WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
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Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 51-404
Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

April 6, 2017

#5339024

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PART 1 - Introduction

The current Canadian Securities Administrators (**CSA** or **we**) Business Plan identifies a review of the regulatory burden on reporting issuers as one of the CSA's key initiatives for 2016-2019.[1] Changes brought on by shifts in market conditions, investor demographics, technological innovation and globalization all have a real impact on reporting issuers. As capital markets evolve, our approach to regulation needs to reflect the realities of business for Canadian reporting issuers to remain competitive. Regulatory requirements and the associated compliance costs should be balanced against the significance of the regulatory objectives sought to be realized and the value provided by such regulatory requirements to investors and other stakeholders.

The purpose of this CSA Consultation Paper (the **Consultation Paper**) is to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers[2] that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital market. Part 2 of this Consultation Paper is focused on considering options to reduce the regulatory burden associated with both capital raising in the public markets (i.e., prospectus related requirements) and the ongoing costs of remaining a reporting issuer (i.e., continuous disclosure requirements).

Appendix A to this Consultation Paper provides a snapshot of the size and types of reporting issuers who operate in the public market. We note that the Consultation Paper focuses only on the various securities legislation requirements applicable to non-investment fund reporting issuers. Separately, the CSA are also considering ways to reduce regulatory burden in other areas of securities legislation, such as reducing the disclosure obligations for investment funds.

Through recent policy initiatives, the CSA have taken steps to support reporting issuers while maintaining investor protection. For example, we have:

- liberalized the prospectus marketing regime by increasing the range of permissible pre-marketing and marketing activities in connection with public offerings,
- introduced new exemptions for use by reporting issuers and amended or modified certain existing prospectus exemptions available to reporting issuers, and
- tailored disclosure and other requirements to alleviate certain requirements for venture issuers in the prospectus and continuous disclosure regimes.

Similarly, the CSA are currently:

- reviewing the current resale regime for prospectus-exempt securities to determine the extent to which the resale provisions continue to be relevant in today's markets and to assess the market impact of alternative regulatory approaches, and
- creating a new national filing system to replace the core CSA national systems.

Appendix B to this Consultation Paper briefly discusses and highlights the details of these regulatory initiatives.

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[1] http://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2016-2019.pdf
[2] In the main body of the Consultation Paper, reference to "reporting issuer(s)" means a "reporting issuer" as defined in securities legislation, other than investment funds. In Appendices A and B of this Consultation Paper, reference to "reporting issuer(s)" means a "reporting issuer" as defined in securities legislation.

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While we have undertaken a number of policy initiatives to decrease regulatory burden for reporting issuers, the CSA recognize that there is more we can do to address other potential sources of regulatory burden for reporting issuers, while being mindful of the impact on investor protection. This Consultation Paper is the first step in this process. We are seeking feedback from market participants and stakeholders to identify specific areas of securities legislation where the regulatory burden on reporting issuers may be out of proportion to the regulatory objectives sought to be achieved. We will consider all comments received in assessing the scope and timing of any further work to reduce regulatory burden. However, while this Consultation Paper sets out a range of potential options and requests comments on these and any other options for consideration that we have not identified, we note that no definitive decisions have been made as to whether to move forward on any particular regulatory initiative.

Comments must be submitted in writing by July 7, 2017. We encourage commenters to provide comments on the full range of options identified in this Consultation Paper.

PART 2 – Potential options to reduce regulatory burden

We set out below some potential regulatory options which may reduce regulatory burden for reporting issuers:

2.1 Extending the application of streamlined rules to smaller reporting issuers

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

(a) Reducing the audited financial statement requirements in an initial public offering (**IPO**) prospectus
(b) Streamlining other prospectus requirements
(c) Streamlining public offerings for reporting issuers
(d) Other potential areas

2.3 Reducing ongoing disclosure requirements

(a) Removing or modifying the criteria to file a business acquisition report (**BAR**)
(b) Reducing disclosure requirements in annual and interim filings
(c) Permitting semi-annual reporting

2.4 Eliminating overlap in regulatory requirements

2.5 Enhancing electronic delivery of documents

While this Consultation Paper discusses some initiatives relating to financial information required under securities legislation, we note that accounting standards for use by entities that prepare financial statements in accordance with Canadian generally accepted accounting principles (**GAAP**) are established by the Accounting Standards Board (**AcSB**), an independent body, and not by the CSA. The AcSB determines the contents of the CPA Canada Handbook – Accounting (the **Handbook**) and has approved the standards set out in Part I of the Handbook (i.e. International Financial Reporting Standards or **IFRS**) as accounting standards for publicly accountable enterprises.

In this Part, we set out a number of potential options for reducing regulatory burden for reporting issuers, including specific consultation questions to gauge the nature and scope of the issues to be addressed in

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each of these areas. We are also soliciting general feedback on which of these options should be prioritized (and, if so, the reasons why), whether such issues can be addressed in the short-term or medium-term, what the impact on investors may be, and any other areas of securities legislation which should also be considered.

General consultation questions

1. Of the potential options identified in Part 2:
   (a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?
   (b) Which should be prioritized and why?

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

2.1 Extending the application of streamlined rules to smaller reporting issuers

Under Canadian securities legislation, venture issuers are permitted to comply with continuous disclosure requirements that are generally less onerous than those imposed on other reporting issuers. For example, venture issuers have:[3]

- longer filing deadlines for annual and interim financial statements
- a higher threshold for significant acquisition reporting
- no requirement to file an annual information form (**AIF**)
- ability to file a quarterly highlights document to meet interim management's discussion and analysis (**MD&A**) requirements
- different corporate governance requirements
- reduced certification requirements

We currently distinguish venture issuers from non-venture issuers based on their exchange listings. A reporting issuer generally qualifies as a venture issuer as long as it does not have securities listed or quoted on what we consider senior securities exchanges or most foreign exchanges (a **Non-Venture Exchange**).[4] Some of the reasons for the current delineation between venture and non-venture issuers were stability and transparency.

We are considering ways to reduce reporting requirements for smaller reporting issuers based on a different metric. One option would be to adopt a size-based distinction. Under this option, a reporting issuer's size could be measured, for example, by the size of its assets, revenue, market capitalization or a

[3] For additional details, see Appendix B.
[4] For instance, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) defines "venture issuer" as a reporting issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange (**TSX**), Aequitas NEO Exchange Inc., a U.S. marketplace, or a marketplace outside of Canada and the U.S. other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

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combination of criteria. A size-based distinction would allow smaller reporting issuers listed on senior securities exchanges to utilize the reduced regulatory requirements currently restricted to venture issuers.

For example, we note that the rules and regulations of the U.S. Securities and Exchange Commission (**SEC**) provide reduced reporting requirements for "smaller reporting companies". Smaller reporting companies provide less historical financial information, have longer filing deadlines and have reduced executive compensation and MD&A disclosure requirements. Smaller reporting companies are presently defined as registrant companies (which are analogous to Canadian reporting issuers) with less than US$75 million in common equity public float, or less than US$50 million in revenue in the case of companies without publicly traded equity. The SEC has recently proposed amendments that, if adopted, would expand the number of registrants that qualify as smaller reporting companies by increasing the criteria thresholds to less than US$250 million in common equity public float or US$100 million in revenue for registrant companies with zero public float.

Additionally, the U.S. *Jumpstart Our Business Startups Act* of 2012 introduced a new category of registrant: the emerging growth company (**EGC**). Most companies with annual revenue under US$1 billion qualify as an EGC and benefit from reduced regulatory and reporting requirements under the U.S. *Securities Exchange Act of 1934*.[5] The EGC status is time-limited. While the quantitative thresholds adopted by the SEC for the U.S. market would need to be adjusted to reflect the significantly smaller scale of the Canadian capital market and its reporting issuers, the general approach taken by the SEC might suggest options worth considering in the Canadian context.

With a median market capitalization of $112 million for reporting issuers listed on the TSX[6], a number of TSX-listed reporting issuers could likely benefit from reduced reporting requirements if we were to adopt a size-based distinction similar to the criteria for smaller reporting companies under the SEC rules.

Consultation questions

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

5. If we were to adopt a size-based distinction:

   (a) What metric or criteria should be used and why? What threshold would be appropriate and why?
   (b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?
   (c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?
   (d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?[7]

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[5] The modified requirements available to EGCs include reduced disclosure with respect to financial statements, MD&A, and executive compensation.
[6] http://www.tsx.com/listings/listing-with-us, as of March 31, 2017.
[7] See section 2.2 for a discussion on expanding the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers for IPO prospectuses.

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2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

(a) Reducing the audited financial statement requirements in an IPO prospectus

The venture issuer regulation amendments introduced in 2015 reduced the number of years of financial information and related analysis required in a venture issuer IPO prospectus from three to two years. In addition, National Instrument 41-101 *General Prospectus Requirements* contains an exemption based on size from the requirement to audit the second and third most recently completed financial years.

We understand that an issuer may choose to list on a Non-Venture Exchange at the time of its IPO despite having relatively low revenues. We could consider allowing issuers that intend to list on a Non-Venture Exchange to present a reduced number of years of audited financial statements in their IPO prospectus if they have pre-IPO revenues under a certain threshold. Alternatively, we could allow all issuers to do so. These issuers could still be subject to the continuous disclosure requirements of a non-venture issuer post-IPO. However, it is unclear to us whether this would contribute to more efficient capital raising in the public market in isolation.

Consultation questions

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:

    (a) How would this amendment assist in efficient capital raising in the public market?
    (b) How would having less historical financial information on non-venture issuers impact investors?
    (c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?
    (d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

8. How important is the ability to perform a three year trend analysis?

(b) Streamlining other prospectus requirements

In addition, there are other prospectus requirements that we can consider removing or modifying to reduce the issuer's preparation costs while still providing potential investors with clear, understandable and comprehensive disclosure necessary to make an informed investment decision. These options include:

- increasing BAR thresholds for non-venture issuers (also discussed in a continuous disclosure context below)
- removing the requirement for interim financial statements to be reviewed by an auditor
- removing the requirement to include pro forma financial statements for significant acquisitions
- tailoring disclosure requirements for non-IPO prospectuses to only focus on the following information: an overview of the issuer's business, key information regarding the issuer's management, disclosure of any conflicts of interest, a description of securities distributed and relevant rights, and the principal risks facing the business

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Consultation questions

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

10. Should other prospectus disclosure requirements be removed or modified, and why?

(c) Streamlining public offerings for reporting issuers

The prospectus requirement, including the statutory rights investors receive under this regime, is a fundamental pillar of our current regulatory regime. Historically, the short form prospectus regime was designed to facilitate efficient capital raising for reporting issuers while providing investors with all of the protections of a prospectus, including statutory rights of withdrawal, rescission and damages, and the protections afforded by the statutory liability regime for the contents of the prospectus (i.e., the liability imposed by securities legislation on the reporting issuer, the underwriters, the board of directors, etc.).

(i) Short form prospectus offering system

We have heard from some stakeholders that the time and cost to prepare a short form prospectus may be impediments to capital raising.

We are considering whether to eliminate or modify existing short form prospectus disclosure requirements where such requirements are duplicative, are not providing potential investors with timely, relevant information or may be misaligned with current market practices. For example, risk factor disclosure in short form prospectuses may often seem repetitive or boilerplate and the required disclosure of price ranges and trading volumes is available on the website of the reporting issuer's trading market.

We could also consider whether to extend the short form prospectus offering system to additional reporting issuers not currently qualified to use it (i.e., re-examine the short form eligibility requirements).

Consultation questions

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

(ii) Potential alternative prospectus model

We are also considering whether conditions are right to revisit the merits of a prospectus offering model for reporting issuers that is more closely linked to continuous disclosure.

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In 2000, the CSA published for comment a concept proposal called Integrated Disclosure System (**IDS**).[8] This regime was designed to complement the existing prospectus regime. Under the IDS, reporting issuers were required to provide investors with more comprehensive and timely continuous disclosure by using an abbreviated offering document integrating the reporting issuer's disclosure base.

In 2002, the British Columbia Securities Commission also published for comment a proposal on, among other things, a system called Continuous Market Access (**CMA**).[9] This regime was designed to replace the existing prospectus regime. CMA provided reporting issuers with access to markets by disclosing the offering in a press release. No offering document was required, but reporting issuers were subject to an enhanced continuous disclosure regime and the obligation to disclose all material information about the reporting issuer.

The IDS and CMA proposals were intended to de-emphasize the traditional focus on primary market disclosure and put increased focus on a reporting issuer's continuous disclosure, in recognition of the fact that the majority of trading was taking place in the secondary rather than primary markets. They were also meant to provide reporting issuers with faster and more flexible access to public markets. Ultimately, these proposals did not go forward and, instead, the CSA subsequently updated the short form prospectus system.

Differences between the securities legislation of the various CSA jurisdictions may have been an obstacle at the time the IDS and CMA were proposed. However, since the early 2000s, the CSA have implemented different rules to further develop the harmonized approach to securities legislation across the country, such as national disclosure rules, the passport regime and registration requirements. Also, all CSA jurisdictions have adopted a statutory secondary market liability regime, which did not exist at the time the IDS and CMA were proposed.

We are now considering if the conditions are right to amend the current prospectus offering regime for reporting issuers. The intention is that the disclosure provided to investors be more concise and focused than under the current short form prospectus regime. For example, in cases other than a significant acquisition or significant changes to the reporting issuer's business, the disclosure in a prospectus could be limited to relevant items concerning the offering and the offered securities, such as:

- a detailed description of the securities offered
- intended use of proceeds
- the plan of distribution
- consolidated capitalization
- earnings coverage
- material risk factors associated with the offering and the offered securities
- conflicts of interest, if any
- investors' statutory rights of withdrawal, damages and rescission

[8] *Canadian Securities Administrators Notice and Request for Comment 44-101, 51-401 – Concept Proposal for an Integrated Disclosure System*, Canadian Securities Administrators, January 28, 2000
[9] *New Proposals for Securities Regulation – A new way to regulate*, British Columbia Securities Commission, June 5, 2002

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Under an alternative prospectus model, reporting issuers and dealers participating in an offering would assume liability for any misrepresentation in the reporting issuer's disclosure base and all written marketing communications pertaining to the offering or the securities offered.

Consultation questions

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

    (a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?
    (b) What types of investor protections should be included under such a model (for example, rights of rescission)?
    (c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

*(iii) Facilitating at-the-market (**ATM**) offerings*

An ATM offering is a continuous distribution by a reporting issuer of equity securities into a public trading market, such as the TSX, at prevailing market prices. ATM offerings are made through a registered securities dealer, typically acting on an agency basis. Distribution agreements governing ATM offerings usually provide reporting issuers with significant flexibility to establish parameters with respect to the timing, price and amount of securities to be sold during a specified period, subject to some limitations.

Part 9 of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) establishes certain rules for ATM offerings under Canadian shelf prospectuses, including an upper limit on the market value of securities which may be distributed under an ATM offering,[10] and a prohibition against market stabilization activities in connection with such an offering. NI 44-102 does not establish a comprehensive framework for ATM offerings as it does not exempt ATM offerings from certain provisions of securities legislation applicable to all prospectus offerings, such as the prospectus delivery requirement and statutory rights of rescission and withdrawal. However, these are impracticable in the context of an ATM offering. Consequently, a reporting issuer wishing to conduct an ATM offering must obtain exemptive relief from these requirements. As a condition of granting the requested relief, exemptive relief granted by CSA members in connection with ATM offerings has typically limited the number of securities that may be sold under the ATM offering on any given trading day (as a percentage of the aggregate daily trading volume) and required monthly reports in respect of sales made through the ATM offering.

ATM offerings are well established in the United States, but much less common in Canada. A number of Canadian issuers have chosen to conduct ATM offerings exclusively in the United States, rather than in Canada. Some industry participants have observed that the limited number of ATM offerings in Canada may be partly attributable to regulatory burden associated with the requirement to obtain prior exemptive relief and the conditions typically imposed in connection with such relief. They have also suggested that

[10] The market value of equity securities distributed under an ATM offering may not exceed 10% of the aggregate market value of the reporting issuer's outstanding equity securities of the same class as the class of securities distributed, calculated in accordance with section 9.2 of NI 44-102 as of the last trading day of the month before the month in which the first trade under the ATM offering is made.

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some of the current restrictions on ATM offerings could be relaxed or eliminated without compromising necessary investor protection and the integrity of the capital markets. We are seeking feedback from participants in the Canadian capital markets as to whether there are measures we should adopt to facilitate ATM offerings in Canada.

Consultation questions

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

(d) Other potential areas

We are also considering other potential areas for reducing regulatory burden associated with capital raising, including:

- facilitating cross-border offerings
- further liberalizing the pre-marketing and marketing regime

Consultation questions

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

2.3 Reducing ongoing disclosure requirements

(a) Removing or modifying the criteria to file a BAR

Currently, reporting issuers are required to file a BAR within 75 days after completion of an acquisition that meets the significance tests set out in Part 8 of NI 51-102. This requirement was introduced in 2004 to provide investors in the secondary market, on a relatively timely basis, the type of information currently required for primary market investors in a prospectus offering. Disclosure required in a BAR includes historical financial statements of the business acquired and, in the case of a BAR filed for a non-venture reporting issuer, pro forma financial statements.

In July 2011, the CSA requested comments on proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (**NI 51-103**). In NI 51-103, the CSA proposed to increase the significance thresholds for acquisitions made by venture issuers from 40% to 100%. Although the CSA did not implement NI 51-103, it amended NI 51-102 in 2015 to increase the significance thresholds for acquisitions made by venture issuers as proposed in NI-51-103. The increased significance thresholds reduced the instances when venture issuers must file a BAR. No increase of the significance tests for non-venture issuers was proposed at that time, as these changes were made in the context of rule amendments targeting venture issuers only.

Reporting issuers frequently apply for and are granted certain relief from the BAR requirements. We have heard from some stakeholders that the preparation of a BAR entails significant time and cost, and that the information necessary to comply with the BAR requirements may, in some instances, be difficult to obtain. Some of these stakeholders have also questioned the value of the disclosure BARs provide. In the July 2011 consultation on NI 51-103, a number of commenters had also indicated that they did not think pro forma financial statements provide useful information to investors. Other stakeholders have indicated that they continue to believe that there are situations where a BAR provides relevant information to investors seeking to make an investment decision.

We are now considering whether we should conduct a broader review of the BAR requirements. We could consider changes such as:

- removing the requirement to file a BAR entirely in certain circumstances
- removing one or more of the significance tests
- increasing the threshold applied to the three significance tests for non-venture issuers
- providing alternative tests based on specific industry criteria

Consultation questions

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

19. Are there certain BAR requirements that are more onerous or problematic than others?

20. If the BAR provides relevant and timely information to investors:

    (a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?
    (b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?
    (c) What alternative tests would be most relevant for a particular industry and why?
    (d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

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(b) Reducing disclosure requirements in annual and interim filings

We have heard from stakeholders that the volume of information included in annual and interim filings may obscure the focus on the key information needed by a reporting issuer's investors and analysts. We are considering whether there are ways in which we could refocus annual and interim filings on such key information. Possible options include:

- removing the discussion of prior period results from the MD&A
- removing the summary of quarterly results for the eight most recently completed quarters in the MD&A
- allowing all reporting issuers to meet interim MD&A requirements by preparing a "quarterly highlights" document (currently, this option is limited to venture issuers only)

Consultation questions

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

(c) Permitting semi-annual reporting

A key element proposed in NI 51-103 was the change from a quarterly financial reporting requirement to a semi-annual reporting requirement.[11] Although the CSA ultimately adopted some of the proposals within NI 51-103 as amendments to the existing regulatory regime for venture issuers, the CSA did not change the quarterly reporting requirement because of concerns expressed by certain commenters. These commenters thought the time period between financial reports would be too long and that the proposals might adversely affect the market perception of venture issuers, their governance, liquidity and comparability to more senior reporting issuers. Some of these commenters did not think that the requirement for interim financial reports was unduly burdensome or costly.

Although the CSA did not implement NI 51-103, it amended NI 51-102 in 2015 to allow venture issuers to replace interim MD&A with quarterly highlights.

There has been considerable discussion over the past several years with respect to perceived short-term focus among publicly-traded entities due to the current emphasis on quarterly financial results, and whether this trend is inconsistent with the creation of value by businesses over the long term. Some academic commentators and business leaders have suggested that quarterly reporting encourages reporting issuers to focus too heavily on short-term financial results, to the detriment of the reporting issuer's business over the longer-term. Others have questioned this analysis, and suggested that the

[11] A semi-annual reporting requirement was also a key feature of CSA Multilateral Consultation Paper 51-403 *Tailoring Venture Issuer Regulation* on May 31, 2010 by the securities regulators in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan.

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elimination of quarterly reporting would deprive investors of timely financial disclosure, while doing little to push publicly-traded entities into better long-term decision making. We note that a semi-annual reporting model has been a long-established practice in the United Kingdom and Australia.[12] Given this ongoing debate, we are soliciting feedback from participants in the Canadian capital markets as to whether the time is right to revisit this issue.

We could provide the option to report on either a quarterly or semi-annual basis to all reporting issuers, or limit this option to smaller reporting issuers. Reporting issuers would still be required to comply with material change reporting requirements and exchange listing requirements to disclose all material information.

Consultation questions

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

2.4 Eliminating overlap in regulatory requirements

There are areas of similarity between the disclosure requirements of IFRS and Form 51-102F1 *Management's Discussion & Analysis*, such as:

- financial instruments
- critical accounting estimates
- change in accounting policies
- contractual obligations

Additionally, there is potential overlap in the disclosure requirements in the NI 51-102 forms. For instance, both the MD&A and the AIF require a form of discussion of the risks associated with the reporting issuer.

We are considering the removal of some or all of this overlap, or consolidating the requirements of the MD&A, AIF and financial statements into one document.

[12] In the United Kingdom, mandatory quarterly reporting was introduced in 2007. However, this requirement was abandoned in 2014 in favour of a semi-annual reporting requirement. UK reporting companies are still permitted to report on a quarterly basis.

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Consultation questions

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

2.5 Enhancing electronic delivery of documents

National Policy 11-201 *Electronic Delivery of Documents* (**NP 11-201**) provides guidance to securities industry participants that want to use electronic delivery to fulfill delivery requirements in securities legislation. NP 11-201 applies to documents required to be delivered under securities legislation, including prospectuses, financial statements, and proxy-related materials that are delivered by securities industry participants or those acting on their behalf, such as transfer agents.

One area where we have facilitated the use of electronic delivery is in the introduction of "notice-and-access". In 2013, amendments were made to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) to give reporting issuers the option to use the "notice-and-access" method to post proxy-related materials on a website instead of having to mail materials to registered holders (under NI 51-102) and to beneficial owners (under NI 54-101). Under NI 51-102, notice-and-access may also be used to post annual financial statements and MD&A in lieu of sending such documents to all security holders.

Under the "notice-and-access" method, reporting issuers must deliver a printed notice and voting documents to beneficial owners who have not given their prior consent to delivery. Also, beneficial owners may request a paper copy of certain documents, such as information circulars, annual financial statements and MD&A, at no charge. Factors outside of securities legislation, such as the delivery requirements under business corporations legislation, electronic commerce legislation, investor preferences and market practice, may also impact a reporting issuer's obligation to print and deliver certain documents to beneficial owners or a reporting issuer's choice to use notice-and-access.

Despite these developments to facilitate electronic delivery of documents, we have heard from some market participants that reporting issuers continue to incur significant costs associated with printing and delivering various documents required under securities legislation.

Given the widespread use of Internet, social media and technology in communications generally, we are considering whether new methods of electronic delivery should be permitted to further reduce the use of paper to fulfill delivery requirements, thus reducing costs for reporting issuers, and promoting a more environmentally responsible approach to document delivery. At the same time, we acknowledge that not all investors are online or may prefer to receive their documents in paper format for other valid reasons.

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Consultation questions

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

    (a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?
    (b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?
    (c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?
    (d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

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PART 3 – Providing feedback

We invite interested parties to make written submissions on the consultation questions identified throughout this Consultation Paper. You must submit your comments in writing by July 7, 2017. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Address your submission to all of the CSA as follows:

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA regulators.

The Secretary Ontario Securities Commission 20 Queen Street West 22nd Floor Toronto, Ontario M5H 3S8 Fax: 416-593-2318 Email: comments@osc.gov.on.ca	Me Anne-Marie Beaudoin Corporate Secretary Autorité des marchés financiers 800, rue du Square-Victoria, 22e étage C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3 Fax: 514-864-6381 E-mail: consultation-en-cours@lautorite.qc.ca

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca), the Ontario Securities Commission (www.osc.gov.on.ca), and the Alberta Securities Commission (www.albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

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PART 4 – Questions

Please refer your questions to any of the following CSA staff:

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APPENDIX A
SNAPSHOT OF THE PUBLIC MARKET

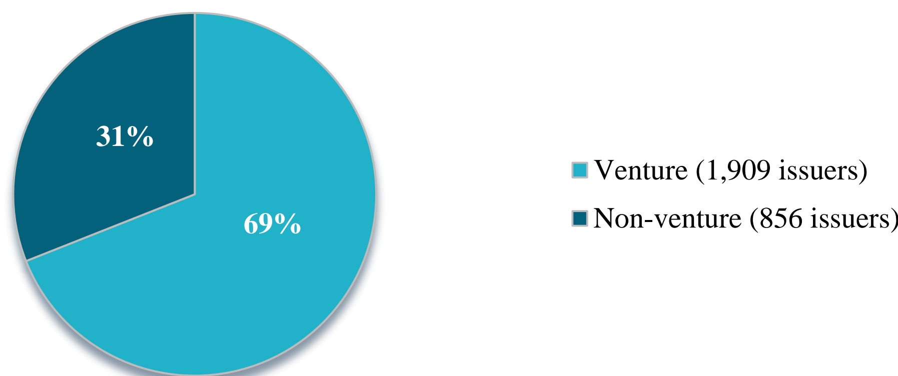
The following charts provide an overview (as of December 31, 2016) of:

- the market capitalization of reporting issuers by industry (both in terms of dollar values and by percentage of total market capitalization), and
- the composition of venture and non-venture issuers (by number of reporting issuers).

Market capitalization and number of reporting issuers, broken down by industry as at December 31, 2016

Industry [13]	Market cap ($ billions)	Market cap (% of total)	Number of reporting issuers	Number of reporting issuers (% of total)
Financial services	$809	31%	132	5%
Diversified industries	$556	21%	370	13%
Oil & Gas	$325	12%	247	9%
Mining	$280	11%	1,319	48%
Utilities & Pipelines	$228	8%	25	1%
Communications & Media	$179	7%	37	1%
Real estate	$96	4%	97	4%
Technology	$85	3%	252	9%
Clean Technology & Renewable Energy	$36	1%	108	4%
Life Sciences	$25	1%	160	6%
Forest Products & Paper	$23	1%	18	1%
TOTAL	**$2,642**		**2,765**	

Status of reporting issuers, as at December 31, 2016



[13] Source: TMX Market Intelligence Group Report for December 2016 and Canadian Securities Exchange (**CSE**) data provided by the CSE. Data excludes exchange-traded funds, closed-end funds, capital pool companies and special purpose acquisition corporations.

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APPENDIX B
SUMMARY OF RECENT CSA POLICY INITIATIVES TO SUPPORT ISSUERS

New or modified prospectus exemptions

Modernization of the exempt market[14] regulatory regime has been a major priority for the CSA. In keeping with this, CSA members have undertaken a series of significant exempt market initiatives related to both introducing new prospectus exemptions and modifying or harmonizing existing ones.[15] The purpose of these policy initiatives was to facilitate greater access to capital through the exempt market for issuers, particularly for start-ups and small and medium-sized enterprises, while maintaining appropriate investor protection.

A number of the prospectus exemptions were specifically designed for use by reporting issuers, including:

- the existing security holder exemption (**ESH Exemption**),
- the rights offering prospectus exemption (**Rights Offering Exemption**), and
- the investment dealer exemption (**Investment Dealer Exemption**).

Other prospectus exemptions are available to both reporting issuers and non-reporting issuers seeking to raise capital:

- the crowdfunding exemption (**Crowdfunding Exemption**),
- the offering memorandum exemption (**OM Exemption**), and
- the friends, family and business associates exemption (**FFBA Exemption**).

ESH Exemption

The ESH Exemption allows reporting issuers listed on specified exchanges to raise funds from existing security holders holding equity securities subject to certain conditions. The ESH Exemption is a cost-effective tool to raise capital because there are no requirements to provide investors with information at the time of distribution except that the reporting issuer is required to issue a news release about the proposed sale of the securities and file any offering materials (other than the subscription agreement) with securities regulators on the same day it provides materials to investors.

Rights Offering Exemption

The CSA have streamlined the rights offering prospectus exemption for non-investment fund reporting issuers in order to reduce the time and cost associated with the use of this exemption. These amendments included:

- removing the current regulatory review process prior to the use of the exemption,
- increasing investor protection through the addition of civil liability for secondary market disclosure,

[14] References to the exempt market refer to securities sold in reliance on a prospectus exemption.
[15] See CSA Staff Notice 45-314 – *Updated List of Current CSA Exempt Market Initiatives*, published on January 28, 2016.

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- introducing a user-friendly form of rights offering circular,
- introducing a new notice that reporting issuers must file on SEDAR and send to security holders informing them about how to access the rights offering circular electronically, and
- increasing the dilution limit from 25% to 100%.

Investment Dealer Exemption[16]

The Investment Dealer Exemption allows reporting issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained suitability advice on the investment from an investment dealer. The reporting issuer must have filed all required periodic and timely disclosure documents and issue a news release with key information regarding the distribution, including the use of proceeds and disclosure of any material facts which have not generally been disclosed.

Crowdfunding Exemption[17]

The Crowdfunding Exemption[18] enables start-ups and small and medium enterprises in their early-stages of development to raise capital online from a large number of investors through a single registered funding portal. A limit on the total amount that can be raised is imposed on issuers and investors will be subject to investment limits as a means of limiting their exposure to a highly risky investment. Multilateral Instrument 45-108 - *Crowdfunding* (**MI 45-108**) is available to all issuers that are incorporated or organized in Canada, with their head office in Canada, a majority of their directors resident in Canada, and their principal operating subsidiary (if any) incorporated or organized in Canada or the USA. A crowdfunding offering document must be provided to investors and an issuer may also provide purchasers with a term sheet, video or other materials summarizing the information in the crowdfunding offering document.

OM Exemption

The OM Exemption was designed to facilitate capital-raising by allowing issuers to solicit investments from a wider range of investors than under other prospectus exemptions, provided that investors receive a disclosure document at the point of sale (an offering memorandum), as well as a risk acknowledgement form in respect of their initial investment. The offering memorandum has to be accompanied by audited financial statements; however the offering memorandum requires less disclosure relative to what is required to be included in a prospectus.

FFBA Exemption

The FFBA Exemption permits issuers to distribute securities to the issuer's directors, executive officers, control persons and founders as well as certain family members, close personal friends and close business associates of such persons, subject to a number of conditions. It was designed to allow early-stage issuers greater access to capital from their network of family, close personal friends and close business associates. There are no requirements to provide investors with information at the time of distribution and the exemption can be used without intermediary involvement.

[16] Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan have adopted the Investment Dealer Exemption.
[17] MI 45-108 was introduced in Ontario, Quebec, Manitoba, Nova Scotia and New Brunswick in January 2016, and was adopted in Alberta in October 2016 and by Saskatchewan in February 2017.
[18] British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia have introduced a start-up crowdfunding exemption to facilitate capital raising for start-up and early stage businesses. The start-up crowdfunding exemption is not available to reporting issuers.

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Venture issuer regulation

In 2015, the CSA implemented targeted amendments to the continuous disclosure and prospectus requirements to streamline and tailor disclosure by venture issuers. These amendments were designed to focus disclosure of venture issuers on information that reflects the needs and expectations of venture issuer investors and eliminate disclosure obligations that may be less valuable to those investors, allowing management of venture issuers to focus on the growth of their business. Specifically, the amendments included:

Quarterly highlights	• allow venture issuers to meet the interim MD&A requirement by filing a "quarterly highlights" document
Executive compensation	• allow venture issuers to use a new tailored form of executive compensation disclosure, Form 51-102F6V *Statement of Executive Compensation - Venture Issuers*
Business acquisition reporting	• increase the significance threshold of an acquisition from 40% to 100% in determining whether an acquisition is significant for purposes of filing a BAR
IPO prospectus	• reduce the number of years of company history and audited financial statements required in a venture issuer IPO prospectus from three to two years
Corporate governance	• require venture issuers to have an audit committee of at least three members, the majority of whom cannot be executive officers, employees or control persons of the venture issuer or of an affiliate of the venture issuer

Pre-marketing and marketing amendments to prospectus rules

In 2013, the CSA adopted amendments to the prospectus rules and related policies which increased the range of permissible "pre-marketing" and "marketing" activities in connection with prospectus offerings by issuers other than investment funds. By helping to facilitate the prospectus offering process for issuers and investment dealers, these amendments sought to foster capital raising activities.

The purposes of the rule amendments and policy changes were to:

- ease certain regulatory burdens and restrictions that issuers and investment dealers faced in trying to successfully complete a prospectus offering, while at the same time providing protection to investors, and
- clarify certain matters in order to provide clear rules and a "level playing field" for market participants involved in a prospectus offering.

Among other things and subject to certain conditions, the amendments:

- expressly allow non-reporting issuers, through an investment dealer, to determine interest in a potential initial public offering by communicating with accredited investors,
- expressly allow investment dealers to use marketing materials and conduct road shows after the announcement of a bought deal, during the "waiting period", and following the receipt of a final prospectus (subject to appropriate limitations designed to address investor protection concerns),

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- specify when bought deals and bought deal syndicates can be enlarged (for reporting issuers relying on the "bought deal" exemption in Part 7 of National Instrument 44-101 *Short Form Prospectus Distributions*), and
- provide greater clarity regarding certain practices used in connection with bought deals.

Review of the resale regime

Securities that are distributed using prospectus exemptions are generally subject to resale restrictions in accordance with the resale provisions in National Instrument 45 102 – *Resale of Securities* (**NI 45-102**). NI 45-102 requires that an issuer be a reporting issuer for 4 months before securities can be freely traded (the **Seasoning Period**). Without this requirement, securities issued under a prospectus exemption could be resold in the public market with little or no public disclosure about the issuer. The resale provisions also include a requirement to hold securities for a specified period of time (the **Restricted Period**). Among other rationales, the Restricted Period is meant to allow sufficient time for the thorough dissemination and absorption in the marketplace of information about the issuer and the securities distributed under a prospectus exemption, and protect those purchasing in the secondary market. With a Restricted Period, securities cannot be sold other than pursuant to a further prospectus exemption until 4 months have elapsed since the distribution date. The Restricted Period may be indefinite if the issuer is not a reporting issuer.

The CSA are undertaking a review of the current resale regime for prospectus-exempt securities to determine the extent to which the resale provisions continue to be relevant in today's markets and to assess the market impact of alternative regulatory approaches.

National Systems Renewal Program (NSRP)

Through various service providers, CSA members operate a number of information technology systems which are widely used across all CSA jurisdictions. These include:

- the System for Electronic Document Analysis and Retrieval,
- the System for Electronic Disclosure by Insiders,
- the National Registration Database,
- the National Registration Search,
- the National Cease Trade Order Database, and
- the Disciplined List.

CSA members have initiated a program to replace these national systems with a single, intuitive and secure filing system for market participants and regulators.

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Caldwell Securities Ltd.
Independent Investment Advisors

April 12, 2017

Mr. Louis Morisset
President and Chief Executive Officer
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, QC H4Z 1G3

Comments regarding CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-investment Fund Reporting Issuers (Consultation Paper)Canadian Securities Administrators

Dear Mr. Morisset,

I was encouraged to note the Canadian Securities Administrators ("CSA") is considering the weight, relevance and impact of current securities disclosure regulation. Having worked in all areas of the securities industry for over fifty years, it is clear to me and to others, that we have transcended any balance between investor protection and public capital market preservation. The ramifications for future Canadian innovation, economic growth and employment are clear.

My concern is Canada's future. Please take my comments with that context.

1) Canada is a great country in which to start a business, but not a great country in which to build one. After "love capital", access to public capital markets has become severely restrained as a result of regulatory costs and on-going reporting burdens.

2) Disclosure demands on public and newly public companies are costly, time consuming and ineffective. Current disclosure regulatory demands ignore the basic fact that "too much information is no information". Shareholders simply do not read AIFs, MD&As or even Annual Reports. The key is to focus on what is important. What does the investor need to know in order to make an informed and intelligent decision?

3) Given my career, it is odd that I now find myself advising companies to stay "private". The risks, costs and the time burdens are simply too great. The significant growth of the private equity market in Canada is reflective of these factors.

REGULATED BY THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA & MEMBER OF THE CANADIAN INVESTOR PROTECTION FUND
150 KING ST. WEST, SUITE 1710, P.O. BOX 47, TORONTO, ONTARIO M5H 1J9 • TEL: 416-862-7755 • 1-800-387-0859 • FAX: 416-862-2498
www.caldwellsecurities.com

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Obviously this is also depriving public investors of choice. As an aside, there are rarely "hot" new issues as companies remain private longer and the IPO phase has become the "unload" period for earlier, accredited investors.

4) The demands of quarterly MD&As, etc. are significant both in content and continuing work load. This is a major cost for every public enterprise. Some, with large administration staffs, may be able to handle the work load but for many the burden is inordinate. In the end, investors bear that cost.

I also suggest you not constrain your consideration in this matter to "smaller" enterprises.

Companies considering an IPO are also faced with some additional hurdles not within the scope of your examination but possibly for consideration in the future. They are:

A) The mechanisms through which new company financings were conducted in the past have been obliterated. Independent investment firms have seen their ranks depleted by over 30% in the past two years alone. As one senior investment manager put it "brokers built Canada" through selling shares in every public Canadian enterprise. The bottom line is only 7 new company IPO's were issued in 2016. That is a shocking number which points to zero growth.

B) The explosion of ETFs within Canada is distorting share pricing. For example, ETFs typically purchase large cap companies included in an index. As a result, small to medium cap companies have become orphaned with little or no research or continuing broker coverage or interest.

C) Investment Advisors are so traumatized by regulatory and legal risks, few recommend small to medium cap companies. Their efforts are now focused on "packaged products".

I would welcome the opportunity to be of any assistance to any group or committee in this regard. More practical and direct investment industry inputs are required if Canada is to realize meaningful and broadly based economic growth.

Best wishes in this project,

Thomas S. Caldwell, C.M.
Chairman & CEO

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CC:

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Alberta Securities Commission
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Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
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June 19, 2017

Dear Sirs/Mesdames:

CSA Consultation Paper 51-404 ***Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers***

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

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KPMG

June 19, 2017

This letter is in response to the request for comment on the Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers.*

We have addressed a number of matters on which specific comment was requested below. We did not respond to questions we believe would be best answered by investors or preparers.

2.1 Extending the application of streamlined rules to smaller reporting issuers

- Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?
  - We believe whatever distinction is drawn that the categorization should be transparent to investors. We also believe the categorization should be relatively stable so investors can have reasonable expectations regarding reporting deadlines and the extent of reporting.
  - The current distinction based on exchange listing has the advantage of being very transparent and stable. Further, smaller non-venture issuer that prefer the reporting requirements available to venture issuers have the ability to switch exchange listings if that is what they desire and their investors would not object. Larger venture issuers do periodically move to the TSX and become non-venture issuers when they believe they are ready for the additional reporting requirements.
  - A size based distinction would have the advantage of acknowledging differing investor expectations regarding financial reporting from larger vs smaller issuers and is not subject to abuse (e.g. a larger issuer avoids reporting requirements be staying on the venture exchange). A size based distinction would likely be the most fair provided the correct metric for size could be determined; however, would require considerable change to existing rules and may result in less consistency as reporting issuers may move more frequently from one categorization to another depending on the metrics chosen.
  - Generally, we do not prefer adding another layer within the current framework such as (1) larger non-venture issuers (2) smaller non-venture issuers (3) venture issuers with differing reporting requirements. The distinction between what reporting to expect for (2) and (3) would likely be unclear to investors. However, minor accommodations within category (2) such as different reporting deadlines for smaller non-venture issuers may be a way to ease the regulatory burden on such reporting issuers without compromising the quality of the information being delivered and as such, we would support a change of that nature.
- If we were to adopt a size-based distinction: (a) What metric or criteria should be used and why? What threshold would be appropriate and why? (b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year? (c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject? (d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

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- If such a distinction were to be made we would recommend use of criteria based on market capitalization measured 6 months prior to the fiscal year end. Market capitalization is an objective measure of the interest investors have in an entity and does not depend on financial statement results which may or may not have had any independent review as of an interim date. Measurement 6 months prior to the fiscal year end, we believe allows the preparer sufficient time to address the changed reporting requirements while not delaying the process too much for investors.
- We would recommend that the issuer profile on SEDAR be modified to clearly identify the category of reporting issuer. This should also be identified with a preamble to the Annual Filing Form assuming such a form is adopted.

- If the current distinction for venture issuers is maintained, should we extent less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why??
  - Yes. The elimination of the requirement for pro forma financial statements should be extended to non-venture issuers. Also as noted above, we would support less onerous reporting deadlines for smaller non-venture issuers.

2.2 Reducing the regulatory burden associated with the prospectus rules and offering process

a) Reducing the audited financial statement requirements in an IPO prospectus

- Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuer? If so: (a) How would this amendment assist in efficient capital raising in the public market? (b) How would having less historical financial information on non-venture issuers impact investors? (c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not? (d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?
  - We believe this question is best answered by investors.
  - We have observed that certain transactions are delayed because of challenges related to completing an audit regarding the most historic information.
- How important is the ability to perform a three year trend analysis?
  - We believe this question is best answered by investors.

b) Streamlining other prospectus requirements

- Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

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- We note that irrespective of any regulatory changes when a Canadian auditor is involved in a prospectus an interim review will be required. Prospectus rules require auditors to consent to the use of their audit report. OCS 7150 *Auditor's Consent to the Use of a Report of the Auditor included in an Offering Document* requires that "when an offering document includes unaudited financial statements of the entity and an engagement to review the unaudited financial statements has not been performed, the auditor shall perform review procedures on the unaudited financial statements in accordance with Section 7060 or CSRE 2400." So irrespective of any regulatory changes when a Canadian auditor is involved in a prospectus an interim review will be conducted.
- Given the fact that removal of this requirement for an interim review may only impact situations when a non-Canadian auditor is conducting the review because of the requirements of OCS 7150 noted above, we would not recommend the change.

- Should other prospectus disclosure requirements be removed or modified, and why?
  - We believe this question is best answered by preparers and investors. However, if changes are made to the BAR rules we believe similar accommodations should be made to prospectus requirements related to (proposed) acquisitions.

c) Streamlining public offerings for reporting issuers

- Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.
  - We believe this question is best answered by preparers and investors.
- Should we extend the availability of the short form prospectus offering system to more issuers? If so, please explain for which issuers, and why this would be appropriate.
  - We believe this question is best answered by preparers.
- Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers: (a) what should the key features and requirements of any proposed alternative prospectus model be? (b) What types of investor protections should be included under such a model (for example, rights of rescission) (c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?
  - We believe this question is best answered by preparers and investors.
- What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?
  - We believe this question is best answered by preparers and investors.

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- Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?
  - We believe this question is best answered by preparers and investors.
- Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers.
  - We believe this question is best answered by preparers and investors.
- As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and is so in what way
  - We believe this question is best answered by preparers and investors.

2.3 Reducing ongoing disclosure requirements

a) Removing or modifying the criteria to file a BAR

- Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?
  - We believe the removal of the requirement for pro forma financial statements for venture issuers should be considered by the CSA. We have concerns regarding whether the purpose of pro forma financial statements are misunderstood by preparers and by extension users. Also we believe investors are confused when different pro form information appears in the financial statements in compliance with IFRS 3 B64 (q) (ii) and IAS 34 16(A) (i) which can create confusion in the marketplace.
- Are there certain BAR requirements that are more onerous or problematic than others?
  - We believe for the real-estate industry it may be more practicable to provide a Statement of Direct Revenue and Expenses rather than a carve-out financial statement as typically significant allocations are required to create the carve-out financial statements related to the asset(s) acquired and the information is of limited use to the investor because the asset(s) will be combined a portfolio of existing assets and such allocated costs will be irrelevant.
- If the BAR provides relevant and timely information to investors: (a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements? (b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision? (c) What alternative tests would be most relevant for a particular industry and why? (d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus level disclosure? Why or why not?

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- Generally, we believe these questions are best answered by preparers and investors.
- In practice, we have observed that the significance test related to profit and loss can at times result acquisitions that are relatively insignificant being included because of one-time events. We would recommend consideration be given to changing to adding an optional test based on revenue when an asset is only significant based on the profit and loss test.

b) Reducing disclosure requirements in annual and interim filings

- Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?
  - We believe this question is best answered by preparers and investors.
- Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.
  - We believe this question is best answered by preparers.

c) Permitting semi-annual reporting

- What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?
  - We believe the benefits of quarterly reporting are that it instills a certain discipline around the financial reporting process. Certain accounting assessments are required to be made each reporting period (e.g. impairment triggers, going concern) and that with less frequent reporting such analysis will not be completed as regularly which may delay the timely reporting of such important matters. Additionally, without timely reporting, investors will not be informed of the use of proceeds from prospectus activities on a timely basis.
  - The concerns or burdens associated with quarterly reporting are best answered by preparers.
- Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?
  - Semi-annual reporting may be a viable option for reporting issuers with no revenue. That said, we believe certain disclosures should be required related to the use of any proceeds raised.
- Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?
  - For reporting issuers with operating businesses, we believe timely information is valued in the marketplace and in the absence of requirements information likely would still be disclosed with possibly less due diligence around the disclosures. That said, we believe investors are in the best position to answer this question.

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- Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?
  - For the issuers above, where we indicated semi-annual reporting may be a viable option (e.g. issuers with no revenue), this style of reporting could also be an alternative.

2.4 Eliminating overlap in regulatory requirements

- Would modifying any of the above areas in MD&A form requirements result in a loss of significant information to an investor? Who or why not?
  - We support the concept of removing duplicative information. We believe combining reporting into one Annual Report would facilitate this approach as the risk of an investor not referring to relevant information contained elsewhere would be reduced.
  - The CSA should also consider encouraging preparers to cross-reference to other documents when information is duplicative provided investors do not object to reading the information in a piecemeal fashion.
- Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?
  - Areas of overlap with IFRS requirements include liquidity (1.6), transactions between related parties (1.9) and changes in accounting policies including initial adoptions (1.13).
- Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?
  - Yes. One document reduces the need for duplication and creates clarity for investors regarding where to obtain information. We would also recommend including the NI 52-109 certification in the Annual Report for non-venture issuers. We recognize this may create pressure on preparers at smaller non-venture issuers, but believe the CSA should address this by extending the deadlines for filing for such issuers.
- Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure in complete, relevant, clear, and understandable for investors.
  - We believe this question is best answered by preparers.

2.5 Enhancing electronic delivery of documents

c) Permitting semi-annual reporting

- Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?
  - We believe this question is best answered by preparers.
- The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this module: (a) Since the adoption of this "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

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(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specially requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available? (c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies? (d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

– We believe this question is best answered by preparers and investors.

- Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

  – We believe this question is best answered by preparers and investors.

Thank you for the opportunity to comment on CSA Consultation Paper 51-404. Should you wish to discuss our comments in more detail, we would be pleased to respond.

Yours truly,

Laura Moschitto
Partner, KPMG LLP
(416) 777-8068

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June 19, 2017

The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

Comments regarding CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-investment Fund Reporting Issuers (Consultation Paper) Canadian Securities Administrators

Executive Summary

Marrelli Support Services Inc. ("Marrelli Support") welcomes the opportunity to comment on CSA Consultation Paper 51-404. My comments will be geared towards small companies as our experience lends itself to this.

From our point of view, there are two points to consider: (i) excessive costs observed in the market place, where the sole cost is absorbed by the investor(s); and (ii) no one reads the excessive information, as it is too much, and to get to what is important, the normal investor lacks the capabilities to do so, so they are basically unprotected from information overload which protects compliant efficient companies.

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Questions and Answers

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

For smaller entities, where there are no revenues and which are project oriented, the BAR is a document that serves no purpose. Investors receive no added value from this document as no proper information can be derived from it, such as trend analysis of revenues. This becomes a cost burden to a small company with no added value to investors.

I have no comments for larger enterprises.

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

For smaller entities, the Management Discussion & Analysis ("MD&A") adds no value to investors. The MD&A is a form document that is a summary of press releases and form document requirements that adds no value to investors. It is not timely, as press releases cover the timely information, but the MD&A becomes a source of information overload for a normal investor, which no one will read.

The Quarterly highlights document is an excellent substitute to the MD&A as it gives a summary of what happened to the company during the reporting period, discloses the cash position and liquidity position, including budget plans, as well as all related party transactions and eliminates all the annual MD&A requirements which no one reads for a small company. Basically, this is a toned down version of the annual MD&A. This should be allowed for venture issuers.

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

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Quarterly reporting allows investors to be provided an update of:

(1) Cash;
(2) Management compensation taken out of the company; and
(3) Advising the market where the company is in meeting its commitments.

Quarterly reporting does involve a cost factor but this is outweighed by investor protection. For example, a December 31, yearend financial statement is filed. The Company is obligated to file its next quarter in March which would release the company's cash position and obligations. If it was semi-annual ie. June 30, then say they would be filed in August of the following year, the company could have spent all it funds and raised funds without being accountable to the market (ie. disclosing to investors what has happened during the last six months; was it management carelessness of funds or are they advancing there project further; investor's would need this information to make a proper decision).

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

Semi-annual reporting should not be provided as an option as outlined in point 23. Investor's need to know what the company's finances are on a timely basis as well as its obligations. If the Company does not provide this basic information, an investor could make an uneducated investment decision due to the lack of information.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

No, as discussed in Questions 23 and 24.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

Yes, as disclosed in 21.

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27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

For smaller entities, the loss of financial instruments, critical accounting estimates, changes in accounting policies, would not have a significant impact on an investor. For small entities, in my opinion, an investor is interested in:

(1) Cash
(2) Working capital
(3) Shares, stock option and warrant position
(4) Management compensation and all other related party transactions.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

Yes, for year ends to save on cost and time, the MD&A, AIF (if applicable) financial statements and Management Information Circular should be merged all in one document and Q1, Q2 and Q3, should be the quarterly financial statements with MD&A quarterly highlights. However, the excessive information should be streamlined.

The single document should be drafted in a way that reduces the current redundancies that currently exist in the MD&A, AIF and financial statements. It should also be written in a way that is easy to understand by an investor that does not necessarily have an accountant or legal background.

This would cut costs from outside legal counsel as they would be reviewing one document instead of several at different points in time. It may also enable management of these companies to better utilize their time by not having to draft, review and contribute to the preparation of documents that contain significant redundancies.

Summary

There are problems in our system from the compliance side, but this is not result of providing timely disclosure and what we provide, instead this is caused by the quantity of information contained in each document. There is too much information provided in each

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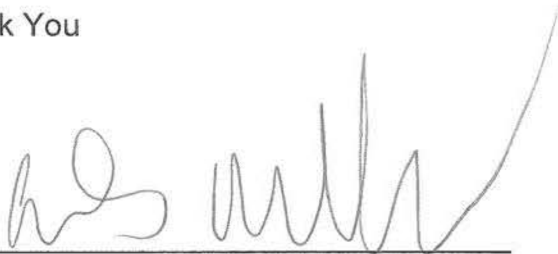
filing and it should be toned down as the process is lending itself to lawyers and accountants being the only ones that are capable of truly understanding certain documents as opposed to investors, which such disclosure is geared towards.

Combining documents or even eliminating documents such as the BAR, and reducing the information required in each document that serve no purpose to investors is a good start.

In addition, in the current environment I have noted that the OSC likes related parties to be identified. With all the information overload in several documents, I note, that it is my observation that I do not see specific identification of related parties in MD&A's on SEDAR. As well, from my observation of SEDAR profiles of smaller issuers, I note that management salaries are significant given the reporting burden put on such companies.

Thank You



Carmelo Marrelli

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June 28, 2017

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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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Me Anne-Marie Beaudoin
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Re: CSA Consultation Paper 51-404, Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers, dated April 6, 2017 (the "Consultation Paper").

Thank you for providing the opportunity for interested parties to make written submissions on the Consultation Paper.

TransCanada Corporation would welcome any developments that facilitate the use of electronic delivery to fulfill delivery requirements. Electronic delivery of proxy materials, financial statements and MD&A would reduce printing and mailing costs and lower the environmental impact of printing and mailing. It would also reduce the delay between printing of materials and filing and/or mailing, which, for a large reporting issuer, may be a gap of up to two weeks. This would allow shareholders to receive access to proxy materials, financial statements and MD&A earlier, providing additional time for shareholders to review materials and make informed investment and voting decisions.

For context, we used the notice-and-access system for our registered shareholders for our May 5, 2017 Annual General Meeting. Of our 18,514 registered shareholders, 15,700 were sent a notice of availability of proxy material, 2,814 have signed up for electronic delivery and 46 have a standing order for a paper copy. Of the 15,700 that received a notice of availability of proxy material, only 14 requested a paper copy. In our experience, notice-and-access does not impede the ability of shareholders to vote and our shareholder participation has in fact increased compared to 2016.

Given our positive experience with notice-and-access for providing registered shareholders with proxy materials, we think it would be appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available with a notice mailed to registered and beneficial shareholders, but without consent. We also support the delivery of paper copies if requested.

Expanding the notice-and-access model to include beneficial shareholders is consistent with the investor protection objectives of securities legislation as investors would continue to receive notice of availability of materials and could request a paper copy. It would harmonize the mailing process for registered and beneficial shareholders, allowing for receipt of information in a more timely manner.

We recognize that the *Canada Business Corporations Act* does not currently allow for notice-and-access delivery of financial statements electronically. However that limit will be removed if the amendments in *Bill C-25: An Act to amend the Canada Business Corporations Act et al.*, are adopted.

If you would like to further discuss this submission, please feel free to contact me.

Christine R. Johnston
Vice-President, Law and Corporate Secretary
TransCanada Corporation

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June 30, 2017

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
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Autorité des marchés financiers
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Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Re: CSA Consultation Paper 51-404

Thank-you for taking the time to review our comments on CSA Consultation paper 51-404. We are supportive of the CSA's initiatives on this front and wish to submit comments in respect of selected consultation questions as follows:

- 2.3 Reducing ongoing disclosure requirements

    (b) Reducing disclosure requirements in annual and interim filings – Question #22

    (c) Permitting semi-annual reporting – Questions #23-#26

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- 2.4 Eliminating overlap in regulatory requirements – Questions #27-#29

Our responses to these topics are attached as **Appendix A**.

Sincerely,

Andrew Yorke
Vice-President, Corporate Finance
The Co-operators Group Limited

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Appendix A – Responses to Selected Questions for CSA Consultation Paper 51-404

2.3 Reducing ongoing disclosure requirements

(b) Reducing disclosure requirements in annual and interim filings

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

While we did not consider the question in detail, we do wish to voice our support for adding clarification for the two examples noted (i.e. we support clarifying that discussion of only significant trends and risks is required and the filing of immaterial amendments to material contracts is not required).

(c) Permitting semi-annual reporting

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

We are supportive of measures that promote a focus on sustainability and long-term value creation. A balance is required between timely information and possibly better reporting rigour on the one hand vs. short-termism and the costs to prepare on the other hand. We believe the costs do outweigh the benefits of quarterly reporting in some circumstances and have outlined one specific situation in Question #24.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

While we have not considered this question from a size-based threshold, we do wish to highlight that some reporting issuers do not have traded common shares. We are an example of this: 100% or our common shares are ultimately held by our co-operative holding company and we are only a public company because of our preferred share holdings. Investors are concerned primarily with our long-term capital strength and credit worthiness; quarterly reporting of operational performance is less of a focus. We would support a semi-annual reporting option for these types of situations and believe there is merit in exploring the semi-annual reporting option more broadly.

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25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

As noted under question #24, we do feel semi-annually reporting is sufficient for certain situations, such as ours, where investors are primarily focussed on a company's rating and capital strength. Further, if a significant credit event did occur, issuance of a material change report would continue to be required, just as we would do today.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

If the semi-annual reporting option was not pursued broadly, we would be supportive of reduced quarterly disclosures for circumstances such as ours. Perhaps this option could be applied to an issuers Q1 and Q3 filings with more robust disclosures semi-annually.

2.4 Eliminating overlap in regulatory requirements

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

We do not believe there would be a loss of significant information to an investor as we feel existing disclosure requirements under IFRS adequately cover these areas. To the extent there is a perceived shortfall, as a general rule, we think it would be better to require/recommend additional disclosures in the financial statements rather than having additional disclosure in a separate section of the MD&A in a piecemeal or duplicative manner.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

Yes, we have observed duplication in these three reports. A portion of this arises because of the different cross-referencing requirements for the MD&A vs. the AIF. While cross-referencing is allowed for in the AIF generally (i.e. Part 1 (f) states "You may incorporate information required to be included in your AIF by reference to another document"), doing so in your MD&A is not allowed unless specifically stated.

In addition to the examples noted in the consultation paper, which we agree with, some additional examples of duplication we have identified include:

- Company need for cautionary language regarding forward-looking statements (included in the AIF & MD&A)
- Corporate structure & business descriptions (included in all three documents)
- Several financial tables and disclosures including dividend information, details on shareholders' equity and off-balance sheet and contractual arrangements (included in MD&A & FS)
- Additional duplication of risk disclosures (included in MD&A & FS)

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

- Transactions between related parties (included in MD&A & FS)
- Significant accounting judgements, estimates and assumptions (included in MD&A & FS)
- Accounting policies and future accounting changes (included in MD&A & FS)

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

We are supportive of measures that bring clarity and conciseness to the disclosure documents and focus disclosures on what is material and relevant to an investor. A reduction of duplicative disclosures should be in the best interest of both issuers and investors.

For this reason, we would be supportive of a move to consolidate these three documents and would expect robust and harmonized cross-referencing requirements would be in place as part of any change to existing disclosure requirements.

The MD&A instructions section of 1.8, item (iv), states "*The discussion need not repeat information provided in the notes to the financial statements if the discussion clearly cross-references to specific information in the relevant notes and integrates the substance of the notes into the discussion in a manner that explains the significance of the information not included in the MD&A*". If a consolidation of the documents proceeds, we believe this statement could be applied to the entire MD&A and not just specific sections.

If this proposal were to proceed, one challenge our organization will need to consider is timelines. Currently we prepare and issue the AIF at a later date than the MD&A and financial statements.

INCLUDES COMMENT LETTERS (see page 23)
WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023

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July 3, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Re. CSA 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Sir,

AMF.REÇU'17JUL 5 9:29

We are writing you concerning your request for responses from market participants to your CSA Consultation Paper 51-404 published on April 6, 2017. Velan Inc ("VLN") has been listed on the TSX for approximately 20 years, and we are fully in favour of your proposal to reduce the regulatory burden on reporting issuers.

First, some background on VLN. We are a Canadian based manufacturer of valves with operating subsidiaries in twelve countries. In our most recent year, we reported revenues of US$332 m and net earnings of US$7.7 m. We are controlled by Velan Holdings, which owns approximately 72% of the equity. Our public float is approximately C$111 m. Two thirds of that float has been held by three institutional shareholders for many years now. Our average daily volume for the last six months is under 2,000 shares. In should be noted that our share price seldom reacts to any of our quarterly financial filings. On the other hand, fluctuations up or down may occur on volumes as low as 200 shares where there is a motivated buyer or seller.

Our quarterly close and reporting process is complicated and tight, with no room for delays or problems at any of the subs. Not all of our subs use the same accounting software but we have streamlined the reporting process using Cognos software. The closing process was made more complicated in 2012 when we switched to IFRS, which has more lengthy and onerous reporting requirements then the Canadian GAAP that we used previously. In spite of the consolidation software, which facilitates the roll-up of results, we still need to take the time to understand all of the issues and trends in each of the subs in order to prepare a proper MD&A for the quarter. The filing process requires much review at various levels up to and including the Board, and

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INCLUDES COMMENT LETTERS (see page 23)

there are costs associated with the entire process which are not inconsequential. Although we do not have an official quarterly legal or auditor review, we do review many issues with our advisors as part of the process.

So with respect to some of the issues that you raised in your document, we would like to make the following comments:

1) **We favour going to a six-month basis for interim financial statements.** We would not abandon the quarterly closing procedures that we impose on our international operations as we think it is important to maintain the internal discipline of correctly reporting financial results. We do think that it is preferable however to devote financial and management time to understanding, monitoring and guiding the financial activities of our operations rather than going through all the steps required for a quarterly statutory filing. We note that the adoption of a six-month reporting timetable has been successfully adopted by other jurisdictions overseas and we see no reason why it wouldn't work here in Canada as well. We believe that there are adequate methods for reporting interim events of interest to stakeholders at other than the official reporting dates, through material change reports, press releases on current developments, etc.

2) **We think that there should be a size limitation used to qualify reporters for six-month reporting.** We would base it upon a combination of measurements: total revenue and total float (say under $1 billion for each).

3) **We would lengthen the filing deadline for the interim financial statements from the current 45 days to 52-55 days.** We have no issues with the 90-day deadline for annual filings.

4) **The overlap of disclosures between the financial statements and MD&A should be reduced or eliminated.** While the note disclosures of interim financial statements are less onerous than at year end, there is a certain amount of duplication with the MD&A.

5) **The AIF should be retained but the share and director information eliminated.** It contains much useful information to stakeholders about our business operations. On the other hand, the information on directors, share ownership, etc. is duplicative of what is already included in the proxy.

6) **We do think it is appropriate for a reporting issuer to satisfy the delivery requirements under security legislation by making proxy materials, financial statements and MD&A publicly available electronically.** We recommend removal of the requirement to deliver paper copies. Although 10 years ago it was different, we very seldom receive requests for paper copies, and the process of preparing them is costly and time consuming.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

We appreciate the opportunity to provide our input and look forward to seeing the outcome of your deliberations.

Yours truly,

VELAN INC.

John D. Ball
Chief Financial Officer

INCLUDES COMMENT LETTERS (see page 23)
WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023

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July 3, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Re. CSA 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Sirs,

I am writing concerning your request for responses from market participants to your CSA Consultation Paper 51-404 published on April 6, 2017. I have been on the Velan Inc. board of directors since July 2013. Immediately before that, I was with the Canadian Public Accountability Board ("CPAB") for seven of its first eight years. I write now as chair of Velan Inc.'s audit committee.

Velan Inc. ("VLN") has been listed on the TSX for approximately 20 years. It is controlled by Velan Holdings, which owns approximately 72% of the equity. The public float is approximately C$111 million. Two thirds of that float is held by three institutional shareholders. Our share price seldom reacts to any of our quarterly financial filings. Similarly, it is very rare that there is even one question on the quarterly earnings call.

Our board is strongly in favour of moving to a six-month basis for interim financial statements. We would continue to require a quarterly reporting process internally, but would use the time freed up from statutory responsibilities to increase our focus on strategy and value creation for our shareholders.

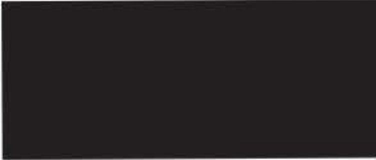
Such a six-month reporting timetable has been successfully adopted by other jurisdictions. It is one way to reduce the focus on generating specific short-term results. This unhealthy focus on "short-termism" has been an ongoing concern of the ICD. A change to a six-month reporting requirement by the CSA would respond to this concern.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023

INCLUDES COMMENT LETTERS (see page 23)

I appreciate the opportunity to provide input and look forward to seeing the outcome of your deliberations.

Sincerely,



Cheryl Hooper CPA,CA, MBA
Chair, Audit Committee
Velan Inc.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

July 4, 2017

Greetings,

The comments following are my own and do not purport to be the views of others, including those of my employer (due to a family health matter, I've not had sufficient time to run this through the process to have my employer directly respond to the Consultation Paper). I do not consent to the public release of my personal e.mail address (which is the one this e.mail originates from). I have been (and continue to be) deeply involved in external reporting for cross-border (US-Canada) reporting issuers, as a preparer, since 1995 (award-winning since 1999) and numerous examples of my handiwork (under the guise of my employer's name) have been included in multiple editions of *Financial Reporting in Canada*.

I would preface that all my references following to financial statements are references to financial statements prepared in accordance with the CPA Handbook - Accounting - Part I - International Financial Reporting Standards.

Consultation question #1 response

In my view, acting on the items identified in option 2.3(b) and option 2.4 could be immediate and should thus be prioritized as a "quick-win" (all "quick-wins" should be prioritized). There would be an almost immediate cost saving to reporting issuers with no meaningful impact on information made available to financial statement users.

Consultation question #21 response

I would suggest that, to a large extent, no one MD&A disclosure requirement is "overly burdensome" - it is "in combination" that the disclosures become burdensome. I would be supportive of removing the summary of quarterly results for the eight most recently completed quarters as that is information that already exists, albeit in multiple documents and reporting periods. I would think this would also result in the deletion of the accompanying trends qualitative disclosure - most often the "burden" of preparation does not come with the quantitative disclosure, rather it comes with the qualitative disclosure.

Consultation question #22 response

I would be supportive of a discussion of only significant risks being required. However, that is a topic for which significantly more prescriptive authoritative guidance would be required (so as to provide the necessary legal protections for a reporting issuer not disclosing items) and I would suspect drafting such guidance would be a challenging undertaking.

Consultation question #23 response

Particularly for Canada's largest reporting issuers, there is a need to compete for capital in the US marketplace and thus accessing the US marketplace is a significant benefit. As noted in the Consultation Paper, semi-annual reporting may be "the law" in the UK and Australia, but it is easy to find UK publicly listed companies that prepare quarterly reporting as they compete for capital in the US marketplace as well. Until such time, if ever, as the US changes its frequency for interim reporting, Canada should just monitor the situation.

Consultation question #27 response

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INCLUDES COMMENT LETTERS (see page 23)

I would strongly support the elimination of the requirements for financial instruments disclosures and changes in accounting policies disclosures from the MD&A. There is nothing in the required MD&A disclosures that is not already required to be in the financial statements - the duplication of disclosure costs issuers time and money. The discussion of critical accounting estimates in the MD&A, as I've written it, augments but does not duplicate financial statement disclosure. However, a refresh of the critical accounting estimate disclosure rules may be warranted as there are some required disclosures that a user could readily determine for themselves (*e.g.* quantitative significance of critical accounting estimates). I would be supportive of the removal of the disclosure requirement of contractual obligations as the bulk of that disclosure is already contained within the financial statements and thus the removal from the MD&A would not result in a loss of significant information to an investor.

Consultation question #28 response

Examples of other overlap would include:

- 51-102F1, Item 1.7(a), (c) - Capital Resources
- 51-102F1, Item 1.8 - Off-Balance Sheet Arrangements
- 51-102F1, Item 1.9 - Transactions Between Related Parties

Consultation question #29 response

Conceptually, the consolidation of the three documents seems a reasonable objective (I see the potential for a much more "flowing" document under this concept where the boundaries of MD&A and financial statements would possibly be obscured). There would, however, be a need to address practical issues such as how to delineate the coverage of the external auditor's financial statement opinion and how it would impact an issuer's legal liability for the various disclosures therein. If this item was to be pursued, coordination with integrated reporting initiatives should occur.

Consultation question #30 response

n addition to that mentioned above, there are a number of AIF requirements which result in overlap with financial statement disclosures.

- 51-102F2, Item 4.2 - Significant Acquisitions
- 51-102F2, Item 6 - Dividends and Distributions
- 51-102F2, Item 8.2 - Prior Sales
- 51-102F2, Item 12.1 - Legal Proceedings

Yours very truly,

/s/ TW Klein

Trent W Klein CPA, CA

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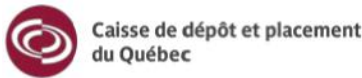
INCLUDES COMMENT LETTERS (see page 23)



[Translation]

July 7, 2017

BY E-MAIL
consultation-en-cours@lautorite.qc.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria
22e étage - C.P. 246
Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Me Beaudoin:

Subject: CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

The *Caisse de dépôt et placement du Québec* (the "Caisse") has reviewed CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper").

About the Caisse
Under its constituting act, the Caisse manages funds from its depositors, primarily public and private pension and insurance plans. The Caisse is one of the largest institutional fund managers in Canada.

Background
The Caisse is a major shareholder of publicly traded companies, many of which are listed on the Toronto Stock Exchange or the TSX Venture Exchange.

As a long-term shareholder of the companies we hold, the Caisse is particularly interested in any regulatory initiative that could enhance their disclosure requirements.

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INCLUDES COMMENT LETTERS (see page 23)

The Caisse therefore thanks the Canadian Securities Administrators (the "CSA") for the opportunity to comment on the Consultation Paper.

The Caisse believes that appropriate corporate transparency ensures efficient capital markets and thus contributes to investor protection.

However, the Caisse is mindful that disclosure requirements may be burdensome for companies. This burden should in no way be disproportionate to the "benefits" these disclosure requirements provide to investors and the market as a whole.

The Caisse submits the following general comments and responses to certain specific questions by the CSA.

General comments

As a shareholder, the Caisse considers that it is entitled to have all the relevant information needed to make informed investment decisions.

In return for the privilege of soliciting investors, companies must provide them with information on their business and any material items that could affect those investors.

The disclosures, however, must be clear, relevant and timely. Investors should not be inundated with non-material, redundant information.

Responses to CSA Questions

1- Extending the application of streamlined rules to non-venture issuers

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing?

We believe that regulations must be flexible and adaptable to the various categories of issuers.

In our view, size-based criteria would be appropriate to distinguish between reporting issuer categories in order to apply appropriate regulatory requirements to each of them.

Accordingly, depending on their size, certain issuers would benefit from reduced regulatory requirements. The exchange listing criteria would no longer be used to determine the requirements applicable to a given issuer.

We are therefore in favour of adopting a size-based distinction.

5. If we were to adopt a size-based distinction: What metric or criteria should be used and why? What threshold would be appropriate and why?

In order to determine the size of an issuer, we believe that a combination of criteria should apply.

In determining an issuer's size and its reporting category, criteria should not be limited to the issuer's market capitalization, for example. Otherwise, an issuer would be moved from one category to another based on changes in its market capitalization.

The size-based distinction must be based on several metrics, a combination of which would make for a better categorization of issuers and provide them with greater stability within a given category.

A combination of the following criteria could be considered: an issuer's market capitalization [the median market capitalization on the Toronto Stock Exchange and Venture Exchange is approximately $500 million], revenue [a minimum threshold of $100 million to ensure issuers have a sophisticated financial team in place] and liquidity (in $).

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INCLUDES COMMENT LETTERS (see page 23)

Moreover, the criteria currently applied in the U.S. under their *Jumpstart Our Business Startups Act* of 2012—which provides for reduced continuous disclosure requirements for emerging growth companies—could be adapted.

5. What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

In order to prevent reporting issuers from being required to report under different regimes from year to year, we propose that issuers be categorized at the end of their fiscal years.

Regulators should also be granted a certain amount of discretion in order to prevent any *untimely* change of category. They could thus allow an issuer to remain within a given category even though it no longer meets the size-based criteria as a result of circumstances or events of an exceptional nature which the issuer is able to justify. Conversely, the CSA should intervene if it finds that a change from one category to another needs to be made within a fiscal year.

2- Reducing the regulatory burdens associated with the prospectus rules and offering process

- **Reducing the audited financial statement requirements in an initial public offering (IPO) prospectus**

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers?

We do not believe this measure to be appropriate.

Investors seeking to gain a better understanding of an IPO issuer and its operations find historical financial information to be essential and highly useful, especially since such issuers have never had to disclose information to the market.

We consider that a provision of two years of financial statements is insufficient.

- **Reducing ongoing disclosure requirements**

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

We believe that the BAR requirement is of little interest to investors.

The timeframes for filing BARs are such that they lose their relevance. We do not believe that the burden of preparing such reports is justified under the circumstances.

- **Permitting semi-annual reporting**

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

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INCLUDES COMMENT LETTERS (see page 23)

Although quarterly reporting allows investors to obtain more short-term financial information, it represents a financial burden for companies.

Currently, the time and costs associated with quarterly reporting are often seen as disincentives by small- and medium-sized issuers.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

The Caisse believes that semi-annual reporting should be an option available to all reporting issuers. Such a reduced regulatory requirement would be a fair compromise between protecting investors and reducing reporting costs for issuers.

However, the Caisse is aware that some issuers will still elect to file quarterly financial statements. It therefore believes that this reduced requirement should be voluntary.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

Given that the Caisse is a long-term institutional investor, it believes that semi-annual reporting would be sufficient.

Moreover, the requirement to report material changes via news releases provides investors with adequate, timely information about such changes.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

The Caisse believes that this option would be preferable since there are currently duplications of information on several levels.

Conclusion

The Caisse is in favour of reducing the regulatory burden on reporting issuers. It believes that the disclosure requirements of issuers should not negatively impact them or hinder their listing on a stock exchange.

The Caisse is fully cognizant that these disclosure requirements can be adapted based on certain criteria, including size.

Reduced regulatory requirements should benefit not only issuers but also investors. Since they are removed from the business's operations, investors must be able to rely on clear, relevant and timely information.

Lastly, the Caisse wishes to take the opportunity of this consultation to raise the issue of climate-related financial disclosures.

The Caisse considers climate change disclosures as relevant information. It would like the CSA to address this issue and propose a disclosure framework to issuers.

In this regard, the Caisse offers its full co-operation.

Yours truly,

Soulef Hadjoudj
Directrice-conseil Affaires juridiques, Investissements

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

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July 7, 2017

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan

Josée Turcotte, Secretary
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Me Anne-Marie Beaudoin
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Re: Response to CSA published Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

The Private Mortgage Lenders Form (the "PMLF") is pleased to provide comments in connection with the Canadian Securities Administrators ("CSA") Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (the "Consultation Paper") as set out below.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

Private Mortgage Lenders Forum

The PMLF is composed of 18 private mortgage lenders including Mortgage Investment Corporations ("MIC") and syndicators located in the provinces of Alberta and British Columbia. The members represent more than $1.3 billion in private mortgage lending in Western Canada.

The PMLF is a committed association of industry members providing the private mortgage lending industry with leadership in the areas of compliance, standards of excellence, education, information and networking. The organization began in 2010 and has actively been engaged in working within and out of its industry to ensure the health and benefits of its members, regulators and the public.

The mandate of the group is:

The Private Mortgage Lenders Forum (PMLF) will provide leadership in the areas of compliance, standards of excellence, education, information and networking. In addition the mandate of the Forum will be to promote ethical, professional and consistent industry practices that will foster a healthy and sustainable industry.

The following is a list of the objectives of the group: Forum Objectives

1. Create a forum that will allow industry members to openly discuss industry related issues;
2. Develop best practices for the industry;
3. To work with provincial and federal regulators to develop legislation, rules and regulations that will:
   a. Protect Canadian investors, consumers and borrowers from unfair, improper and fraudulent practices;
   b. Promote best practices for transparent and reliable disclosure; and
   c. Ensure the health and vitality of the private mortgage lending industry for the benefit of all Canadians.
4. Assist members in understanding and adhering the regulatory requirements of registration in their particular situation and jurisdiction;
5. Create effective communications for politicians, consumers and other industries practitioners, regarding the private mortgage lending industry by identifying the benefits and value provided to Canadians, the economy and the real estate industry;
6. Advocating for the health and vitality of the Private Mortgage Lending industry and Canadian economy.

Summary of Concerns

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

Reference

http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170405_51-404_considerations-for-reducing-regulatory-burden.htm

Potential Options to reduce burden

Streamlining prospectus requirements and public offerings for reporting issuers could meaningfully reduce the regulatory burden, however the reduction will be dependent on the individual analysts and commissions being willing to accept a streamlined process. Any significant reduction in the regulatory burden will require clear guidelines for regulators to ensure that they do not hold issuers to standards which are beyond what is intended by regulation.

2.1 Extending the application of streamlined rules to smaller reporting issuers

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

- (a) Reducing the audited financial statement requirements in an initial public offering (IPO) prospectus
- (b) Streamlining other prospectus requirements
- (c) Streamlining public offerings for reporting issuers
- (d) Other potential areas

2.3 Reducing ongoing disclosure requirements

- (a) Removing or modifying the criteria to file a business acquisition report (BAR)
- (b) Reducing disclosure requirements in annual and interim filings
- (c) Permitting semi-annual reporting

2.4 Eliminating overlap in regulatory requirements

2.5 Enhancing electronic delivery of documents

Response

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

While the majority of our members are not reporting issuers, the PMLF would encourage the CSA to reduce regulatory burden to the areas of greatest concern. We would encourage the ability to enhance electronic delivery of documents.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

(b) Which should be prioritized and why?

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

No comment.

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

   No comment.

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

   The PMLF does not support further division of categories as it will create further gaming of the system and not enhance the quality of investor protection.

5. If we were to adopt a size-based distinction:

   a. What metric or criteria should be used and why? What threshold would be appropriate and why?

   b. What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

   c. What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?

   d. How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

   No comment.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023
INCLUDES COMMENT LETTERS (see page 23)

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?{7}

   No comment.

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:

   a. How would this amendment assist in efficient capital raising in the public market?

   b. How would having less historical financial information on non-venture issuers impact investors?

   c. Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?

   d. If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

   No comment.

8. How important is the ability to perform a three year trend analysis?

   The PMLF would have the position that for our industry real estate moves in multi year cycles which 3 years may or may not be adequate.
   To determine trends.

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

   PMLF has the position that this is too high of standard and not cost effect to the value of disclosure to the investor.

10. Should other prospectus disclosure requirements be removed or modified, and why?

    The PMLF believes that disclosure for the mortgage industry should not included detailed information of mortgage, only summary information, as data becomes outdated very quickly.

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The PMLF does not agree that detailed data of funds raise is necessary and prefer only summary for the last 12 months.

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

    No comment.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

    The PMLF would support extending the availability of the short form prospectus offering to reporting issues. This will improve the capacity for management teams to more cost effectively allow the market to operate in and in a time sensitive manner. Reduces the barriers of entry, and encourage firms operating under reporting issuer standards to increase transparency and disclosure to investors.

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

    a. What should the key features and disclosure requirements of any proposed alternative prospectus model be?

    b. What types of investor protections should be included under such a model (for example, rights of rescission)?

    c. Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

    No comment.

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

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No comment.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

    No comment.

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

    No comment.

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

    No comment.

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

    No comment.

19. Are there certain BAR requirements that are more onerous or problematic than others?

    No comment.

20. If the BAR provides relevant and timely information to investors:

    a. Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

    b. To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

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c. What alternative tests would be most relevant for a particular industry and why?

d. Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

No comment.

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

    No comment.

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102

    The PMLF would encourage regulators to be thoughtful in their analysis of the value information for investors. Many boiler plate disclosures tend to reduce relevance for investors.

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

    The PMLF believes that there is value in quarterly reporting and would encourage disclosure.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

    The PMLF would support semi-annual reporting for entiries that are not raising new capital.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

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This is a business decision which should be left to industry to determine.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

    The PMLF would encourage regulators to be flexible and allow non-venture issuers to provide investors with relevant information. Concise information tends to be more utilized by investors. We support the use of highlights as a tool.

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

    The PMLF would have the opinion that the value of an MD&A is to engage management in a dialog as to why the numbers are what they are. This dialog maybe achieve in different forms and may be suitable in different industry achieved in less formulated documents as shareholder letters.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

    The PMLF would argue that while there maybe overlap the purpose of the two documents are different and are used by investors is different ways. We would argue that there needs to be overlap as a result.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

    The PMLF would not agree that the MD&A and Financial statements should be put into one document. This would place a higher level of responsibility to auditors that would be ownerous.

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors?

    No comment.

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

    No Comment.

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

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a. Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

b. Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

c. Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?

d. Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

No comment.

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

No Comment.

Sincerely,

Dean Koeller, Chair
Private Mortgage Lenders Forum

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July 7, 2017

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen St. West
22nd Floor
Toronto, Ontario
M5H 3S8

Dear Ms. Knakowski,

Re: CSA Consultation Paper 51-404: *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* dated April 6, 2017 (Consultation Paper)

The Canadian Bankers Association (CBA) [1] would like to thank the Canadian Securities Administrators (CSA) for the opportunity to comment on the recommendations in the above-noted Consultation Paper.

We are pleased that the CSA has identified a review of the regulatory burden on reporting issuers as a key initiative for 2016-2019. Furthermore, we agree that regulatory and compliance costs should be balanced against the significance of the regulatory objectives sought to be realized, and the value provided by such regulatory requirements to investors and other stakeholders. We believe this should be done without compromising investor protection and the efficiency of capital markets.

Finally, we appreciate the steps the CSA has taken and continues to take in support of reporting issuers, while maintaining investor protection.

[1] The CBA works on behalf of 63 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The CBA also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness. www.cba.ca.

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We provide the following comments and suggestions that we would like the CSA to consider, as a "potential regulatory option" as set out in the Consultation Paper.

2.1 Extending the application of streamlined rules to smaller reporting issuers

We do not have any specific comments on this section.

2.2 Reducing the regulatory burden associated with the prospectus rules and offering process

We are supportive of examining whether prospectus requirements can be removed or modified to reduce the issuers' preparation costs. However, we do not have any specific comments at this time.

2.3 Reducing ongoing disclosure requirements

We agree that it is important to examine whether the volume of information in annual and interim filings can be reduced, as excessive information can obscure the focus on key information.

In terms of the alternatives set out in section 2.3 b, we agree that the discussion of prior period results in the MD&A (disclosed in the Annual Report) can be removed, as it provides minimal value, and is readily available in prior Annual Reports.

We would prefer not to remove the eight quarter summary in the MD&A, as we believe it provides a valuable trend analysis for shareholders to review, and is not overly burdensome to produce.

With respect to allowing reporting issuers to meet MD&A requirements by preparing a "quarterly highlights" document, similar to the requirements currently available to venture issuers – we welcome this suggestion and are open to further exploration. However, we would require additional guidance in terms of the information that would need to be included in the "quarterly highlights" document, in order to determine the time, effort and costs that could be saved by proceeding with this option. We note there are several quarterly regulatory disclosure requirements for Canadian banks, including those relating to OSFI's Residential Mortgage Underwriting Practices and Procedures (B-20), the recommendations of the Enhanced Disclosure Task Force (EDTF), and Basel's Pillar 3 requirements in the MD&A that would make moving to a "quarterly highlights" document more difficult.

In terms of 2.3 c – permitting semi-annual reporting requirements, those Canadian banks that are also U.S. foreign private issuers would still be required by the SEC to report quarterly, and therefore would not benefit from a semi-annual reporting requirement. We also believe the time period between reports under a semi-annual requirement may be too long, as significant developments often occur between quarters, and it is preferable for Canadian banks to provide

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financial reports on a greater frequency than semi-annual. Therefore, we recommend maintaining the quarterly reporting requirement, or at least providing banks with the option to either report quarterly or semi-annually.

2.4 Eliminating overlap in regulatory requirements

We welcome the initiative to remove overlap in regulatory requirements, including consolidating the requirements of the MD&A, AIF and financial statements, as there is significant effort associated with managing separate processes for each report. However, this would need to be coordinated with the SEC, as current Form 40-F requirements still require filing the AIF. We also suggest that some of the information in the AIF, including director profiles, Board and Committee mandates, credit ratings and other corporate information, could be satisfied by inclusion on the bank's website. This would align with the recent initiative of the Toronto Stock Exchange (TSX) to introduce amendments to the TSX Company Manual requiring website disclosure of certain governance documents for TSX listed issuers.

In addition, substantial overlap currently exists between NI 51-102 MD&A requirements and IFRS disclosures relating to: i) critical accounting estimates and upcoming accounting policy adoption, and ii) the determination of fair value of financial instruments. We would like to see these guidelines harmonized to the extent possible.

2.5 Enhancing electronic delivery of documents

We incur significant costs, as well as timing delays associated with printing and delivering various corporate disclosure documents required under securities legislation and the *Bank Act*, including MD&A and Financial Statements, and are supportive of new developments to facilitate the electronic delivery of these documents while recognizing that shareholders should be given the option of requesting paper copies. As any amendments to the *Bank Act* relating to the electronic delivery of documents will take into consideration changes under securities legislation and business corporations legislation, we would be supportive of the CSA continuing to advance new methods of electronic delivery to further reduce the use of paper to fulfill delivery obligations.

We thank you for taking our comments into consideration and would be pleased to discuss our concerns in further detail at your convenience.

Sincerely,

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July 7, 2017

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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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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Re: CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

This letter represents the comments of Broadridge Investor Communications Corporation[1] (Broadridge) in response to your request for comment on *CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (hereafter, the "Consultation").

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[1] Broadridge is an industry leader in the Canadian financial marketplace, facilitating the proxy communication process since 1987. Our services include delivery of shareholder communications and other documents on behalf of corporate issuers, mutual funds and banks, brokers and trust companies, in compliance with industry regulations. We currently support 70 proximate intermediaries (representing 297 financial institutions) holding securities on behalf of investors of approximately 3,600 Canadian public issuers, as well as custodians and institutional investors. Broadridge's global reach also provides U.S. and other foreign investors the opportunity to receive materials from and participate actively in the voting process for Canadian reporting issuers. Unique to Broadridge are our domestic and global reach and our combined industry, regulatory and information technology expertise. Our clients rely on us to help them efficiently and cost-effectively comply with applicable proxy and disclosure laws and regulations through the deployment of technology-based solutions.

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Introduction

Broadridge supports the goal of the Consultation in seeking additional ways to allow non-investment fund reporting issuers to communicate efficiently and effectively with their securityholders. At the same time, it is understood that changes to regulations involving securityholder communications should not unintentionally reduce securityholders' access to information by requiring them to take steps to receive it. Information must remain easily accessible and available in the format preferred by the investor. We would submit that issuers and securityholders are benefitting from current rules and guidance for e-delivery and notice and access. Cost savings are growing and voting participation has increased. A change to an "access equals delivery" model would reduce costs on printing and postage but would also reduce securityholders' engagement with disclosure communications. By contrast, greater cost savings are available under current rules and guidance without a change in the delivery default simply by making it easier for more issuers to use the notice and access option that is currently available.

We will limit our response to Section 2.5 of the Consultation Paper – Enhancing Electronic Delivery of Documents – as this is where our expertise and experience are most relevant.

Consultation questions

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

We believe that NP 11-201 provides appropriate guidance to securities industry participants that want to use electronic delivery to fulfill delivery requirements in securities legislation. We also acknowledge that it is the investor's choice to receive material electronically as their preferred preference.

The continued evolution of new channels and the increasing adoption of e-delivery suggest that the rule requires no change to the current guidance on the use of electronic delivery. Currently, the use of e-delivery results in the greatest savings to issuers. In the 2016 proxy season (year ending June 30, 2016), issuers collectively saved $3,431,289 by using e-delivery.[2] We estimate that adoption of e-delivery by all eligible issuers and where all securityholders received material electronically would generate an additional savings of approximately $87.5 million on printing, postage, and fees.

E-delivery continues to evolve with adoption of new technologies such as cloud communication channels. As we have commented on previous occasions, we would suggest the CSA ensure that language not be so prescriptive as to limit or preclude the adoption of new technologies as they emerge.

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[2] 50.3% of proxy mailings processed by Broadridge were eliminated through a combination of customized processing applied to bank and broker supplied data for account consolidations (i.e. discretionary managed accounts), ProxyEdge® and e-delivery. This compares to the 48.1% processed the previous season, and resulted in an estimated $34 million in savings for issuers, a $1.7 million improvement over the prior year.

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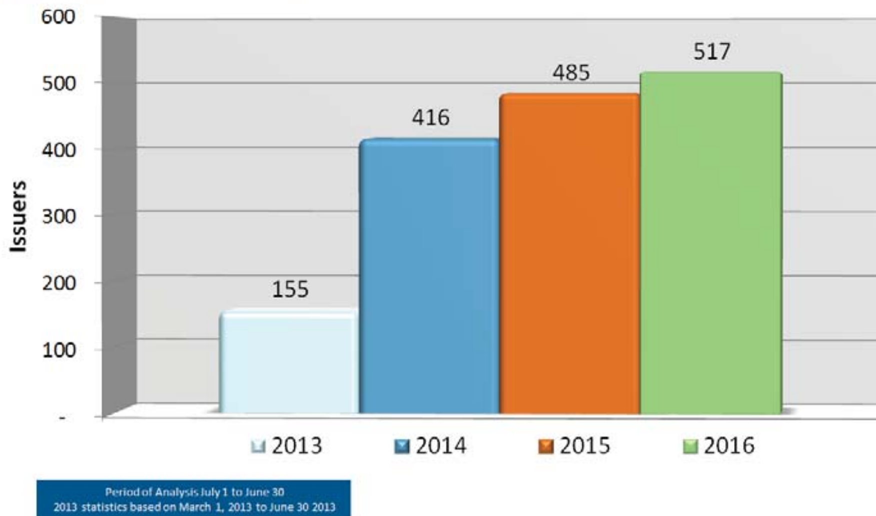
32. (a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

Since the introduction of Canadian notice and access delivery in 2013, Broadridge has tracked statistics on adoption and use for delivery of proxy materials. Specifically, the number of investors requesting full set (paper) proxy materials has been negligible. Fewer than 1% of investors requested paper materials after receiving the notice.

The following statistics[3] regarding the use of notice and access since its introduction are provided here for your further information. The statistic provided below pertain only to issuers that used notice and access for their beneficial shareholders.

1. Adoption of notice and access is growing and there's room for further growth.

In 2016, 517 issuers used notice and access to deliver proxy materials to their beneficial shareholders. This represents approximately 14% of the estimated 3,600 Canadian issuers that could choose to use the notice and access method. In some cases, issuers used notice and access for their registered shareholders but not their beneficial shareholders due to certain restrictions in corporate regulations.



[3] Data is based on Broadridge fiscal year ending June 30, 2016.

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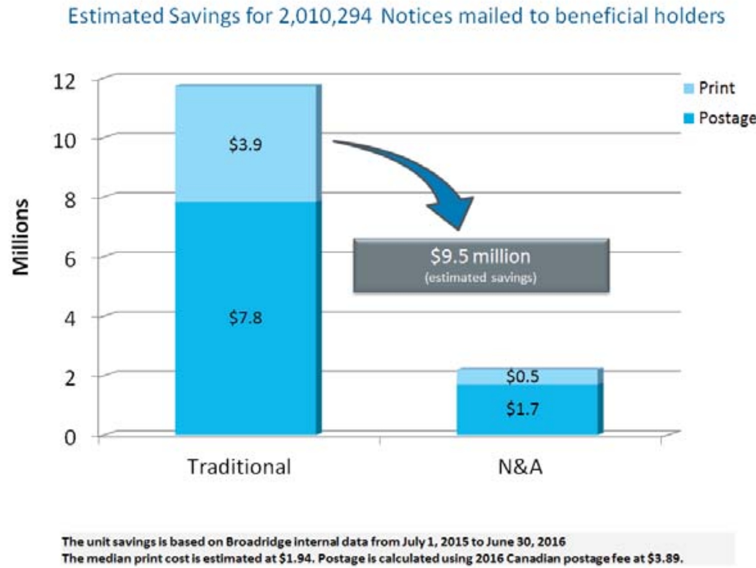
2. Cost savings to corporate issuers continues to increase with the notice and access option; a large opportunity remains.

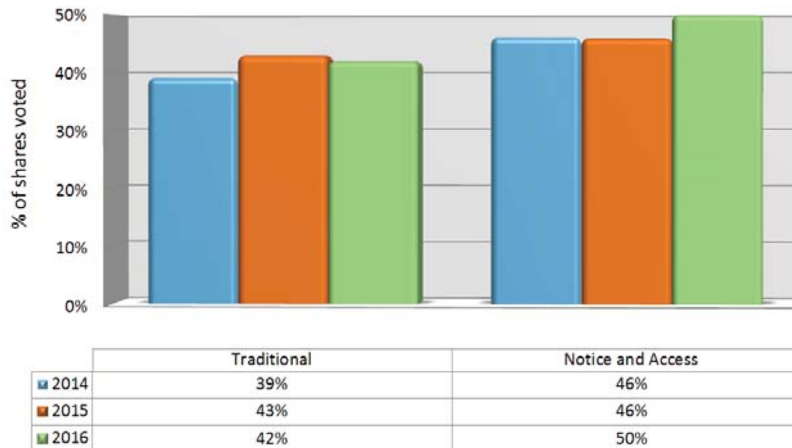
In 2016, the 517 issuers that used notice and access saved an estimated $9.5 million on their costs for printing and postage. There is the potential for an additional $23 million in savings to Canadian issuers annually if all beneficial holders were mailed notices in lieu of a full package of proxy materials.



3. No negative impact to voting; voter participation increases with notice and access

Since 2013, the percentage of shares voted when securityholders received a notice has been higher than with traditional delivery.

Voting Results –Traditional vs. Notice and Access



	Traditional	Notice and Access
2014	39%	46%
2015	43%	46%
2016	42%	50%

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Broadridge

32 (b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

The CSA was rigorous in its approach to the introduction of notice and access to ensure retail investors were not disengaged by an issuer's decision to use the notice delivery option.

The CSA's approach reflected the fundamental principle in legislation of "pushing" information to investors rather than expecting them to know when the information is available and requiring them to take steps to obtain it. (Parenthetically, this principle is also one that marketers have long relied on; namely, if people are to be made aware of information, it needs to be sent directly to them.) Obligating securityholders to search for their investment information would lead to a significant decline in participation and voting, a scenario that the CSA took particular interest to avoid when considering the empirical data on the negative participation impact of the notice and access regime in the U.S.

A large body of behavioural data on "defaults," "switches," and "nudges" is also incontrovertible. A change in the process along the lines of the Consultation would result in a significant and irreversible decline in investors' engagement with disclosure materials. Securityholders expect automatic delivery of a notice or the materials themselves *consistent with their standing preferences and default*. An investor consents to their preference to receive material rather than an issuer determining how they will make it available. Behavioural science shows that when there is a change in the underlying default, individuals typically take no action. They neither opt-in nor opt-out, even when taking action is in their best interest. Economists and policy experts generally have observed that defaults should be set in ways that encourage the greatest public good. There are many areas that involve the careful balancing of the efficiency needs of issuers against the information delivery preferences of investors. Canada's current rules on notice and access have been successful in striking a careful balance.

Practically speaking, the elimination of direct notification could also have a client service impact on intermediaries. Specifically, the CSA's language in question 32(b) "without prior notice or consent" would result in undue burden on the intermediary firms' ability to service those of their clients (investors) who are confused as to how they would need to access materials.

32 (c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?

As per our response in 32 (b), we suggest that a change to the notice and access model would jeopardize the balance between the efficiency needs of issuers and the information delivery preferences of investors. Canada's current rules on notice and access have been successful in striking a careful balance.

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(d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

In 2013, Broadridge worked with the CSA to inform the inclusion of the notice and access regime under National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer (NI 54-101) to give reporting issuers the option to use the notice and access method to post proxy-related materials on a website instead of having to mail materials to registered holders (under NI 51-102) and to beneficial owners (under NI 54-101). Under NI 51-102, notice and access may also be used to post annual financial statements and MD&A in lieu of sending such documents to all security holders.

Subsequently, we provided further guidance and statistical data to the CSA over several years as well as to Industry Canada (May 2014) and the Standing Committee on Industry, Science and Technology (April 2017) regarding the implementation of the notice and access method for CBCA issuers. The process to bring notice and access to Canadian issuers and to improve its implementation and adoption has been collaborative and thorough. It remains now for issuers to adopt that method in order to realize significant additional cost savings on printing and postage.

The CSA may want to consider a similar scheme to that of Enhanced Broker Internet Platforms ("EBIP"), a concept introduced by the SEC and the New York Stock Exchange (NYSE) in 2010 to increase electronic delivery adoption.

An EBIP concept would promote the continued development of new technology and an increase in adoption of electronic delivery, would require no regulatory change and would create for issuers the opportunity for even greater savings.

We encourage the CSA to seek to better understand why only 14% of issuers have adopted notice and access four years after its effective date. We would submit that its restrictions over traditional processes and timelines impact an issuer's decision to use notice and access. The extended timelines required for use of notice and access may cause many issuers to not avail themselves of the option. Record dates for notice use must be set no less than 40 calendar days prior to the meeting date. Mailing dates must be no less than 30 calendar days prior to the meeting date. The CSA may wish to review timing as a factor to bring requirements in line with conventional proxy timelines.

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

It has been clearly demonstrated that the application of new and enhanced technologies benefits the efficiency and transparency of communications for all participants. The impetus for the evolution of shareholder communication vehicles includes:

- Historic declines in voter participation encouraged the creation of new communication channels

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- Increased use of electronic / online / social media methods of communication by securityholders
- Improved access to and performance of online / electronic channels
- Regulatory change that expands communication options

Rapidly growing and popular digital delivery platforms can provide delivery of proxy and other financial information, determined by the preference of the investor, to the sites currently being visited by the investors (rather than at sites where the issuer determines they should go to find them). Interfaces are now available for Dropbox, Evernote, and other leading digital channels which millions of investors choose to use to receive information.

Enhancements are also being made to the format and content of email messages for delivering proxy information and other regulatory communications electronically. For example, issuers and brokers can more easily add branding to their e-delivery messages. This can enhance interest in the material and provide a communications "dialogue," such as for a short video on a company's market outlook. Customizable messages can provide useful information in the body of the email message itself, as well as links to the full report for compliance. These new formats offer opportunities to improve viewing rates of disclosure information.

Broadridge's Communications Cloud solution integrates leading digital channels like epost, Amazon, Microsoft Drive, Doxo, Evernote, Google Drive and others together on to one digital communications platform. Issuers can expect to improve communication with their security holders in order to meet evolving digital preferences, comply with increased security and privacy standards and deliver more effective, actionable communications.

In Conclusion

We would be pleased to meet with representatives from the CSA to discuss further the proxy communication process and our technology infrastructure that enables it. We are also happy to provide further quantitative data that may be informative and valuable.

Broadridge remains committed to improving the proxy system for issuers, intermediaries, investors and all other constituents of this critical capital markets infrastructure.

Sincerely,

"Patricia Rosch"

Patricia Rosch
President
Broadridge Investor Communications Corporation

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July 7, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Response to the CSA Consultation Paper 51-404 on Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Sir or Madam,

We welcome the opportunity to respond to the Consultation Paper 51-404 on Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers.

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INCLUDES COMMENT LETTERS (see page 23)

British Columbia Investment Management Corporation (bcIMC) is an asset manager with more than $135 billion Canadian dollars in assets under management, making it one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 554,000 people in our province. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will provide strong and stable financial returns.

As a long-term investor, bcIMC relies on well-functioning capital markets. We see it as our responsibility to contribute to the overall stability of the financial system. As an active participant in the capital markets, we address systemic risks with the expectation that our efforts will lead to greater stability and integrity within the markets. We regularly engage with regulators and advocate for legal and regulatory changes to ensure that principles of good governance are integrated into the regulatory framework.

In this response, bcIMC will focus on the consultation paper's section on semi-annual reporting (2.3 (c)). While we generally support the CSA's objective in reducing the regulatory burden on non-investment fund reporting issuers while preserving investor protection and efficient capital markets, we are concerned that 2.3 (c) on semi-annual reporting could be inconsistent with that objective and elaborate on our concerns below.

2.3 (c) Consultation questions and bcIMC responses:

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

bcIMC response:

The core benefits of quarterly reporting for reporting issuers is in providing their investors with timely disclosure of key data required for ongoing investment analysis, as well as the confidence-building such transparency provides for investors, suppliers and regulators.

Specifically, investment analysis requires frequent financial and operational disclosures as they enable systematic and timely tracking of emerging trends in a company's operations. Without a quarterly pace, nuanced trend analysis of, for example, seasonal effects in a business becomes difficult. Quarterly public reporting provides transparency and puts all investors on equal footing.

We acknowledge that one commonly cited problem, especially for smaller issuers, is the cost of maintaining and providing quarterly reporting; however, we believe that such a cost is the price for access to the capital markets.

Another problem associated with quarterly reporting is the belief that senior management has become fixated on short-term results, harming long-term performance. While we see evidence that this is happening, we ultimately believe that reducing the frequency to

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semi-annual is not what we would consider to be long-term and is unlikely to shift the focus of management to where it needs to be: balancing short-term demands with long-term value creation over multiple years, while providing adequate investor protection.

A more direct driver of short-termism that the CSA could examine is quarterly earnings guidance. We believe this guidance could be eliminated or, at least, reduced to annually, reducing the burden on issuers. In other words, we require quarterly information on financial and operational performance to input into our valuation models, and we find earnings guidance, which is voluntary, largely unnecessary. If quarterly earnings guidance is consuming senior management time and corporate resources, as well as driving excessive short-termism, then its elimination could provide practical solutions to these issues.

As we would not want management focus to swing exclusively to the long-term, we also see an opportunity for the CSA to provide a feedback mechanism between investors and issuers on whether their compensation plans are appropriately balancing the short- and long-term.

By analyzing compensation practices and engaging with issuers, we have learned how compensation plans have become powerful tools in steering management’s focus. Therefore, we believe annual investor feedback on an issuer’s executive compensation plan provides a concrete and effective mechanism to ensure compensation is designed to balance management's focus between addressing short-term demands and providing long-term value creation. Hence, we strongly encourage the adoption of annual advisory votes on executive compensation for non-venture issuers modeled on those used in many capital markets around the world.

We believe that the reporting burden that issuers experience could be reduced by clear guidance from the regulator that reminds issuers to focus their efforts and place emphasis on reporting data related to financial performance and operations. The lengthy narratives currently included in quarterly reporting is often boilerplate and is not necessary; issuers should focus on telling investors what has changed over the reporting period.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

<u>bcIMC response:</u>

Semi-annual reporting could be an option, but we would prefer establishing if such reporting has shifted focus to the long-term in other markets before adopting such practices in Canada. If there is such evidence, it would likely depend on the sector and size of the company. Theoretically, we believe larger companies in more stable sectors could report less frequently if the guidance and rules on reporting material changes between reporting periods is made more robust; however, smaller reporting issuers,in less stable sectors, need to sustain quarterly reporting to maintain confidence among

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investors. We are concerned that a move to semi-annual reporting could compromise transparency in the market as well as potentially create an information deficit for average investors.

The numerous examples of material reporting failures provided in the British Columbia Securities Commission's publication, *2012 Mining Report* (BCSC, January 2013), and its review of mining technical disclosures, reinforces the need for smaller issuers to improve reporting. Given that BC mining companies represent significant portions of the TSX and TSX Venture Exchange, we believe a qualitative improvement in disclosures should be the primary focus as this would increase confidence levels among investors and attract more capital to those smaller issuers. Conversely, reducing the degree of transparency provided by them would increase uncertainty and risk levels even further, negatively impacting the accuracy of our valuations, possibly leading to more frequent fraud events and reducing capital flows to those issuers. Additionally, we note that the reviews the CSA conducts are under the Continuous Disclosure Program consistently reveal the quality issues in current reporting.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

bcIMC response:

Semi-annual reporting would not provide sufficiently frequent disclosure except in the cases outlined above. Generally, we believe regular and consistent disclosure is critical for investors to analyze and track ongoing changes in an issuer's financial and operational performance. We also believe that sustaining this tempo of information disclosure will provide the transparency capital markets require to function efficiently and protect investors.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

bcIMC response:

We believe that non-venture issuers should not be given the option to adopt quarterly highlights unless they are large issuers operating in very stable sectors. This is another example of where guidance from the regulator could be useful in advising issuers on where to apply their efforts when preparing the MD&A. Again, we would suggest that issuers could be advised to focus on describing material information rather than relying on the statements. This includes key business drivers, outlook, strategy and any material changes to the company's business activities and plans.

In summary, we believe the regulatory approach in Canada could be optimized to benefit issuers and protect investors by:

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- improving the quality of disclosures and retaining the quarterly frequency,
- eliminating quarterly earnings guidance or reducing it to annually, and
- adopting mandatory advisory votes on executive compensation.

We further believe that mandatory requirements for an advisory vote on executive compensation and a clawback policy for non-venture issuers could be achieved without any additional disclosures and would level the playing field, making Canada's capital markets more competitive, attracting more capital and protecting investors.

We greatly appreciate the opportunity to respond to this consultation and sincerely hope that our comments will assist you in your review.

Please feel free to reach out to our Senior Manager for ESG Integration, Jennifer Coulson (jennifer.coulson@bcimc.com) as you consider these comments or if you require further clarification.

Regards,

Bryan Thomson
Senior Vice President, Public Equities

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Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

July 7, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames,

Re: CSA Consultation Paper 51-404 - Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

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The Pension Investment Association of Canada (PIAC) is pleased to respond to CSA Consultation Paper 51-404. We appreciate the opportunity to provide responses to the paper.

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over $1.8 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries. PIAC's positions on public policy reflect the fiduciary framework in which member funds operate and its commitment to work in the best interests of plan members.

PIAC is very mindful of the regulatory burden on market participants and generally supports changes to streamline disclosure requirements, provided our interests as investors are adequately protected without compromising transparency or access to material information required for effective decision-making. PIAC's members represent pension plans whose focus is delivering returns over the long term; therefore, we are particularly interested in the CSA's proposal allowing for semi-annual reporting to reduce issuers' reporting burden while fostering a longer-term view by management. PIAC believes quarterly reporting and guidance encourages short-term thinking wherein issuers make decisions to meet near-term market demands resulting in less than optimal outcomes for shareholders and pension plan beneficiaries. However, we understand investors require regular and consistent disclosure to analyze changes in an issuer's financial and operational performance. We are cautious about the potential impact on transparency from this proposal and suggest that if semi-annual reporting is implemented, reporting requirements must sufficiently disclose any material changes to the issuers' business activities and business plans on a timely basis.

We trust our response has been helpful. Thank you for your attention and please do not hesitate to contact us if you have any questions or concerns.

Yours sincerely,

Kevin Fahey
Chair

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Tel 1-416-640-0264   Fax 1-416-585-3005   info@piacweb.org   www.piacweb.org

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July 7, 2017

SENT BY ELECTRONIC MAIL

TO THE ATTENTION OF:

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
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E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers, published April 6, 2017 (the "Consultation Paper")

We are making this submission on behalf of George Weston Limited and its controlled entities, Loblaw Companies Limited and Choice Properties REIT (collectively, the "**Weston Group**"), each of which are publicly-traded entities on the Toronto Stock Exchange.

The Weston Group is committed to high standards of transparency and accountability and believes that these hallmarks of good governance are fundamental to the Weston Group's success and to building long-lasting value for its investors. The Weston Group recognizes the importance of continuous and comprehensive disclosure to enable informed investment, credit and voting decisions.

However, we also recognize that regulatory requirements for reporting issuers have become increasingly burdensome. This is as true for larger public companies as it is for venture issuers that are typically the focus of rules aimed at simplifying or rationalizing disclosure

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obligations. To this end, we commend the Canadian Securities Administrators' initiative to review the regulatory regime which governs reporting issuers and are supportive of improvements that can be made to provide relief. It is important that any reforms continue to ensure that investors are protected and adequately informed.

Opportunities for Improvement

The following are some of the more consequential opportunities identified in the Consultation Paper which would allow our business to reduce its costs and management to focus more time on value-added business activities.

Permitting Semi-Annual Reporting

We support providing issuers with the option to publish "quarterly highlights" in Q1 and Q3 in lieu of the current disclosure requirements, while issuers would continue to be subject to the current disclosure requirements in Q2 and Q4. We believe there would be a benefit to the CSA providing guidance to issuers on the financial metrics to include in the "quarterly highlights" so that investors can evaluate different issuers using comparable financial metrics. However, it would be beneficial to investors if issuers also had the flexibility to report on industry-specific financial metrics or other key performance indicators, assuming these metrics and indicators are balanced, reliable, consistently disclosed and are defined and calculated in a way that makes them comparable across companies, much like other non-GAAP financial measures. The Weston Group would, of course, continue to disclose any material changes in accordance with current requirements.

This approach would allow us to continue to communicate regularly with our investors, while meaningfully reducing the administrative burden and internal and external costs associated with the current quarterly reporting requirements. For example, one area of disclosure which is time-consuming to prepare on a quarterly basis and may not change or provide significant insight quarter over quarter is certain notes to the financial statements and sections of the quarterly MD&A, including notes on share-based compensation and financial instruments. Reducing the volume of disclosure would also allow investors to focus on key areas of financial performance which could improve their ability to understand the disclosure.

Simplifying Continuous Disclosure Requirements

We believe that the disclosure requirements should focus on *better* disclosure, rather than *more* disclosure. For example, in the MD&A, AIF and prospectus documents, there is unnecessary duplication of disclosure relating to the risks and share capital. There is often also duplication in the MD&A and AIF documents in the disclosure concerning legal proceedings, credit facilities and dividends. Furthermore, there is duplication between the AIF and the proxy circular documents with respect to disclosure about directors and officers and certain governance matters, including audit committee disclosures.

To remove this duplication, we propose eliminating the AIF and incorporating the non-duplicative parts of the AIF into either the MD&A or proxy circular, as appropriate. If information is located in fewer documents without duplication, it would be easier for investors to

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locate and understand information. Simplified disclosure would also reduce the burden on corporate resources.

In the alternative, we propose eliminating all duplication in the disclosure requirements. The duplicative disclosure should be required to be included in one single disclosure document, based on the purpose of the disclosure document.

Another potential area for improvement is the requirement to disclose quarterly results for the eight most recently completed quarters in the quarterly MD&A and for the last three years in the annual MD&A and AIF. To be consistent with information provided in financial statements and notes to the financial statements, we suggest limiting the disclosure in the quarterly and annual MD&A and AIF to the most recent interim or annual reporting period and the comparative interim or annual reporting period.

The original intent of the requirement to provide historical data was to highlight significant trends for investors over time. However, such trend comparisons may be less meaningful and possibly misleading in light of certain business changes such as significant corporate transactions or shifts in market dynamics. Furthermore, preparing these historical disclosures requires retrospective restatements in the event of an accounting standard or policy change. This process can be time-consuming and costly, especially in cases where the historical information is limited or not available.

BAR Disclosure

The requirement to include acquired company historical financial statements and pro forma financial statements is onerous where the acquired company is not publicly traded (as the previous financial statements may not have been audited) and where an acquired company's financial year-end differs from that of the acquirer. We propose that the significance tests be increased, similar to the approach adopted by the CSA for venture issuers in 2015. Other considerations in determining whether a BAR is required could include whether the acquired company is a private company or whether there is a significant business relationship between the acquirer and the acquired company prior to the transaction.

Enhancing Electronic Delivery of Documents

Since the adoption of "notice-and-access", GWL and Choice Properties REIT have received a nominal number of requests for paper delivery of proxy-related materials. Our view is that it would be appropriate for an issuer to satisfy its delivery requirements by sending an email to its investors advising them when its proxy-related materials and continuous disclosure documents are publicly available electronically. An issuer would only deliver paper copies of these documents where it was specifically requested by an investor. This approach would allow our business to reduce its costs. There would also be an environmental benefit as a result of the reduced printing and postal delivery.

Conclusion

In summary, we are supportive of improvements to make the requirements on reporting issuers more efficient, effective and investor-friendly. We believe the changes discussed above

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would accomplish these objectives without compromising investor protection or the efficiency and integrity of the Canadian capital markets.

Thank you for the opportunity to comment on these important issues.

Yours truly,

Robert A. Balcom
Senior Vice President and
Chief Administrative Officer, Legal

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July 13, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Re: CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

The Panel is pleased to provide its response to this Canadian Securities Administrators (CSA) Consultation Paper that seeks to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital market.

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We also support the CSA in adopting an approach to regulation that protects investors and seeks to reflect the business realities of Canadian reporting issuers striving to remain competitive. To that end, we generally support a reduced regulatory burden insofar as it makes the system more efficient and more attractive for small companies to issue securities and if it ensures continued market efficiency.

However, the Panel cautions that this cannot be done at the cost of transparency and investor protection. Investors must have in their hands the information that they need to make informed decisions. At the same time, it must be delivered to investors in a way that is both relevant, meaningful and clear – in plain language and through channels that are the most useful and timely to recipients.

Below we provide specific answers to consultation questions in Part 2 related directly to retail investors.

2.1 Extending the application of streamlined rules to smaller reporting issuers

Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

It must also be made clear to investors the distinction between reporting requirements for larger and smaller issuers along with any potential risks. This is essential – it must be apparent to an investor which issuers offer lighter disclosure, which ones are required to offer more, and why.

2.3 Reducing ongoing disclosure requirements
(a) Removing or modifying the criteria to file a business acquisition report (BAR)

Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

Overall, the Panel believes that BAR reporting should remain and be disclosed in cases where the acquisition is material in terms of dollars or overall impact on the business.

The BAR provides relevant information but it must be made in clear language. BAR should explain the cost of the acquisition, how it fits with the current business, why the company was purchased and what value-added it will bring, as well as potential effect on current share value.

(c) Permitting semi-annual reporting

Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

The Panel supports disclosure through audited semi-annual statements as opposed to quarterly.

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2.4 Eliminating overlap in regulatory requirements

Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

The Panel recommends that the AIF and MD&A be combined into one document and that this can be used for various reporting organizations.

Overall, duplication and overlap should be eliminated, and document requirements should be harmonized.

2.5 Enhancing electronic delivery of documents

Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

The Panel supports the use of electronic delivery as the default, however, issuers should not assume that delivery means access. Rather, they must provide investors with the option to receive hard copies if desired.

Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

Issuers should always communicate with investors using plain language and a readable, clear font. All communication should be meaningful and have sufficient context and clarity to make it useful for investors. It should also be easily accessible to investors.

Yours truly,

Letty Dewar
Chair, Investor Advisory Panel

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INCLUDES COMMENT LETTERS (see page 23)

CSA Consultation paper 51-404:

Author: James S. Hershaw, Crowdmatrix and WATT Capital

Item	Yes/No	Why/Comments/answer to an open end question
Introductory Comments		
		I endorse the release of the CSA 51-404 Consultation Paper. I encourage all Canadian regulators to research innovative regulatory practices and incorporate new technologies to reduce the regulatory burden for Small Issuers. The "one size fits all" approach to regulations for Issuers is not appropriate and does not enhance either capital formation or investor protection for all stakeholders. It should be recognized that Small Issuers as defined by less than a $250 million market capitalization make up close to 80% of the Canadian public company issuers. Many of these companies are pre-revenue and have innovative blue-sky business plans. I also suggest, that developing innovative regulation is not just about collecting feedback through consultation papers. It is likely that most Small Issuers do not have the resources or priority to develop detailed analysis and recommendations for new regulatory systems. These entrepreneurial companies should be supported with leadership by regulators to develop innovative regulations. The future of Canadian capital markets and the Canadian economy is dependent on these Small Companies, even though the importance of the small cap sector is often misunderstood or underrepresented by governments and regulators.
General Questions		
1. Of the potential options identified in Part 2:		
a. Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?		2.1 Streamlined rules for Smaller Issuers to apply to new Small Issuer 2.2, 2.3, 2.4 and 2.5 Rules
b. Which should be prioritized and why?		2.1, 2.3, 2.4 and 2.5 modified for Small Issuers
2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?		2.1, 2.3, 2.4, 2.5
3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.		All Dealers, IIROC, EMD, Crowdfunding, Discount and Mutual Fund Dealers that complete KYP and KYC should be allowed to offer Small Issuer Prospectus Offerings. The expansion of the Prospectus Offerings network would provide incentives to be more efficient and innovative with the development of the next generation of low cost Prospectus Offering documents that make use of Continous Disclosure and accessibility through technology of all referenced documents.
2.1 Extending the application of streamlined rules to smaller reporting issuers		
4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?	Yes	Market Capitalization is readily transparent and objective measure of a whether a company is a Small Issuer. Arbitrary exchange differentiation is not revelant given the growing exchange listing and trading options in Canada and internationally.
5. If we were to adopt a size-based distinction:		

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Question	Answer	Comment
a. What metric or criteria should be used and why? What threshold would be appropriate and why?		Market Capitalization. Adopt new SEC model of $250 Million market float (cap) as most relevant. Use Canadian currency to simplify metric.
b. What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?		Once a company elects to be in the Small Issuers category as long as there is not a material change of at least a 25% change in market cap for 2 years the company remains in Small Issuers category.
c. What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?		Public Issuers are required to meet Continuous Disclosure which combined with low cost informatioon access by Investors enabled by technology means that relevant investor information is now more readily available, timely and complete than in prior paper based periods.
d. How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?		Education on Market Capitalization is a fairly straight forward task. Small companies have higher risk but also potentially greater opportunities. Small Companies are the crucial for a successful Canadian economy.
6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?[1]	Yes	Small Issuers as defined by Market Capitalization not by Exchange Listing.
2.1 Reducing the audited financial statement requirements in an IPO prospectus		
(a) Reducing the audited financial statement requirements in an IPO prospectus		
7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:	Yes	Small Issuers as defined by Market Capitalization is a better measure of stage of development than by a specific exchange listing. Market Capitalization is also the standard metric for inclusion in Market Indexes and related ETF products.
a. How would this amendment assist in efficient capital raising in the public market?		Lower costs and most recent financials are most revelant for Small Companies
b. How would having less historical financial information on non-venture issuers impact investors?		It would not, as criteria is based on stage of development for Small Companies
c. Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?	No	Revenues for Small Companies are usually limited and volatile. Adding additional thresholds add complexity that is not required.
d. If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?		See answer above.
8. How important is the ability to perform a three year trend analysis?		It is only important if the company has a business model that supports this type of analysis. If it is relevant than the company can choose to show trends through supplemental analysis to the benefit of the company. It should not be a regulatory requirement for Small Companies.
(b) Streamlining other prospectus requirements		
9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?	No	Audit of annual financial statements is a sufficient requirement and material. No audit required for interim financials.

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Question	Answer	Comment
10. Should other prospectus disclosure requirements be removed or modified, and why?		Eliminate any repeated sections. Provide standard risk disclosures that are repeatable for all small companies in a separate document that can used to educate clients. Unique aspects of business plan and related risks should be disclosed through summary documents that outline use of proceeds, benchmarks and key timelines.
(c) Streamlining public offerings for reporting issuers		
(i) Short form prospectus offering system		
11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.	No	The costs and size of a Short Form Propectus is approaching that of the Initial Public Offering Prospectus. This is not acceptable or useful for Small Public Issuers that have continuous disclosure record and public trading history. IPO have a different objective than secondary prospectus offerings.
12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.	Yes	Small Public Companies should have a streamlined Prospectus Offering Document that has more emphasis of the Investment Dealer Due Diligence Review, Continuous Disclosure Record, Audited Annual Financials and Management Report and Exchange listing that is in good standing. All this additional information if it is available on SEDAR should be available by reference to public disclosure record. Prospectus should be streamlined and avoid repeated sections copied from other public documents.
(ii) Potential alternative prospectus model		
13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:	Yes	Small Public Companies should be allow to Buy and Sell up to 10% of the public float on a continous basis based on a targeted price range determined by Management and Directors. Short selling and share buy backs would be allowed as the company can cover any short sales through a new share issue and limited share purchases (similar to Normal Course Issuer Bids) would help to provide liquidity and price discovery information to the market to the benefit of all investors and shareholders.
a. What should the key features and disclosure requirements of any proposed alternative prospectus model be?		Continous Disclosure. For mining issuers there would not be requirement to issue new NI 43-101 report updates as long any revisions are press released and levels of material change are disclosed. In many cases NI 43-101 material changes are limited. If the change is material then mining issuer has incentive to update NI 43-101 if a significant new offering is planned.

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b. What types of investor protections should be included under such a model (for example, rights of rescission)?		There should be a review of the types and levels of investor rights of recission and investment dealer, auditor and legal liabilities as they relate to higher risk public Small Issuer prospectus offerings. With proper risk disclosure, prospectus offerings for Small Issuers should have lower costs and lower professional liability. It is estimated that over 80% of the Small Company financings on Canadian exchanges are non-brokered private placements. The reluctance of investment dealer to work actively with Small public companies is a concern. In many cases the Dealers are reluctant to assume liabilities relative to size of transaction. A two tiered system for prospectus offerings based on company size should create a framework that encourages investment dealers to provide valuable due diligence review of the Continous Disclosure record and be compensated to inform investors of the investment offering. The alternative is small companies rely on private placement exemptions where there is less dealer involvement. This alternative provides less investor protection and less efficient capital markets.
c. Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?	No	ATM only available to Small Issuers that have disclosed higher risks and where it is a more important financing strategy compared to large companies that usually have the capital and range of options to complete significant financings.
(iii) Facilitating at-the-market (ATM) offerings		
14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?		Allow both buy and sell trades (for 10% of float) once the Small Company has disclosed it is utilizing this ATM offering method. This new integrated system would allow Issuers to better manage both company valuation and investor demand which by nature tends to be volatile and seasonal. The Issuer would be allowed to have up to a 10% short position for extended periods with the provision that as deemed necessary by the Issuers Board, the short position can be covered by a treasury issue. Account and algorithmic trading technology should be allowed and developed to allow Small Issuers to manage share trading to the benefit of all shareholders. It is likely regulators will need to study this approach in more detail and it is suggested that Small Issuers be allowed to participate in a exemptive test of these new trading systems.
15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?		For continous ATM offerings there must be exemptive relief for rights of recission up to the suggested 10% float maximum. For larger offerings, the Issuer can follow existing offering rules. It should be noted that this is how the highly successful ETF market place balances high trading volumes and volatile demand. ETF units can be both created and cancelled on an ongoing basis through the use of designated market makers. This ETF advantage should also be allowed as a low way for Small Company Issuers to compete for new capital that might choose to use ETFs as an alternative.
(d) Other potential areas		

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	16. Are there rule amendments and/or processes we could adopt to further streamline the process for crossborder prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?	Yes	Advocate regulatory passport reciprocity for disclosure and financing requirement with other juridictions that have similar financial systems.
	17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the premarketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?	Yes	There should be no restrictions on full disclosure and marketing prospectus offerings for Small Companies. These companies are usually pre-revenue and there should be active disclosure to the widest audience of both existing shareholder and potential investors as deemed appropriate by the company and the business plan. The intent of these restrictions were for large liquid markets where inconsistent information might impact efficient daily trading. In many case new placements both prospectus and private are the relevant price discovery mechanism for Small Companies and this information should be free available to all market participant to allow informed decisions.
2.3 Reducing ongoing disclosure requirements			
	(a) Removing or modifying the criteria to file a BAR		
	18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?	No	The BAR report should be eliminated for Small Issuers and all relevant information including Financial Reports as deemed appropriate by the Issuers should be part of the Continous Disclosure Record.
	19. Are there certain BAR requirements that are more onerous or problematic than others?	Yes	See Answer in 18.
	20. If the BAR provides relevant and timely information to investors:		
	a. Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?		
	b. To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?		
	c. What alternative tests would be most relevant for a particular industry and why?		
	d. Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?		
	(b) Reducing disclosure requirements in annual and interim filings		
	21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?	Yes	Move toward providing comprehensive Audited Annual Statements and Management Report and non - audited comprehensive Semi-Annual Statment and Management Report. These two documents along with a robust Continuous Disclosure record are sufficient for Small Company Issuers to complete both prospectus and private placement offerings subject to appropriate risk disclosures and where appropriate Dealer reviews. The prospectus documents are streamlined and can refer to Financials and other technical reports such as the NI 43-101 by reference.

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Question	Response	Comment
22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.	No	There is a long history of appropriate disclosure through audited Annual Financial Statements for Small Public Issuers and best practices that are appropriate for specific sectors. The CSA does not need to be creating more rules based guidelines that may or may not be appropriate and will add to the compliance and regulatory time and expense.
(c) Permitting semi-annual reporting		
23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?		No benefit for Pre-Revenue Small Cap Issuers that maintain a continous disclosure record.
24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?	Yes	Yes limited to Small Company Issuers that elect to adopt the standard.
25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?	Yes	When combined with Continous Disclosure for Small Companies
26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?	Yes	Quarterly Highlights as deemed appropriate by Small Issuers would not be a regulatory requirement but would likely be a useful Investor Relations strategy as part of successful Investor Relations. If companies choose a semi-annual reporting standard this is sufficient when combined with a Continous Disclosure record.
2.4 Eliminating overlap in regulatory requirements		
27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?	No	Many MD&A reports are repetition of form based regulations. Audited financial reporting guidelines provide a more useful reference document.
28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?	Yes	Most MD&A is a repeat from disclosure in IFRS financials.
29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?	Yes	MD&A and AIF should be eliminated for Small Issuers. Issuer can design ongoing Continous Disclosure to maximize Investor Relations benefits. Single simplified documents that make reference to the SEDAR filed Continous Disclosure record would provide a more concise and easier to review record of the Issuer activities. Too many of the existing documents repeat the same information and also repeat standard risk disclosures. The net result are lengthy documents that are often not read by investors and shareholders. If a simplified Small Companies Prospectus document is developed this will eliminate the need for both a AIF and a Short Form Prospectus.
30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.	Yes	There should be limited regulatory rules to define material continuous disclosure as it varys with specific company, size and business model.
2.5 Enhancing electronic delivery of documents		

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31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?	Yes	There should be allowance for new types of technologies to provide direct communications between Issuers and Shareholders. In particular, email is becoming an older form of technology. New trends with specific mobile designed application systems, closed notification systems and the ability to have all shareholder documents automatically be linked to cloud databases such a Google Drive is the existing standard. Issuer should have the abililty to link all documents, and websites to specific documents in SEDAR so that there are no issues with accessing the most current document version. Regulators should hire technology consultants to ensure that all regulations reflect the latest and upcoming technology standards. This type of technology regulatory leadership will directly aid in reducing regulatory costs for Issuer while providing a better user experience for shareholders and future investors.
32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:		
a. Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?		The system of having i) paper share certificates and ii) CDS having both a) Objecting and b) Non Objecting shareholders adds to the expense and inefficiency of direct communication between the Issuer and Shareholder. Canada should eliminate paper certificates (like Australia) and not allow the Objecting Shareholder category. There should only be one class of digital certificates for all shareholder to recieve timely access to all material information about the Issuer through modern cloud based databases and mobile applications that allow efficient information access. The provision of minimal paper based notices sent to all shareholder registered address will ensure notice has been provided to obtain information regarding financials, proxy votes, press releases, continuous disclosure, private placements and prospectus offering. The combination of a streamlined shareholder records, communications systems and efficient paper notices will ensure all shareholders are well informed and will enhance KYC and security requirement implementation for all stakeholders in the capital markets.
b. Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?	No	An efficient Notice and Access system as described in 32 a) above will benefit both Issuers and Shareholders. Shareholders should be informed where they can access all material documents through efficient and regular paper based Notice and Access Documents. Small Issuers should not be required to spend resources mailing large paper documents of any type. It is likely that with further innovation even the paper Notices will be reduced in costs if the intermediaries at the dealers, trust companies and postal delivery services seek low cost alternatives and efficient management of shareholder records through the creation of one class of shareholder as noted in 32a .

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	c. Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?	No	The number of shareholders that actually need and use paper based documents is minimal and not materially significant. If an Issuer choose to create specific paper documents that will be for business reasons that are to the benefit of the company.
	d. Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?	Yes	Move to one class of digital shareholder and Notice and Access communication systems.
	e. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?	Yes	Ensure that SEDAR has integrated database APIs that can allow innovative new technology applications. See comments in Question 31.

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Submitted via electronic email

Re: CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Ontario Securities Commission,

Thank you for the opportunity to comment on the CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

The Real Property Association of Canada ("REALPAC") is Canada's senior-most voice for Canada's commercial investment real estate industry. Our members include the largest publicly traded real estate companies and real estate investment trusts (REITs) in Canada.

REALPAC and its members are very supportive of the CSA's initiative to ease the regulatory burden on non-investment fund reporting issuers. In particular we support:
1. An option to permit semi-annual reporting
2. Removing or modifying the criteria to file a BAR
3. Reducing the regulatory burdens associated with the prospectus rules and offering process
4. Simplifying continuous disclosure obligations and eliminating overlap in regulatory requirements

Reducing ongoing disclosure requirements

1. AN OPTION TO PERMIT SEMI-ANNUAL REPORTING

REALPAC supports implementing the option to report on a semi-annual basis for all reporting issuers. The real estate industry, for example, is focused on long term value creation through acquiring, developing and holding long term real estate assets. We believe that quarterly reporting is inconsistent with a long-term value creation strategy and encourages reporting issuers to focus too heavily on short term results.

As noted in the CSA Consultation Paper, a semi-annual reporting model has been utilized effectively in Australia and the UK. The UK, in particular, serves as an example of how a move to quarterly reporting was "tested" and abandoned. In 2007, the UK mandated quarterly reporting. In 2014, this requirement was abandoned after a government

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review found that quarterly reporting requirements seemed to be promoting a short-term focus by companies, investors and market intermediaries.

Other jurisdictions are also considering ways to decrease regulatory burdens. In the U.S., the Securities and Exchange Commission ("SEC") recently acknowledged that public companies are weighed down with too much regulation, and that increased disclosures and other burdens are making the public markets less attractive. In his address on July 2017, SEC Chairman Jay Clayton stated that, "(w)hile there are many factors that drive the decision of whether to be a public company, increased disclosure and other burdens may render alternatives for raising capital, such as the private markets, increasingly attractive to companies that only a decade ago would have been all but certain candidates for the public markets. And, fewer small and medium-sized public companies may mean less liquid trading markets for those that remain public. Regardless of the cause, the reduction in the number of U.S.-listed public companies is a serious issue for our markets and the country more generally."

We disagree with the premise that the elimination of quarterly reporting would deprive investors of timely financial disclosure. REALPAC consulted a group of our analyst and investor contacts and heard strong support for the move from quarterly to semi-annual reporting. Many noted that information included in quarterly reports was of little use because of how little changes in a 3-month period.

Further, as a result of on-going disclosure obligations required by securities regulation, issuers will report any transactions or events deemed material to their business, thus keeping investors and other stakeholders apprised in any interim period between reporting periods. We support the premise that quarterly reporting encourages reporting issuers and the users of these reports to focus too heavily on short-term financial results.

In addition, some argue that companies are choosing the private market over public markets when faced with the prospect of producing onerous quarterly reports.

Question 23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associates with quarterly reporting?

While quarterly reporting provides timely information, REALPAC questions the relevance of the information being reported on in such a short time frame. In industries where the focus is on long term value creation and long term holding and developing of long term assets – such as real estate – the amount of change that occurs in a short three-month period is insignificant. In fact, quarterly reporting on financial results where the business strategy is long-term is arguably detrimental as it focuses both management and investors on short-term results and changes at the expense of focusing resources on long term strategy.

Even those who advocate for quarterly reporting often concede that much of the information in quarterly reports is redundant, duplicative and/or largely irrelevant to investors. The costs of producing these reports is staggering in terms of both dollar amounts and resources. Permitting semi-annual reporting would alleviate these costs

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and free up resources, allowing them to be redirected towards long-term strategy and value creation. For an average REIT, external costs alone for a single interim review account for approximately 1 – 1.5% of annual general and administrative costs. When internal costs are taken into account, this cost doubles. On a dollar basis, this amounts to between $160,000 to $460,000 per quarter.

Question 24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

The semi-annual reporting option should be available to all reporting issuers. The notion of limiting the option to smaller issuers seems counter intuitive, as one could expect to see more fluctuation in earnings or asset values within shorter time periods in small entities than in larger, more established ones. This supports the argument that investors would be more interested in these large changes in smaller entities than smaller changes in larger ones.

In addition, under current securities regulation, companies are required to report material changes. As such, the markets are provided with timely updates when transactions or events that may be significant to investors occur. Quarterly reporting is not needed in order to keep market participants adequately updated on significant occurrences.

Question 25: Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

Yes. As noted above, continuous disclosure requirements under securities law already require the reporting of material changes, and as such, investors are already provided with significant timely information in between reporting periods. Mandatory quarterly reporting is not required to provide timely information.

Question 26: Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

Yes. Allowing this option reduces duplication of information and reporting results where changes in the intervening period are insignificant.

2. REMOVING OR MODIFYING THE CRITERIA TO FILE A BAR

REALPAC supports either removing or modifying the criteria to file a BAR.

Question 18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

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No. In many circumstances, in respect of the acquired business, financial statements are not readily available, in particular where the acquired business has been held by private entities. Financial statements of the business acquired, as well as pro forma financial statements are not reflective of the combined business afterwards. This is simply a historical mathematical exercise that does not accurately represent the future state of the combined business.

Question 19. Are there certain BAR requirements that are more onerous or problematic than others?

Yes. The cost of filing a BAR as well as the BAR cross-over rules relating to a Short Form Prospectuses are particularly onerous.

The cost of filing a BAR is very high. This is due to the fact that:

- audited financial statements are required for one year of the financial statements prepared;
- the property being acquired normally does not have historical separate financial statements available, thus requiring that the statements be carved out from the vendor's financial statements (i.e. start from scratch to create);
- it requires cooperation from the vendor and typically from the vendor's auditor/accountant who generally will extract some "premium" fee for getting the work done;
- the additional cost of the REIT's auditors who would normally be engaged to review the pro forma statements prepared for the BAR; and,
- the duplicate costs for audits and reviews that arise when the BAR information must be incorporated in a prospectus initially and then updated when the acquisition actually closes.

In addition, the BAR rules that cross-over to the rules relating to Short Form Prospectuses per National Instrument 44-101 ("NI 44-101") are onerous. The rules of NI 44-101 (specifically Section 10.2 of Form 44-101F1) state that the reporting issuer must include in the prospectus information about significant acquisitions that have either been completed or are highly likely to be completed. In order to satisfy this requirement, the financial statements or financial information provided in the prospectus must include the information that will be required for a BAR filed under Part 8 of NI 51-102.

Therefore, if a BAR has already been filed, then the BAR may simply be incorporated by reference in the prospectus. However, if no BAR has been filed, as may be the case if a reporting issuer is raising capital before an acquisition is completed, the BAR information must be created to be placed within the body of the prospectus. This creates a significant amount of work and cost and significantly complicates the process of raising capital.

Most smaller and growth-oriented REITs need to raise capital in order to finance proposed acquisitions. The prospectus requires that detailed information be provided on proposed acquisitions. This also means that the BAR requirements are included in the prospectus. Therefore, in order to meet the requirements of the BAR, the REIT must obtain the necessary audited financial statements from the vendor before the prospectus

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can be filed. This can take weeks to complete and could delay the REIT's plans to raise capital when markets are favourable. It leads to uncertainty of market execution which affects every "bought deal" financing as investment banks need assurance that no regulatory obstacle will impact the execution of an offering. Several REITs have noted instances where deals have been delayed or abandoned as a result of the onerous requirements of filing a BAR.

Question 20. If the BAR provides relevant and timely information to investors: (a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

No. Part 8 rules provide three specific tests to assess whether an acquisition is "significant": an asset test; an investment test, and a profit or loss test. In simple terms, if an acquisition represents 20% of the reporting issuer's total assets or total net income, the acquisition is considered significant.

The biggest issue with the BAR rules is the "profit and loss test". The profit and loss test does not make any sense in respect of a real estate entity and in no way reflects how the real estate industry measures operating performance or asset value. For many small REITs/REOCs, most property acquisitions will fail the profit and loss test because of how net income is determined under IFRS accounting standards.

The profit and loss test measures the net income of the property against the net income of the reporting issuer. Where the net income of the property is greater than 20% of the reporting issuer's net income, the acquisition is deemed significant. For purposes of this test, if the net income of the reporting issuer is in fact a loss, the absolute value of the loss is used for the calculation. Therefore, ironically, the larger the loss a reporting issuer incurs, the less likely the significance test will be met. This is one of the many nonsensical results arising from this test.

a) Net income of a property:
Net income of a property will represent primarily Net Operating Income ("NOI") of the property, less mortgage interest if a mortgage exists, plus/minus fair value changes on investment property. The property level net income will not include any allocation of trust/company G&A, nor trust/company level financing expenses (e.g. convertible debentures, operating lines, unsecured debentures, etc.)

b) Net income of a real estate entity (for purposes of this discussion we will refer to the real estate entity as a "REIT"):
Net income of the REIT will include all trust level expenses which for most REITS drive low net income or net losses. The net income is the reported IFRS/GAAP net income from continuing operations. Specifically, the key issues affecting net income of a REIT are:

> i) Fair Value Changes of Re-Measuring Investment Property – under IFRS, the fair value swings of investment property will cause volatility in the income statement. Should capitalization rates increase in a notable fashion, all REITs will be recording significant fair value losses which could easily wipe out all of the income of the REIT. In that case, it is not only the small REITs that would be impacted by the BAR significance test regarding profit and loss.

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ii) Accounting for Class B Units of Open-ended Trusts – the accounting standards applied under IFRS for Class B units of an open-ended trust (with redeemable units) result in two items that cause volatility and additional expenses in the income statement:

a. Class B Units are accounted for as liabilities, and they are measured at fair value each reporting period, of which the fair value is typically based on the unit price of the REIT. This introduces volatility to the income statement as unit prices move up and down and are sometimes impacted by greater market factors rather than the REIT's business itself. Ironically, if the unit price of a REIT increases, a fair value loss is recorded as the liability increases, therefore driving the net income down.

b. Since the Class B Units are considered liabilities, the distributions paid out on the units are treated as interest expense, driving net income down.

iii) Transaction Costs – under IFRS, more transaction costs are expensed, several which can be quite significant. For example, if any acquisition is deemed a "business combination" in accordance with IFRS 3, the transaction costs (which include land transfer taxes) are expensed immediately in the income statement. Second, for convertible debentures measured at fair value, which for many open-ended REITs this is the case when convertible debentures are issued, all related transaction costs are expensed (including the underwriters' fees).

iv) Other fair value changes under IFRS – under IFRS, many items are measured at fair value (derivatives, stock-based compensation units), thus creating volatility to the income statement.

v) Depreciation and Amortization (for those entities choosing the cost model under IFRS) – real estate entities have large depreciation and amortization charges which are recorded when using the cost model under accounting rules. Even older properties are being constantly renovated/redeveloped, thus never allowing depreciation charges to wind down.

Net income of a real estate entity has traditionally been and continues to be an irrelevant operating metric. That is the reason why the real estate industry created non-GAAP/non-IFRS measures to assess the operating performance of a real estate entity nearly forty years ago. The industry globally has widely adopted operating measures such as NOI, Funds From Operations ("FFO") and Adjusted Funds From Operations ("AFFO") as appropriate and relevant operating metrics.

The point being, the profit and loss test almost guarantees that any acquisition made by a smaller REIT will require that a BAR be filed regardless if an acquisition is deemed not significant under the asset test, investment test, or by another measure (i.e. where the acquisition represents less than 20% of the REIT's asset base or less than 20% of the REITs NOI).

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REITs may apply for exemptive relief from the BAR requirements – which many have done and continue to do. The REITs typically request that the profit and loss test use another measure other than net income such as NOI, or that net income be adjusted for items such as depreciation and there are many precedents that exist where the OSC (and other provincial regulators) have granted relief. However, the issues around this solution are that:

a) it may take anywhere from 3-4 weeks to obtain the necessary relief – this may have an impact on the REIT's ability to raise capital on a timely basis as the REIT may be seeking relief in order to be able to issue a prospectus without the BAR requirements but cannot do so unless it is certain it will obtain the relief;

b) the OSC (or other provincial regulator) may not issue the relief; and

c) the application for relief is costly (legal fees).

Given that the OSC (and other provincial regulators) have granted relief to REITs on numerous occasions, it speaks to the fact that the profit and loss test is not working for the real estate industry.

(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

Ideally, the threshold of 20% should be increased to 50% or 75%. Using such a low threshold of 20% guarantees that most acquisitions for smaller, growing entities are subject to filing a BAR. As noted above, many factors that impact net income under IFRS are not truly representative of a REITs' operating income and artificially suppress income under various circumstances. As the costs associated with meeting the BAR requirements are very significant, they act as a hindrance to raising capital. Given the issues with how IFRS net income is calculated for REITs, increasing the threshold will arguably provide investors with better information as it will only highlight transactions that are actually significant to the REITs, rather than focusing on every single time a smaller, growing REIT is simply adding a property to its portfolio and distracting the management team from building a stronger operating base.

(c) What alternative tests would be most relevant for a particular industry and why?

In addition to increasing the threshold for significant acquisitions, we offer two additional alternatives for the real estate industry.

1) eliminating the income test, and relying on the asset test; or
2) creating a new profit or loss measure for the real estate industry

In real estate, "net operating income" (NOI) is a profit or loss measure commonly used and widely-accepted across the industry. NOI is reported by virtually all REITs and is also a key component in driving a property acquisition's value and price. For example, when analyzing a potential purchase, NOI is used by capitalizing it at the property's capitalization rate to arrive at the property's value; thus, NOI is highly relevant to REITs. Further, by referencing NOI, it excludes any financing impact relating to debt the seller

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may have placed on the sold property, which in most cases will not be assumed by the acquiring entity nor reflect the acquiring entity's cost of borrowing.

Additionally, in most cases, the significance of an acquisition measured using NOI for the profit and loss test tracks virtually in the same proportion as the significance of an acquisition using the Asset Test or Investment Test. That is, if an acquisition represents 10% of a REIT's assets, the NOI of the property will represent approximately 10% of the REIT's NOI. As such, when using the appropriate "income" test for REITs, the resulting impact on a threshold is essentially the same as per an "asset" test. Therefore, completing both the income test and the asset test is redundant when related to applying a threshold test.

(d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

REALPAC supports any initiative that aligns the requirements of separate rules that address the same transaction. Therefore, REALPAC does support modifications to Item 14.2 of 51-102F5 such that it aligns with requirements of a BAR. Currently Item 14.2 introduces additional disclosure requirements over and above and different from those required in a BAR for an acquisition deemed significant in Part 8 of NI 51-102. Yet, the intent of the BAR is to provide users information about the acquired company and as such unnecessary duplication arises with Item 14.2.

3. *REDUCING THE REGULATORY BURDENS ASSOCIATED WITH THE PROSPECTUS RULES AND OFFERING PROCESS*

REALPAC supports easing the burdens surrounding the capital raising process.

Streamlining public offerings for reporting issuers

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

No. Currently, raising capital is a costly and onerous process, that is hindering activities in the public markets. REALPAC members have directly experienced situations in which accessing the public markets was either delayed or abandoned as a result of the requirements. Had some of these burdens been less onerous, several more transactions would have taken place and on a more efficient (and less costly) basis.

The most significant cost of completing a prospectus is obtaining the comfort letter from the issuer's auditors for the underwriters. As a result of the vast number of documents

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that are required to be included in a prospectus (for example, financial statements for interim and annual reporting periods), an enormous amount of work is required to gain comfort on every document included as well as all documents that are cross-referenced therein (for example, Annual Information Form (AIF) and Management Information Circular (MIC)). In most instances, the comfort process has *no materiality limit* and any financial number is highlighted in the comfort letter report to underwriters if inconsistent by +/- one (1) from source documents.

While this creates a lucrative business for those reviewing or auditing those documents, it does so at great expense to companies operating in the public markets. It is not surprising that studies show decreasing activities in the public markets as many entities are pushed to chose the private markets as a result of these onerous costs.

Eliminating the number of documents incorporated by reference in a short form prospectus, as well as easing the requirements for multiple periods of financial results, would help ease this burden and allow for more and nimble activity in the public markets.

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers?

Yes. While historical information is relevant when analyzing a transaction, having a large amount of such information included in a prospectus may mislead investors into relying too heavily on the historical information rather than the opportunity and risk factors of the future investment they are buying into.

REALPAC supports an alternative prospectus model for reporting issuers that is more closely linked to continuous disclosures. We also support an alternative prospectus model where reporting issuers and dealers participating in an offering would assume liability for any misrepresentation in the reporting issuer's disclosure base and all written marketing communications pertaining to the offering or the securities offered.

If an alternative prospectus model is utilized for reporting issuers:
(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?

REALPAC supports the suggestions included in the CSA Consultation Paper, including:

- a detailed description of the securities offered
- intended use of proceeds
- the plan of distribution
- consolidated capitalization
- material risk factors associated with the offering and the offered securities
- conflicts of interest, if any
- investors' statutory rights of withdrawal, damages and rescission

(b) What types of investor protections should be included under such a model (for example, rights of rescission)?

- investors' statutory rights of withdrawal, damages and rescission

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(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Yes. As noted above, more focus should be placed on the specific facts of the offering and risk factors of the investment, with less emphasis on referenced historical information.

4. SIMPLIFYING CONTINUOUS DISCLOSURE OBLIGATIONS AND ELIMINATING OVERLAP IN REGULATORY REQUIREMENTS

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

No. As noted above, REALPAC welcomes any alignment of requirements of separate regulation that address the same disclosure objective.

All form requirements can be referenced in other documents and the availability of this information is easily accessible. Any changes or additional risks can be noted in the MD&A as part of continuous disclosure requirements thereby providing investors with relevant information as opposed to repetition.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

Yes, there are several MD&A requirements that overlap existing IFRS requirements as follows:

- Related party transactions and disclosures
- Commitments
- Accounting policies
- Judgments and estimates
- Future accounting policies
- Subsequent events

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

Since the financial statements are typically subject to audit, REALPAC recommends retaining the financial statements as a standalone document. However, the MD&A and AIF are both disclosure documents, prepared and certified by management, and governed by securities regulation. There are a number of overlapping disclosure requirements between the AIF and the MD&A and REALPAC supports creating a more efficient document that will eliminate duplication of disclosures. The MD&A and AIF duplicating disclosures include:

- Acquisitions and dispositions
- Financing activities
- Details in respect of an issuer’s assets (in the case or real estate, all aspects of its investment property portfolio)

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- Capital structure
- Related party transactions
- Risk factors

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

As per Question 29 above, duplication between the MD&A and AIF.

As addressed in Question 11 above, the inclusion by reference, of public documents within a prospectus (e.g. the inclusion of financial statements, MD&A, AIF, MIC within a prospectus, when all are filed for public disclosure)

We thank the OSC for the opportunity to provide our input on the CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*. If you would like to discuss our comments, please contact Nancy Anderson, REALPAC's Vice President Financial Reporting and Chief Financial Officer, at 416-642-2700 x226.

Respectfully submitted,

NAnderson

Nancy Anderson, Vice President, Financial Reporting and Chief Financial Officer
REALPAC

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July 21, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador Superintendent of Securities, Northwest Territories Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention: The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
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C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Re: CSA Notice and Request for Comment
CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (CP 51-404)

Dear Sirs/Mesdames:

Suncor Energy Inc. (**Suncor** or **we**) appreciates the efforts of the Canadian Securities Administrators (**CSA**) in reviewing the regulatory burden on reporting issuers to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital market. We also appreciate you allowing us the opportunity to submit this comment letter in response to CP 51-404.

Suncor is an integrated energy company headquartered in Calgary, Alberta, Canada. We are strategically focused on developing one of the world's largest petroleum resource basins – Canada's Athabasca oil sands. In addition, we explore for, acquire, develop, produce and market crude oil and natural gas in Canada and internationally; we transport and refine crude oil, and we market petroleum and petrochemical products primarily in Canada. We also conduct energy trading activities focused

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principally on the marketing and trading of crude oil, natural gas, power and byproducts. We also operate a renewable energy business as part of our overall portfolio of assets.

Given the volume and breadth of questions contained within CP 51-404, we have only provided comments on selected questions. Our silence on the remaining questions in CP 51-404 should not be seen as either implied approval or implied disapproval thereof and we reserve the right to comment on the topics identified by such questions (including any proposed amendments relating thereto) at a later date. References to question numbers herein refer to the question numbers contained in CP 51-404.

Before providing feedback on specific questions, we would like to recognize our support for the CSA in this review. Suncor agrees that efforts should be taken to ensure that there is no undue burden on issuers while also recognizing the importance in ensuring that investors receive the level of protection that is appropriate under the circumstances. Our feedback below identifies areas which Suncor believes would benefit from further review by the CSA and presents opportunities to the CSA to make reforms to securities legislation without compromising on its regulatory objectives.

Question 3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

Suncor's comments: In addition to the comments provided in response to specific questions below, Suncor would like to raise an additional area of focus which Suncor believes could result in a reduced regulatory burden on issuers without comprising on investor protection.

Contingent Resources: Suncor wishes to note certain requirements relating to contingent resources (as defined in CSA Staff Notice 51-324 *Glossary to NI 51-101 Standards of Disclosure for Oil and Gas Activities*). Specifically, we note that the requirement to have any and all contingent resources volumes which are disclosed in an issuer's annual information form (**AIF**) to be either evaluated or audited by an Independent Qualified Reserves Evaluator/Auditor (**IQRE**) is more stringent than the requirement for reserves disclosure (in which case the IQRE must evaluate or audit at least 75% of the future net revenue, and review the balance). In addition, the disclosure requirements for contingent resources sub-classes other than 'development pending' are onerous and require analysis that would, in many cases, be based on limited information and high level assumptions. In particular, estimated total costs and general timelines to achieve commercial production may be very preliminary and could even be misleading to disclose given their low level of accuracy. Suncor believes that the aforementioned requirements serve to inhibit some companies from reporting their contingent resources.

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Question 21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

Suncor's comments: Suncor is generally supportive of reducing or removing disclosure requirements which are either overly burdensome or which do not provide stakeholders with relevant information. Suncor also notes that there are a growing number of disclosure requirements and believes the CSA should be mindful that stakeholders may be receiving too much information (or the same information in several locations) which may be undermining the usefulness of the disclosure to the stakeholder.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

Suncor's comments: Suncor is generally supportive of reducing or removing disclosure requirements which are either overly burdensome or which do not provide stakeholders with applicable information. Suncor also notes that stakeholders may be receiving the same information in various documents (or in different locations within the same document) and believes that this is also not in the best interests of the stakeholders. One area in which there is overlap between the requirements in the annual financial statements and the annual MD&A is with respect to Accounting Policies and Critical Accounting Estimates. As per the current requirements, each of the annual financial statements and the annual MD&A require information regarding Accounting Policies and Critical Accounting Estimates. It may be more useful if the required information with regards to these topics were contained within a single disclosure document.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

Suncor's comments: Suncor is generally supportive in reducing or removing disclosure requirements in order to lessen the amount of immaterial information stakeholders receive and to ensure that stakeholders are not receiving the same information in several locations, as each of those outcomes may undermine the usefulness of the disclosure.

Several components of an issuer's AIF are required to be provided in an issuer's MD&A which results in the duplication of disclosure, increasing the aggregate length of the continuous disclosure documents and resulting in increased paper requirements and printing costs. Areas in which the required disclosure is similar to the disclosure required elsewhere include: (i) the overlap between the disclosure required in the *Summary of Quarterly Results* section of the MD&A and the disclosure already required in the *Discussion of Operations* section of the MD&A; (ii) that each of the MD&A and AIF require disclosure relating to the risks faced by the issuer; and (iii) the overlap between the *Description of the Business/General Development of the Business* in the AIF and the *Overall Performance/Discussion of Operations* in the MDA.

Suncor suggests that the CSA consider whether it would be appropriate to consolidate the disclosure requirements for the AIF and the annual MD&A into one disclosure document. In addition to the paper considerations noted above, this may also alleviate the confusion some

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stakeholders may face when seeking out information about a company as there would be no confusion as to which annual document contains the information that the stakeholder wishes to review.

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

Suncor's comments: Suncor is supportive of measures which allow documents to be delivered to its stakeholders in a fast, environmentally friendly manner and believes that increasing the use of electronic delivery should be a goal of the CSA. Electronic delivery allows immediate access to the recipient and may greatly reduce the paper requirements for the issuer.

Further, Suncor would be supportive of a review of the securities legislation relating to what constitutes "generally disclosed" in the context of the increasing use of, and access to, the internet since such legislation was enacted. Suncor would be supportive of a change to consider the posting of material onto an issuer's website to meet the requirements of general disclosure.

Thank you for this opportunity to provide comments on CP 51-404. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

SUNCOR ENERGY INC.

"*Jacqueline Moore*"

Vice President Legal Affairs, Corporate

cc. Alister Cowan, Executive Vice President and Chief Financial Officer
Janice Odegaard, Senior Vice President, General Counsel and Corporate Secretary
Angela Butler, Vice President and Controller
Shawn Poirier, Director Legal Affairs, Corporate

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S. Mark Francis

Suite 300, 840 – 6th Avenue SW Calgary, AB T2P 3E5 403-993-1750 email: sfrancis@mymts.net

24th of July, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Regarding: Ongoing Governance and Disclosure Requirements for Venture Issuers

Dear CSA:

I write based on my experience as a former Investment Advisor, an advisor to companies both public and private, a founder of reporting issuer companies, director of some as well as CEO of one, an advisor to Canadian Securities Exchange and to companies considering how to access the capital markets, a formal VA Angels member, and a co-founder/principal of a small cap investor forum (TakeStock!Conferences).

In addition as part of my responsibilities with CSE and also with the TakeStock!Conferences, I have consulted with a range of individuals active in the small cap markets and companies regarding the CSA whitepaper. These included CFOs and CEOs of pubcos, independent directors, both Investor Relations professionals and Investment Advisors who participate in small caps, investors both institutional small cap and individual, securities lawyers, etc.

I also coordinated a formal feedback session for CSE and MNP which had some 15 people and a range of the professions mentioned above (though no CFOs).

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Restricting my comments to the ongoing disclosure requirements, and definition of Venture Issuer:

Size to qualify as a "Venture Issuer" Small cap companies incorporate a wide range of types, industries, and capital pacing, from tiny to larger, and from consumers of cash to generators of cash. These companies find their market caps, revenues, and access to capital quite volatile. A company could raise $100 million, and find the project or business to become unviable for a number of reasons, and be right back to the position of nanocap.

RECOMMENDATION: Exchange, market cap, revenue over several years, and capital raised – a company should have to breach thresholds in all of these, or at least three, for it to be removed from "Venture Issuer Status".

Not one person with whom I consulted supported elimination of 1st and 3rd quarter financial reports, but very few find the MD&A for most venture issuers to be useful, and no one found any value in the CEO and CFO certifications.

It is confusing as to why the CSA would give up disclosure of 1st Q and 3rd Q Financial statements and MD&A, which would deny investors critical regular information about the cash position especially approaching release of the audit,

but won't simply give up MD&A for Q1, Q2, and Q3, which so many investors in most venture issuers find rather pointless.

Speaking as an investor, elimination of 1st and 3rd quarter financials, or making them optional and therefore confusing investors' expectations of the space, would be a terrible decision. It would mean at one point making investment decisions using financial statements that are ten months old – simply unacceptable for most investors.

From the company view, elimination of 1st and 3rd quarter financials would provide only minimal savings, as those financials are unaudited, and the board should be reviewing them regularly anyway.

It is the MD&A which is so time consuming for small companies, so it would be far better to eliminate that requirement for all but the year end. Many venture issuers are not availing themselves of the "modified MD&A" option because the CFOs fear that the subjective nature of the guidelines increases the risk of a time consuming and expensive regulatory review. The market place is telling the CSA that this initiative has missed the mark.

Adoption of IFRS has been counterproductive for investor understanding of companies, and using a similar argument that we should standardize with other international markets risks following in the same footsteps; furthermore; Canada still has the best public venture markets, though we are slipping, and adopting the practices of less successful markets does not seem wise.

RECOMMENDATIONS: Eliminate MD&A for Q1, Q2, and Q3, along with CEO and CFO certifications for that period. Simple, clear, and easy.

Yours truly,

S. Mark Francis
Capital Markets Consultant

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July 25, 2017

The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

RE: Comment letter on CSA Consultation Paper 51-404 "Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers"

Dear Secretary

The Committee on Corporate Reporting (CCR) of Financial Executives International Canada (FEI Canada) is pleased to respond to your request for comments on CSA Consultation Paper 51-404 **"Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers"**

FEI Canada is the all-industry professional membership association for senior financial executives. With eleven chapters across Canada and more than 1,600 members, FEI Canada provides professional development, thought leadership and advocacy services to its members. The association membership, which consists of Chief Financial Officers, Audit Committee Directors and senior executives in the Finance, Controller, Treasury and Taxation functions, represents a significant number of Canada's leading and most influential corporations.

CCR is one of seven thought leadership committees of FEI Canada. CCR is devoted to improving the awareness of issues and educating FEI Canada members on the implications of the issues it addresses, and is focused on continually improving the standards and regulations impacting corporate reporting.

In general, CCR is of the view that the discussion paper questions are detailed and comprehensive and address all areas of concern. Answers to the specific questions from the invitation to comment are included in the Appendix.

Thank you for the opportunity to respond to the Consultation Paper.

Yours truly,

Susan Campbell
Chair – Committee on Corporate Reporting

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APPENDIX

**FEI CCR Comment letter on CSA Consultation Paper 51-404
"Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers" - July 2017**

1. **Of the potential options identified in Part 2:**
   a) **Which meaningfully reduce the regulatory burden on reporting issues while preserving investor protection?**
      - Point 2.3 "Reducing ongoing disclosure requirements" and 2.4 "Eliminating overlap in regulatory requirements" are the most meaningful options to review
   b) **Which should be prioritized and why?**
      - Identification of overlaps in reporting the same information to multiple regulators should be the first step in reducing the burden. This will also improve the overall efficiency of reporting cycles.
      - Second priority should be given to the ongoing disclosure requirements, as they have a major impact due to the ongoing frequency of the periodic reporting
      - Third priority should be given to the application of streamlined rules to smaller reporting issuers and reducing the burden associated with the offering process

2. **Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?**
- Eliminating overlap in regulatory requirements and reducing ongoing disclosure requirements should be addressed in the short term
- The remaining issues can be addressed in the medium term. However, we encourage the CSA to perform a more comprehensive review to streamline regulatory reporting requirements across all reporting issuers in addition to eliminating duplication and increasing eligibility for smaller reporting issuers.

3. **Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.**
- No other options identified

4. **Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?**
- Yes, size-based distinction is an important criterion for assessing capability to meet reporting requirements; however, consideration should be given to establishing a set of criterion that do not lead to frequent changes of reporting regime. This would be very onerous for companies to implement and administer. Also, some rules should be established that prohibit changing regime classifications for at least 2-3 years, even though the underlying variables may have changed. The Companies should have an option to use the more onerous regime, if they chose to.

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5. **If we were to adopt a size-based distinction:**
   a) **What metric or criteria should be used and why?**
      - A weight-based approach may be more helpful than only considering revenue and market capitalization:
        - Revenue and market capitalization should be the main weighted factors
        - Some weight should also be given to other factors such as headcount, operating jurisdiction, number of investors, global footprint, etc to determine the regime.

   b) **What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?**
      - Refer to answer in question 4 above.

   c) **What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?**
      - The filing should include a statement on the reporting regime and how the reporting issuer qualifies under that regime. The statement should be part of the MD&A.

   d) **How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?**
      - Regulators can liaise with professional associations to provide training
      - Webcasts and bulletin boards are most cost effective measures

6. **If the current distinction for venture issuers is maintained, should we extend less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?**

- Point 5 above addresses our thoughts on this

7. **Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:**

- Assuming that this point refers to Initial Public Offering:
  a) **How would this amendment assist in efficient capital raising in the public market?**
     - This will reduce the costs for reporting issuers.
     - In today's fast paced world of change and disruption, investors are more interested in forward looking growth plans than in historical information prior to two years. However, the concept of stub period should be still applicable.

  b) **How would having less historical financial information on non-venture issuers impact investors?**

  c) In our experience of dealing with brokers, underwriters etc we have not found any interest in the financial statements beyond 2 years **Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?**
     - A criteria similar to the discussion in question 4 above should be used.

  d) **If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?**
     - A weighted threshold using a combination of revenue (financials) and a non-financial metric may be useful

8. **How important is the ability to perform a three-year trend analysis?**
   - In our experience and interactions with the users of financial statements, this is important to analysts but not critical.

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9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

- Yes, it provides credibility to the information and reduces the D&O liability

10. Should other prospectus disclosure requirements be removed or modified, and why?

- In today's world, where most of the documents are electronically available and are online, less repetition and more cross referencing will help.
- Information that is repetitive within the prospectus should be removed. Further, information that is disclosed elsewhere in other filed documents should be cross referenced.

11. Is the current short form prospectus system achieving the appropriate balance (i.e. between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

- Cross referencing to recent quarterly or annual filings should be done throughout the prospectus.
- More focus and discussion should be given to use of proceeds and future projections/plans

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

- Yes, in fact short form prospectus should be the general rule with long form information required only in certain specific cases. This will reduce the cost and effort required for some small and mid-size companies.

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

a) **What should the key features and disclosure requirements of any proposed alternative prospectus model be?**

b) In our view, the current model is the right one, but it needs streamlining per our comments above **What types of investor protections should be included under such a model (for example, rights of rescission)?**
   - Implications for liability should be carefully considered before moving to an alternative prospectus model.

c) **Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?**
   - Yes, but this also depends on the features of the alternative offering model

14. What rule amendments or other measures could be adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

- No point of view from FEI Canada.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

- No point of view from FEI Canada.

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16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

- No point of view from FEI Canada.

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

- No point of view from FEI Canada.

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

- BAR is a post transaction filing and serves as a "for your information" only document
- The document has very limited use and should be eliminated. Quarterly reporting addresses all pre and post-acquisition disclosures

19. Are there certain BAR requirements that are more onerous or problematic than others?

- Reporting of multiple years of historical data of the acquiree in the BAR is an onerous task

20. If the BAR provides relevant and timely information to investors:

We view that BAR provides limited "timely" data as it is reported after the transaction is over and has therefore has very limited use.

a) **Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?**
b) **To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?**
c) **What alternative tests would be the most relevant for a particular industry and why?**
d) **Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?**

The profit or loss significance test often leads to anomalous results that may not be indicative of significance. We have observed that smaller reporting issuers are disproportionately affected by anomalous results, particularly if their annual results fluctuate between income and losses or if they operate at close to break-even.

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

- Most companies report annual results which cover part of the first quarter updates and subsequent events. Thereafter, the annual information form and management information circulars in the first half of the year also provide some "subsequent to year-end updates".
- Removing quarterly reporting for the first and third quarter and replacing it with "financial and operating highlights" that read more like a detailed "earnings release" may be more efficient both for the reporting entity and the investors.
- As a rule, elimination of duplication between financial statements and MD&A should be encouraged.

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- AIF and MIC disclosures should be limited to two years' historical information only. Any investor requiring more information has access to past period filings.

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.
- Yes, guidance with specific checklists and examples are certainly helpful.

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?
- In today's fast changing world, quarterly reporting has some benefits, but the scope of the disclosures and the reporting mechanism can be made more lean
- Major issue with quarterly reporting include more focus on short term goals and targets, instead of long term strategic objectives

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?
- Semi-annual reporting should be an option provided with quarterly highlights for first and third quarter. There are other ways to get useful information to investors (earnings releases, material change reports, etc)
- This will substantially reduce costs and help companies focus more on operations

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?
- A lot European countries and Australia follow the semiannual reporting regime, which is working well for investors in those countries
- As mentioned above, a brief quarterly highlight or earning release will provide sufficient information to the users for the first and third quarter

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?
- Yes

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?
- Reporting should ensure there are no overlaps and repetitions

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?
- Yes, in the disclosure of critical accounting policies.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document?
- No, as the MD&A and AIF are unaudited and therefore should not be combined with the financial statements

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.
- FEI Canada is of the view that the most relevant areas are discussed in this paper.

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fei

financial executives
international

canada

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?
No point of view from FEI Canada.

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

a) **Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper deliver of proxy materials, financial statements and MD&A?**
   - Notice and access should become the norm as being the only delivery method. In today's world, electronic delivery is the main communication carrier.

b) **Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery?**
   - Yes.

c) **Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?**
   - No

d) **Are there other rule amendments that could be made in NI54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?**
   - No

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

- Canadian Securities Administrator should enhance the SEDI reporting portal. It is currently not very user friendly. It should be more interactive, with each-of-use and cross referencing capabilities
- Single portal for all regulatory filings will help in reduction of overlaps in reporting

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July 26, 2017

SENT BY ELECTRONIC MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Authorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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Dear Sirs and Mesdames:

CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

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This letter is in response to the request for comment on *Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper"). We appreciate the opportunity to comment on the Consultation Paper and have provided responses below to a number of matters on which specific comment was requested.

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

(c) Streamlining public offerings for reporting issuers

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers?

We support initiatives that seek to provide investors with more concise and focused disclosure in an offering document; however, we would be reluctant to support any changes to the short form prospectus regime that could impose additional burdens on an issuer's continuous disclosure obligations. The alternative prospectus model referenced in the Consultation Paper suggests adopting a model whereby reporting issuers and dealers participating in an offering would assume liability for any misrepresentation in the reporting issuer's disclosure base. We would be hesitant to support an alternative prospectus model that effectively incorporates by reference a broader set of a reporting issuer's continuous disclosure documents than that required by the current short form prospectus regime. The concerns arising from such an alternative prospectus model include that all of a reporting issuer's disclosure documents: (i) will become subject to greater degree of auditor review and scrutiny, (ii) will likely necessitate further French (or English) translation obligations, and (iii) would demand a higher level of “due diligence” in the preparation of continuous disclosure documents. This could have the unintended consequence of increasing costs, delaying dissemination of information and generally discouraging the dissemination of non-material information.

2.3 Reducing ongoing disclosure requirements

(c) Permitting semi-annual reporting

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

The concern with quarterly reporting includes the costs and resources required to prepare and compile quarterly financial statements. There is also a theory that quarterly reporting causes investors and analysts to focus on short-term results over long-term performance.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

We support the recommendation of providing reporting issuers with the option to report on a semi-annual basis. For reporting issuers that have a long-term investment horizon, such as TransAlta Corporation, having the option to report on a semi-annual basis would be welcomed as a positive development. Accordingly, the option should not be limited to smaller reporting issuers.

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As has been the case in the United Kingdom, there are a number of factors that could nonetheless lead reporting issuers to continue to report on a quarterly basis. These factors include the potential for: (i) negative signaling effects of stopping quarterly reports, (ii) keeping up with industry peers where quarterly reporting is required, and (iii) making the disclosure of an issuer's information more episodic.[1] As such, we are also supportive of shifting quarterly reporting from an emphasis on quantitative factors to qualitative factors, which could include the filing of a "quarterly highlights" document in the form permitted to be filed by venture issuers rather than filing quarterly financial statements.

2.5 Enhancing electronic delivery of documents

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

As a result of the adoption of "notice-and-access", we have been able to realize meaningful reductions in our costs for printing and mailing. However, the requirement to continue to deliver financial statements and management's discussion and analysis ("MD&A") to beneficial shareholders continues to give rise to substantial printing and mailing costs. We would propose amendments that provide for the "notice-and-access" regime that currently applies to proxy related materials to be extended to also apply to financial statements and MD&A. We would expect that the delivery to both beneficial and registered holders of a notice explaining where to obtain an electronic copy and how to request a paper copy would be sufficient to satisfy delivery purposes. We have not had a meaningful number of investors express a preference for paper delivery of proxy materials, financial statements and MD&A.

(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

Yes, it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery. It would seem to be appropriate to provide paper copies of the financial statements, MD&A and proxy circular if requested by the shareholder. In addition to the anticipated cost savings of adopting a broader "notice-and-access" amendment

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[1] *Impact of Reporting Frequency on UK Public Companies*; Robert C. Pozen, Suresh Nallareddy, Shivaram Rajgopal; The CFA Institute Research Foundation (March 2017).

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through reduced printing and mailing expenses, there will also be an environmental benefit as less paper will be required that would otherwise go into landfills or be recycled and the reduction in physical delivery of documents will lower carbon emissions. We suggest that the securities regulatory authorities coordinate their efforts to further amend the "notice-and-access" regime with provincial and federal legislatures such that comparable amendments are made to the federal and provincial business corporations acts.

Thank you for the opportunity to comment on the Consultation Paper. Please feel free to contact the undersigned should you wish to discuss in more detail.

Yours truly,

TRANSALTA CORPORATION

"*Scott Jeffers*"

SCOTT T JEFFERS
Assistant Corporate Secretary

Cc: John Kousinioris, Chief Legal and Compliance Officer and Corporate Secretary
Donald Tremblay, Chief Financial Officer
Todd Stack, Managing Director and Controller

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July 26, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Our reference
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CSA Consultation Paper 51-404 — Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Introduction

This letter is submitted in response to the CSA Consultation Paper 51-404 — *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (**Consultation Paper 51-404**) issued by the Canadian Securities Administrators (the **CSA**) on April 6, 2017. It reflects the views of a working group consisting of issuers having a combined market capitalization of more than $120 billion (the **Working Group**). Members of the Working Group believe the CSA's review of the regulatory burden on reporting issuers is an excellent initiative as such burden has an impact on Canada's ability to attract and keep public companies. We thank you for affording us an opportunity to comment on this important matter.

Public companies play a vital role in ensuring efficient capital allocation. Unfortunately, 2016 was a dismal year for the Canadian IPO market, with only three new issues on the TSX and eight new issues on all exchanges in

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Canada.[1] One of the main criticisms of reporting issuers is the never-ending increase in regulatory requirements and compliance costs. In March 2017 alone, the CSA announced a project to review the disclosure of risks and financial impacts associated with climate change and published its report on social media, requesting issuers to take action to improve social media disclosure in response to issues raised during its review.

Through this letter, members of the Working Group first provide general comments on how to revamp disclosure requirements and then focus on certain questions listed in Consultation Paper 51-404. In their answers to these questions, they identify options that would have the most impact in reducing their regulatory burden. These options consist of permitting semi-annual reporting, streamlining prospectus requirements and eliminating overlap in regulatory requirements.

General comments

When considering general reporting requirements, it is important to keep in mind that compared to other world-leading economies, the Canadian stock market is primarily composed of SMEs, with a large percentage of issuers having a market capitalization of less than $500 million.[2] Despite the profile of Canadian issuers, our securities regulations are often similar to U.S. regulations designed for a market of much larger issuers. The regulatory burden of all Canadian issuers should be reduced to reflect the realities of our market. Even in the U.S., regulators recognize that the regulatory burden plays an important role in a large number of companies, including many of the country's most innovative businesses, opting to remain privately held. On July 12, 2017, the newly appointed SEC Chairman, Jay Clayton, shared his perspective on the SEC with the Economic Club of New York.[3] Mr. Clayton said that "Incremental regulatory changes may not seem individually significant, but, in the aggregate, they can dramatically affect the markets". He took a public stand against the decline in the total number of U.S.-listed public companies over the last two decades. Mr. Clayton said that "while there are many factors that drive the decision of whether to be a public company, increased disclosure and other burdens may render alternatives for raising capital, such as the private markets, increasingly attractive to companies that only a decade ago would have been all but certain candidates for the public markets". A similar phenomena is observed in the Canadian market and the CSA should be proactive in reducing the regulatory burden of Canadian issuers.

To effectively reduce the regulatory burden of Canadian issuers, the CSA should focus on facilitating useful and readable disclosure and eliminating rules creating overdisclosure. To reach this goal, CSA requirements must allow issuers to better focus on what is material to their specific business and financial conditions. Although securities regulations provide some guidance on materiality, the risk of liability for failure to disclose encourages issuers to overdisclose and adopt standardized "boilerplate" disclosure. Until the CSA addresses liability risks, many issuers will continue to follow prudent practices and include, for instance, lengthy risk factor disclosure to mitigate such liability risks. What may be perceived as an overdose of information may ultimately obscure important facts and limit the ability of shareholders to efficiently make investment decisions.

In order to properly take into account the particular circumstances of each issuer, the disclosure regime should change in some respects from a purely prescriptive, rules-based construct to a more flexible principles-based approach, relying to a greater extent on management's judgment in identifying material information. Such emphasis on principles-based disclosure requirements would reduce the amount of less relevant information disclosed pursuant to one-size-fits-all thresholds. The CSA could also consider automatic sunset provisions attached to certain new disclosure rules requiring formal action by the CSA following its assessment of the effects of or necessity for a particular requirement before its permanent adoption.[4]

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[1] Dismal 2016 the worst year for Canadian IPO market, PwC survey shows: http://www.pwc.com/ca/en/media/release/dismal-2016-the-worst-year-for-canadian-ipo-market.html
[2] Public Listing: The Weak Link in Quebec's Corporate Finance Ecosystem, A Corrective Action Plan, June 15, 2016, p. 20, online: http://quebecbourse.com/wp-content/uploads/2016/08/rapport-inscription-en-bourse_en.pdf.
[3] https://www.sec.gov/news/speech/remarks-economic-club-new-yorkhttps://www.sec.gov/news/speech/remarks-economic-club-new-york
[4] The SEC has, on occasion, adopted rules with automatic sunset provisions. See the Regulation S-K Concept Release, p. 29-30, online: https://www.sec.gov/rules/concept/2016/33-10064.pdf.

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Overall, emphasis should be put on what is most important for investors, including an overview of an issuer's recent performance, development of its business and strategies to achieve long-term growth, similar to what a CEO would report to his board of directors.[5] This is consistent with what is considered by some as the "new paradigm" of corporate governance, focusing on sustainable value, long-term corporate strategies and shareholder involvement.[6]

Potential options to reduce regulatory burden

1. *Of the potential options identified in Consultation Paper 51-404, which would meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?*

    (a) Permitting semi-annual reporting

Two going-private transactions involving leading companies in their fields were recently announced on the same day. Both these deals highlighted the disconnect between the creation of long-term value and the management of market expectations on a quarterly basis.[7] Faced with the prospect of having to produce extensive quarterly reports, it is understandable that many growing companies are preferring private exits to public listings. Members of the Working Group are of the view that the CSA should lift the requirement that public companies issue quarterly financial reports and allow them to report semi-annually. Moving away from what some institutional investors have called the "quarterly earnings hysteria"[8] may in many instances free significant corporate time and resources while encouraging long-term thinking. Allowing semi-annual reporting would also put Canada on a level playing field with many European jurisdictions, the United Kingdom and Australia.

Some may argue that because the United States maintains quarterly reporting, at least for now, many issuers will feel pressured to keep reporting on a quarterly basis. That may be especially true for large corporations, particularly Canada-U.S. inter-listed issuers. Members of the Working Group nevertheless believe that the option permitting semi-annual reporting should be made available and urge the CSA to work with the U.S. Securities and Exchange Commission to encourage them to follow suit.

To those concerned that reporting semi-annually may increase the risks of selective disclosure, one could respond that applicable securities laws and stock exchange rules will still require issuers to update the market on all material information, on a timely basis, and that selective disclosure of material non-public information will remain illegal.

    (b) Streamlining prospectus requirements

The time and cost to prepare prospectus documentation is also an impediment to capital raising for some public companies. Members of the Working Group thus welcome the CSA's proposal to study alternative prospectus models that do not duplicate and are more closely linked to continuous disclosure documents, while providing more concise and focused information to investors. As we understand it, one of the proposed prospectus offering regimes described in the Consultation Paper is essentially the shelf system, using continuous disclosure as a substitute for the shelf prospectus. Under that regime, an issuer would only be required to produce a brief document similar to the Integrated Disclosure System prospectus model, a concept developed by the CSA in 2000, focusing on information relevant to the offering, such as a detailed description of the securities offered, the

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[5] A similar proposal made by the Committee on Financial Reporting of the New York City Bar is referred to in the Regulation S-K Concept Release, p. 98-99.
[6] "Corporate Governance: the New Paradigm," Martin Lipton, Wachtell, Lipton, Rosen & Katz, January 11, 2017, online: https://corpgov.law.harvard.edu/2017/01/11/corporate-governance-the-new-paradigm/
[7] Canam Group Inc. and Lumenpulse Inc. both announced going-private transactions on April 27, 2017. In an interview with the Globe and Mail, Marc Dutil, CEO of Canam, said the deal was born from the conclusion that the cyclical and risky nature of the construction industry was increasingly at odds with the imperatives of public markets, highlighting a disconnect between the pace at which he saw his business going and what the markets were expecting. See Nicolas Van Praet, *Quebec's Dutil family taking Canam Group private*, Globe and Mail, April 27, 2017: https://www.theglobeandmail.com/report-on-business/quebecs-dutil-family-taking-canam-group-private/article34827891/.
[8] http://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016-6

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use of proceeds, the plan of distribution, material risk factors associated with the offering, etc.[9] Members of the Working Group generally agree with such proposal, which would remove duplications and simplify the process.[10] To the extent the shelf system is maintained, the length of the shelf prospectus should be increased from the current maximum of 25 months to at least 36 months, as is the case in the United States.[11]

Members of the Working Group also suggest removing the current requirement to file every version of marketing materials shown to investors in connection with an offering. Filing on SEDAR very similar documents multiple times (for instance, an indicative term sheet, a final term sheet and a blackline between the two, in English and French, and similar material for various series of notes issued concurrently) is burdensome to reporting issuers and not particularly useful to investors.

(c) Eliminating overlap in regulatory requirements

Of the issues identified in Consultation Paper 51-404, members of the Working Group believe the CSA should also prioritize the elimination of overlapping regulatory requirements. Some rules are duplicative. This is the case, for instance, for information relating to directors on bankruptcies, penalties or sanctions and biographies when they are members of the audit committee. Risk factors also need to be disclosed in various documents.

Although consolidating the MD&A, AIF and financial statements into one document as suggested in the Consultation Paper would appear to present issues under accounting rules, the CSA could allow the MD&A and the AIF to be combined. Members of the Working Group believe that this change would be beneficial to both issuers and investors, provided that the new combined document is not substantially longer than the current MD&A and that overlapping MD&A and financial statements requirements be eliminated. To the extent these overlapping requirements remain, allowing the new combined form of MD&A and AIF (unlike the current MD&A requirements) to incorporate by reference relevant sections of the Financial Statements[12] could be a good way to eliminate duplications. Some disclosure requirements related to the MD&A and AIF could also be transferred to the proxy circular, such as information on directors and officers.

(d) Other options to reduce the regulatory burden

(i) Modifying the criteria to file a business acquisition report (**BAR**)

Members of the Working Group feel that the 20% threshold applied to the significance tests for the publication of a BAR, as described in Part 8 of NI 51-102 *Continuous Disclosure Obligations*, is too low and should be increased to at least 30%, given the size of Canadian issuers. They are of the view that the CSA should also codify some of the case-by-case exemptions granted to issuers when the requirement to file a BAR does not make sense, such as in cases where important write-offs must be taken by the target company.

(ii) Enhancing the use of electronic communications

Members of the Working Group believe that corporations should be allowed to use electronic communications to provide notice of meetings to shareholders and online access to relevant documents. Working with corporate law legislators to allow reporting issuers to communicate with shareholders through emails or other electronic means, will significantly improve effectiveness and reduce costs. Eventually, blockchain technology could also

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[9] See *Canadian Securities Administrators Notice and Request for Comment 44-101, 51-401 – Concept Proposal for an Integrated Disclosure System,* January 28, 2000.
[10] As we understand the CSA's proposal, some disclosure included in the shelf prospectus such as the description of the business, consolidated capitalization, prior sales and recently completed and probable acquisitions would not be required.
[11] Section 2.2(3)(a) of NI 44-102 – *Shelf Distributions* and *U.S. Securities Act of 1933*, Regulation C, Rule 415.
[12] Including, in particular, sections on (i) contractual commitments; (ii) financial instruments; (iii) critical accounting estimates; and (iv) critical accounting policies so as not to repeat in the new combined form of MD&A and AIF disclosure that is already covered in the Financial Statements.

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help to disseminate information, allow more automated corporate record-keeping and make shareholder voting more efficient and accurate.[13]

(iii) Removing information that is no longer useful or that is easily accessible to investors in real time

Some regulatory requirements are no longer useful and should be removed. Furthermore, certain information is now accessible to investors online in real time. For instance, members of the Working Group are of the view that the trading information disclosed in the AIF[14] should not be required as investors can find more customized information online, in real time. Similarly, disclosing the summary of quarterly results for each of an issuers' last eight quarters in the MD&A[15] and describing how a company has developed over the last three financial years in the AIF[16] are not as useful as they used to be. Businesses evolve so quickly nowadays that what happened a few years ago may not be material anymore and information on these matters can be found in an issuer's past continuous disclosure documents. In addition, instead of attaching the audit committee charter to the AIF,[17] an issuer should have the option to refer to its website where the document would be made available to investors. More generally, the CSA should provide more flexibility to issuers in determining what should be disclosed on their business activities, based on materiality.

(iv) Allowing a single filing to satisfy more than one obligation

Although a lower priority, there may be an opportunity to reduce the regulatory burden of issuers by allowing a single filing to satisfy more than one obligation. For example, the material change report is in many cases only a cover sheet for the more detailed news release required to be filed under Section 7.1 of NI 51-102. A news release that includes the disclosure required by Form 51-102F3, that could be filed as a material change report and be incorporated by reference in an offering document, would reduce this duplication.

(v) Amendments to ATM Offerings

Finally, the Working Group is of the view that the exemptive relief granted for ATM offerings should be codified in securities legislation. To require issuers and associated agents to apply for exemptive relief (which relief has historically always been granted and, one expects, would continue to be granted) each time that an ATM offering is launched, adds an unnecessary layer of regulatory burden to ATM offerings in Canada.

Conclusion

In conclusion, cost-effective access to capital for issuers of all sizes plays an important role in our national economy. The cost of disclosure increases the cost of raising capital and is time consuming. It is no wonder that the never-ending increase of regulatory requirements is often mentioned as a factor contributing to going-private transactions. Members of the Working Group therefore applaud the CSA's initiative to place the review of the regulatory burden on reporting issuers as one of its key initiatives for 2016-2019 and look forward to the CSA's next steps in this regard.

Many of the options identified in Consultation Paper 51-404 would have the effect of reducing the regulatory burden of reporting issuers. As outlined above, members of the Working Group believe that disclosure requirements should focus on material information and be more principles-based. They are also of the view that

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[13] On March 27, 2017, the Delaware State Bar Association approved amendments to the Delaware General Corporation Law to permit blockchain maintenance of corporate records. The proposed amendments will be introduced in the Delaware General Assembly for consideration and could become effective by the end of the summer. They can be found here: http://www.rlf.com/files/14257_Council%202017%20Proposals%20in%20Bill%20Form%20(5).pdf
NASDAQ is also currently developing a solution enabling issuers to digitally represent share ownership using blockchain technology. Their goal is for this solution to eventually become a distributed ledger. For more information, see "Building on the Blockchain: NASDAQ's Vision of Innovation", online: http://business.nasdaq.com/Docs/Blockchain%20Report%20March%202016_tcm5044-26461.pdf
[14] See Section 8 of Form 51-102F2 – *Annual Information Form*
[15] See Section 1.5 of Form 51-102F1 – *Management's Discussion & Analysis*
[16] See Section 4.1 of Form 51-102F2 – *Annual Information Form*
[17] See Form 52-110F1 – *Audit Committee Charter Required in an AIF*

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permitting semi-annual reporting, streamlining prospectus requirements and eliminating overlap in regulatory requirements would have the most impact. In order for our public markets to remain appealing to Canadian and foreign companies, the costs associated with regulatory requirements should be balanced against regulatory objectives and their real value to investors.

Yours very truly,

(signed) Norton Rose Fulbright Canada LLP

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July 27, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
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Fax: 416-593-2318
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Consultation-en-cours@lautorite.qc.

Re: CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Sirs,

We are pleased to provide our comments on the above consultation paper.

Overall, our firm supports the CSA's efforts to enhance public confidence in the integrity of financial reporting while ensuring efficient disclosures for the investors. We agree that there is a balance to be struck between the regulatory reporting requirements for reporting issuers with investor protection and public interest.

We believe that many aspects of this consultation paper is best responded to by preparers and investors and as such have only provided comments to certain topics as presented below.

Our comments follow the order of the discussions in the CSA Consultation Paper for ease of reference.

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2.1: Extending the application of streamlined rules to smaller reporting issuers:

We are supportive of the initiative to extend the application of streamlined rules to smaller reporting issuers and agree that using a size-based distinction would be preferable to the current distinction based on exchange listings. This would also permit the rules to be applied if other exchanges emerge in the Canadian marketplace.

2.2: Reducing the regulatory burdens associated with the prospectus rules and offering process:

(a) Reducing the audited financial statement requirements in an initial public offering (IPO) prospectus

Changes made in 2015 with respect to the reduction of financial statement requirements for venture issuers was well received as it created efficiencies in raising capital in the public market for these issuers. However, there is a view that inequity exists for those larger venture issuers and smaller non-venture issuers who are not able to take advantage of such accommodation. Depending on the size of the reporting issuer, the investing public should be receiving consistent reporting and this could be accomplished by the use of a size test.

As such and similar to the discussion under section 2.1, we believe that the requirement should be triggered by the size of the issuer rather than exchange listings. Ensuring that the distinction is made based on size test will allow for a balance of investor protection with the level of reporting and assurance required on financial statements for public offering of securities.

(b) Streamlining other prospectus requirements

When considering streamlining these other prospectus requirements specifically as it relates to no longer requiring an auditor review of interim financial statements in a prospectus, it is important to note that there would still be a review requirement that exists within the professional standard – CPA Canada Handbook – Assurance – Section 7150: ***Auditor's Consent to the Use of a Report of the Auditor included in an Offering Document,*** paragraph 10. As such, irrespective of the securities requirement, the auditor is required to perform review procedures in order to provide their consent to use their audit report in a prospectus. Therefore, we do not believe that in the absence of changes to the CPA Canada Handbook, making such regulatory change will have the desired effect.

(c) Streamlining public offerings for reporting issuers and (d) Other potential areas

These are areas that we do not have a particular view on as it would be best responded to by the preparer and the investors relating to reductions in such disclosures, however we do have an additional comment relating to the prospectus rules that would benefit from clarification.

Additional comment:

While not specifically discussed in the paper, one suggestion that we would like to put forward for the CSA to consider is to provide clarity as to the interpretation of the "issuer" contained in Item 32.1(1) (b) of Form 41-101 F1. As per Item 32.1(1)(b) of Form 41-101 F1, any acquired entity or related business that a reasonable investor would regard as the primary business of the issuer should be interpreted to be, and thereby meet the same disclosure level as that of an issuer. Guidance to Item 32 of Form 41-101 F1 is given in paragraph 5.3 of CP 41-101 which states that "*... a reasonable investor would regard the primary*

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business of the issuer to be acquired business or related businesses, thereby triggering the application of Item 32, are when acquisition(s) was (a) a reverse takeover (b) a qualifying transaction for a Capital Pool Company or (c) an acquisition that is a significant acquisition at the 100% level under subsection 35.1 (4) of Form 41-101F1". Nevertheless, often there are instances where an acquired entity or related business is interpreted to be an "issuer" for the purposes of Form 41-101F1 while none of the considerations in (1) to (3) mentioned in the companion policy are met and specifically a very low threshold is applied in respect to subparagraph (c). The lack of clear interpretative guidance creates confusion, undue burden and costs for the preparers, and at the same time causes confusion for investors when interpreting the disclosures (and the level of disclosures) and their ability to compare among various entities. We suggest that the interpretation of the "issuer" within Form 41-101 F1 be considered as part of the efforts to reduce regulatory burden.

2.3: Reducing ongoing disclosure requirements:

a. **Removing or modifying the criteria to file a business acquisition report (BAR)**

The current BAR requirements are already streamlined for venture issuers as the threshold was recently increased to 100% and pro-forma requirements were eliminated. Whether the regulators move to a tiered test similar to the test used by the SEC in the U.S., or remain at a single 20% and 100% threshold, we believe that the filing requirement should differ based on the size of the reporting issuer rather than on which exchange they list their shares or debt.

b. **Reducing disclosure requirements in annual and interim filings**

The discussion in the consultation paper mainly deals with the MD&A requirements in annual and interim filings. We agree that the disclosure requirements which are repetitive should be eliminated to reduce burden for the preparers and also provide more effective disclosure for the investors.

c. **Permitting semi-annual reporting**

We believe there are both advantages and disadvantages for semi-annual reporting.

We understand that quarterly reporting may be the cause of short term focus for businesses and a solution adopted by some jurisdictions was to move to semi-annual reporting. In addition, the current comprehensive quarterly reporting regime may cause the creation of a large volume of disclosure often with a lack of meaningful change from quarter to quarter.

However, an alternative position would suggest there is value to quarterly reporting as it not only provides more timely information for investors who are constantly demanding better and more relevant information, but also encourages public companies to have better governance and a more diligent and regimented process. Additionally, some companies struggle today to meet the current quarterly requirements. While some might suggest that the relief provided by moving to semi-annual requirements, instead of quarterly, will increase the time and attention issuers provide to their periodic filings, there is concern that the move would erode the discipline with which some companies attend to their filing requirements.

As such and to reduce the regulatory burden, other solutions could include consideration of the following:

- Reduction in quarterly disclosure for reporting issuers, for example, a dramatic shortening of quarterly MD&A with more referencing to the annual disclosures,

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- Encouraging reporting issuers to do a better job of identifying longer term goals and measures and reporting their progress against these goals to relieve some of the focus from the short term quarterly performance and create better balance with their longer term goals, and
- Guidance to encourage more effective disclosure with a better use of graphics, images and tables to explain performance (resulting in a reduction of often long excessive prose).

Finally, we believe that if semi-annual reporting is permitted, consideration should be given as to whether this will impact Multi-jurisdictional Disclosure System ("MDJS"), an accommodation that is available and largely applied by Canadian/U.S. dual-listed reporting issuers. We believe the introduction of MJDS was based on the premise that the securities and disclosure regulations in the two countries were largely comparable. If the CSA were to implement such reduction in disclosure requirements, careful consideration should be given as to whether the SEC will continue to allow Canadian companies to be exempted from the other disclosure standards of the SEC under the current MJDS rules. Further, since many Canadian public companies are in direct competition with their peers in the U.S., these company may continue to prepare similar documents voluntarily regardless of the reduced requirements.

2.4: Eliminating overlap in regulatory requirements

We agree with the elimination of overlap in disclosure requirements within MD&A, AIF and the financial statements, to promote disclosure efficiency. We believe that one consolidated document including MD&A, AIF, the financial statements as well as officers' certifications would allow for a more efficient and effective disclosure.

We will be pleased to discuss any of our comments further if required. Any questions can be directed to Andrew Macartney (amacartney@deloitte.ca).

Yours truly,

Deloitte LLP

Chartered Professional Accountants
Licensed Public Accountants

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July 27, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Me Anne-Marie Beaudoin
Corporate Secretary
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Re: CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Sirs,

We are pleased to provide our comments on the above consultation paper.

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Yours truly,

Chartered Professional Accountants
Licensed Public Accountants

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July 27, 2017

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 (New-Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Financial and Consumer Services Commission, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Anne-Marie Beaudoin
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Re: CSA consultation - 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Dear Sirs/Mesdames:

Québec Bourse would like to congratulate the Canadian Securities Administrators (the "CSA") for initiating this very important consultation on reducing the regulatory burden on public issuers.

Allow us first, to introduce Québec Bourse. We are the association that brings together Québec's public companies and the stakeholders that make up the public market ecosystem. Québec Bourse was officially created in 2016 and currently has over 90 members. Listed companies' members of Québec Bourse are of various sizes and from all industries. Listed companies' members of Québec Bourse have an aggregate market capitalization of more than $40 billion.

The association took shape following a CROP survey conducted on behalf of Québec Bourse in the fall of 2015. The survey results confirmed that the regulatory burden and the associated high compliance costs represent major irritants for public companies and significant barriers for anyone considering an IPO.

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Québec Bourse is particularly well placed to convey the views of listed companies and its other members. The comments we are transmitting today are the outcome of discussions by the Québec Bourse board of directors and comments made by our members at a roundtable held on May 30, 2017 and during telephone interviews.

As you know, Canadian securities regulations have evolved considerably over the past 20 years, and new regulatory requirements have entailed many new obligations and high compliance costs for issuers. To a certain extend, the overload of information seems to work against the true needs of investors in terms of protection and information for investment decision purposes.

If the Canadian market (and the Québec market in particular given the production of information in both French and English) is to survive, it is crucial for us to take a close look at the current regulatory framework and the relevance and appropriateness of all the requirements. There is an urgent need to act if we want a dynamic, efficient stock market that can compete with the other available sources of capital and the early divestiture of companies.

Looking at the Canadian market, we observe the following:

1. A significant reduction in the number of initial public offerings (IPOs) and other new listings;
2. An important wave of privatization that has shrunk the pool of public companies (which also becomes an issue for investors);
3. A perceived significant imbalance between the regulatory burden, compliance costs and investor protection;
4. Canada has a much higher proportion of SMEs listed on a stock exchange than other international markets;
5. The lack of competitiveness of the Canadian regulatory framework with that of the United States;
6. The current system's failure to take into consideration technological advances in terms of access to information.

Our comments for the consultation are attached, cross-referenced to the numbering system used in the consultation document.

We would be pleased to meet with you at your convenience to discuss our comments and respond to any questions you might have. We would also very much like to invite your representatives to speak to our members in the fall of 2017 in Montreal to provide us with an update on your progress.

Finally, we would welcome the opportunity to participate in any initiatives or in any working groups the CSA might create to implement initiatives aimed at reducing the regulatory burden.

Thank you in advance for your consideration of our comments.

Sincerely,

Louis Doyle
Executive Director
Québec Bourse Inc.

WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023

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Appendix: Québec Bourse's comments on the CSA consultation

General consultation questions

1. Of the potential options identified in Part 2:

a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

The options that meaningfully reduce the regulatory burden on reporting issuers are, without question, broadening the application of streamlined rules, removing the requirement to file a business acquisition report, permitting semi-annual reporting and eliminating overlap. These measures would not have any negative impact on investor protection, as they would not eliminate any material information.

b) Which should be prioritized and why?

All the elements identified in the above response are important and require the CSA's immediate attention.

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

Enhancing electronic delivery of documents, eliminating overlap in regulatory requirements and permitting semi-annual reporting.

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

We have identified three other areas that merit attention given the costs they entail for issuers:

- CEO/CFO certification:

  We recognize the importance of internal control over the reliability of financial reporting, as well as the appropriateness of obtaining certifications from the President and Chief Executive Officer and the Chief Financial Officer.

  However, we think it is important to review the frequency with which those certificates must be produced.

  We suggest that the requirement should be annual rather than quarterly. An annual frequency would offer issuers some relief while still meeting the regulatory objective at no detriment to investors.

- Material change report:

  Currently, for a material change, issuers are required to issue a press release immediately, and then file a material change report that essentially contains the information already disclosed in the press release.

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We suggest that the material change report requirement be waived in cases where a press release is issued and filed on SEDAR. The material change report requirement is a clear example of duplication that is of no benefit to investors.

- Executive compensation disclosure requirements:

  Executive compensation has significantly evolved. The information issuers present to comply with the regulatory requirements is complex that the disclosure fails to achieve the intended objective. Disclosure in its current form involves complex components of compensation, and we would submit that few shareholders grasp the full scope of this disclosure.

  For shareholders, the most relevant information is the total compensation paid (with carefully distinguishing earned compensation from compensation payable in the future and conditional upon future objectives being met). Disclosure in a table is the most effective form of disclosure.

  Our members also tell us that under the current requirements, they must disclose strategic elements of their compensation model, which could be of benefit to their competitors. The analysis of compensation requires explanation of key components, in particular the short term incentive program's objectives, what they are designed to compensate, quantitative and qualitative performance matrix, results rating (which may go as far as detailed calculations supporting the compensation paid under these programs). Often these objectives are strategic in nature. Disclosure of such objectives and of achieved results, force companies to reveal their corporate strategies.

  Bonus allocations under these short terms and long-term incentive programs are subject to robust processes and to sub-committees of the Board of Directors approval (normally independent from management) and subsequently to Board approval. This rigor and independence should allow for a reduction of the extend of the disclosure requirements of objectives and results in order to prevent prejudice to companies by having to disclose strategic information.

2.1 Extending the application of streamlined rules to smaller reporting issuers

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing?

As mentioned above, there is an urgent need to provide SMEs with a regulatory regime that corresponds to their reality. We would submit that the exchange on which the issuer is listed is not an appropriate distinction criterion. Canada differs from other major world markets in that it has large number of relatively small issuers compared to other markets. According to statistics published by TMX Group, as at May 31, 2017, more than half of "other issuers" (other than listed exchange traded funds products) had a market capitalization of less than $500 million, representing $114.5 billion out of a total of $2,876.5 billion.

While the streamlined rules for venture issuers are fairer (apart from issues discussed below), the normal regulatory framework imposes disproportionate requirements on the issuer that not "venture issuers (whose market capitalization is less than $500 million), both in terms of regulatory burden and compliance costs.

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5. If we were to adopt a size-based distinction:

a) What metric or criteria should be used and why? What threshold would be appropriate and why?

The goal is to properly identify issuers who should benefit from a regulatory framework that fits their profile. It is relevant to distinguish between the large companies and those of smaller sizes.

We submit that the two main characteristics that define issuer size are market capitalization and revenues earned by the issuer. These two separate criteria should therefore be included in the new eligibility rules.

In addition, we recommend that the designation of issuers that qualify for the streamlined rules be changed to "SME issuer" ("émetteur PME" in French).

The application of the streamlined rules should be extended to all issuers with:

i) A market capitalization of less than $500 million; and

ii) Revenues of less than $100 million.

b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

Issuer eligibility should be assessed at the end of the fiscal year for the revenue criterion, and on the basis of the 60 days preceding the end of the fiscal year for the market capitalization criterion.

An issuer that was previously a large issuer would not be able to qualify for the streamlined rules without first obtaining a confirmation of non-objection from its principal regulator.

c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?

Two measures could be put in place to facilitate the identification of an issuer's status:

i) The SEDAR profile could include a "marker" identifying issuers subject to the streamlined rules; and

ii) A "notice to reader" could be added to the materials produced by the issuer indicating that the issuer is an "SME issuer" within the meaning of the relevant Canadian regulations.

d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

The CSA should conduct an investor awareness campaign to inform the investing public of the new definition and the nature of the streamlined rules.

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INCLUDES COMMENT LETTERS (see page 23)

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

That is not desirable, as it would increase confusion in the market. It would create three types of issuers: those that are eligible for the streamlined rules, those that are eligible for a portion of the streamlined rules, and those that are ineligible.

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process
(a) Reducing the audited financial statement requirements in an IPO prospectus

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements? If so:

a) How would this amendment assist in efficient capital raising in the public market?

The requirement to file a third year of audited financial statements is a significant burden for new issuers. Furthermore, prospectus requirements are also imposed on the disclosure document required for qualifying transactions on the TSX-V and for reverse takeover transactions.

We submit that two years are sufficient, for the following reasons:

- For many growth issuers, the third year of financial reporting is often not representative of the issuer's current reality and therefore provides the investor with little or no useful information.
- Also, bear in mind that for most issuers, the financial statements for the third year were prepared in accordance with some other accounting standards (Canadian, private company), and converting them to IFRS represents a significant cost.
- We propose one year of audited financial statements for issuers eligible for the streamlined rules and two years for other issuers.

The issuer could be required to present key performance indicators for a period of three years as supplementary information. Presentation for a longer period should be left to the discretion of the brokerage firms responsible for the initial public offering.

b) How would having less historical financial information on non-venture issuers impact investors?

We do not anticipate any negative consequences in this regard. The prospectus in its current form has been around for many years, and many people consider that it contains so much information that investors rarely read it through.

It is worth noting that in the United States, an issuer with revenues of under US $1 billion is only required to produce two years of audited financial statements. We are not aware of any comment to the effect that reducing the number of years of financial reporting has had a negative impact on investors.

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c) **Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?**

The same eligibility criteria as the criteria for the streamlined rules should be used, with the IPO issue price used to calculate market capitalization.

d) **If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?**

Please refer to our comments to question c) above.

8. How important is the ability to perform a three-year trend analysis?

Issuers of all sizes and sectors list on the stock exchange. The importance of a three-year trend analysis varies greatly from one issuer to the next.

The brokers in charge of the financing are in the best position to determine which financial information is relevant and the period for which that information is required, on a case-by-case basis. In our opinion, key performance indicators are sufficient for trend analysis.

2.2 (b) Streamlining other prospectus requirements

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

In the normal course of business, a review of quarterly financial statement does not represent significant workload and costs. It becomes a significant burden, however, when a prospectus is required and the issuer has not yet obtained a review of its latest quarterly financial statements. In addition to the direct costs involved, the review limits the issuer's agility, and the resulting delays can cause the issuer to miss market opportunities.

We suggest that the review of interim financial statements no longer be required. The interim financial statements have already been filed on SEDAR and the information provided is already covered by the civil liability regime which provides rights for persons who feels adversely affected.

10. Should other prospectus disclosure requirements be removed or modified, and why?

The prospectus format needs to be updated to make it more relevant for investors. The following existing requirements should be removed:

- MD&As:

  MD&A should only cover the latest 12-month period. MD&A for other periods is both a significant burden to prepare and less relevant for the investor. Furthermore, the information required in the MD&A should not repeat information presented elsewhere in the prospectus.

- Pro forma financial statements:

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As discussed in the section on business acquisition reports below, we suggest that in the case of a material acquisition, the pro forma financial statement requirement should be eliminated.

- Predecessor financial statements:

  The requirement to file predecessor financial statements should be eliminated if the financial information is included in the issuer's most recent annual financial statements.

- Carve-out in the case of a resource company (that acquires a property).

  In a large proportion of cases, information is difficult to access (especially if the property was previously owned by a large company.) We submit that for a mineral property, geological information is more useful than carve-out financial statements.

2.2 (c) Streamlining public offerings for reporting issuers
i) *Short form prospectus offering system*

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

Under the current regime, using the short-form prospectus entails a series of prior requirements that significantly lessens its appeal (particularly for venture issuers in the resource sector). The time required for the regulator's review of the Annual Information Form and the Technical Report (two prerequisites) can be such that by the time the review is complete, the window for funding has closed and the issuer is unable to proceed with the financing.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

The short-form prospectus regime should be accessible by any issuer whose continuous disclosure file is complete and up-to-date.

ii) *Potential alternative prospectus model*

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?

The CSA should use the rights offering circular as a guide in terms of basic information required for disclosure purposes.

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b) What types of investor protections should be included under such a model (for example, rights of rescission)?

Simplification of prospectus content should have no impact on investor's rights. The same protection rights should apply.

c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Eligibility should be restricted to issuers listed on recognized stock exchange which the CSA is satisfied with such exchange standards. Exchange's listing imposes to the issuer obligations, transparency and some level of liquidity on its securities. This differentiates them from none-listed reporting issuers.

2.3 Reducing ongoing disclosure requirements
(a) Removing or modifying the criteria to file a BAR:

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

In most cases, the BAR is not worthwhile in terms of the benefits to investors and the burden and costs for the issuer. The requirement to file a BAR containing audited and pro forma financial statements may influence the decision on whether or not to proceed with an acquisition.

The acquisition has already been disclosed via press release, and any material information has therefore already been disclosed.

The first financial statements to be filed on SEDAR post transaction must already provide consolidated information with pro forma information on key indicators, as required under IFRS.

Many issuers enjoy regular financial analyst coverage and institutional tracking, which means that the marketplace is perfectly capable of assessing disclosure relating to a significant acquisition.

We would submit that the requirement to produce a BAR should be eliminated for issuers eligible for the streamlined rules. For larger issuers, should the requirement be maintained, the materiality threshold should be increased to 50%.

19. Are there certain BAR requirements that are more onerous or problematic than others?

Many listed companies have a strategy of growth through acquisition. Target private companies are often unable to provide the required IFRS financial statements in time. The requirement to file a BAR containing audited and pro forma financial statements is a major barrier for many reporting issuers.

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20. If the BAR provides relevant and timely information to investors:

Information produced within 75 days of the closing of a transaction is already dated and arrives too late. The information provided by a BAR is irrelevant because it is not timely.

2.3 (b) Reducing disclosure requirements in annual and interim filings

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

In recent years, new regulatory requirements and obligations have been introduced by the CSA, often in response to events that have often occurred in countries other than Canada (CEO and CFO certification requirements, for instance). Other elements, such as the adoption of IFRS accounting standards, have been imported. The introduction of each new element has added to the burden imposed on issuers. It is the whole set of requirements that has become too burdensome for issuers.

Among the excessively restrictive elements, we would highlight:

- CEO/CFO certification: prerequisites, content and frequency
- MD&A: content and frequency

  MD&As should cover only the current period. Repetition of information from period to period makes for bulky disclosure and distracts the reader from the relevant information.

  For the vast majority of listed SMEs, the MD&A in its present form contains far too much static, historical information that weighs down the information presented. Highlights would provide the reader with more relevant information.

- Executive compensation disclosure: see our response to Question 3.

2.3 c) Permitting semi-annual reporting

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

Quarterly financial reporting and the related obligations impose extremely tight deadlines on corporate management (particularly for first quarter reporting).

For companies with limited activity or stable operations, semi-annual reporting would be sufficient for investors.

If a material financial event occurs during the six-month reporting period, the issuer would be required to disclose it in accordance with its timely disclosure obligations, and investors would therefore be informed.

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24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

We propose that venture issuers, new defined based on a market capitalization and revenue threshold, be eligible for an exemption from filing quarterly financial statements. A company would only avail itself of the exemption if it deemed that it would not be penalized by investors for doing so, i.e., if the benefits outweigh the risks.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

We recognize that some issuers will be reluctant to stop producing financial statements on a quarterly basis. We therefore recommend that the measure be voluntary.

Again, in the event that a financial material change occurs during a period, the issuer would be required to inform the market via press release.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

Yes. In its current form, the MD&A provides a significant quantity of information which can also be found in other material produce by the issuer or which are not that relevant for investor focusing on financial information. Reliance on highlights would have the benefit of focusing on the issuer financial performance information. Many issuers are structuring their MD&A by having highlights presented right at the beginning.

2.4 Eliminating overlap in regulatory requirements

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

No. The investor would simply have to refer to the financial statements, where much of the information overlap is evident.

The goal is not to limit information. However, we believe it is essential to eliminate any overlap in the various documents already filed. The basic principle is that “information only has to be disclosed once”. Duplication and overlapping of regulatory requirements is a major issue. It entails costs and resources and is a burden for issuers, and creates confusion for investors. Moreover, investors are ill-served by the volume of information produced and the existing duplication. More structured information would clearly be beneficial.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

The CSA would need to look at the origin of the requirement and the purpose of each document required under the regulations, and eliminate the elements that do not serve the intended purpose.

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We believe that CSA staff is very well placed to do this exercise, to identify all the overlaps and propose a solution to eliminate them.

Moreover, as part of such an exercise, consideration should be given to the fact that, in the digital age, ease of access to information in other documents justifies the elimination of overlaps.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

A single document containing the financial statements, annual information form (for non-venture issuers and for venture issuers who wish to produce it), an MD&A or highlights, and the CEO and CFO certificates would be a definite improvement.

Consolidating all the information into one document would make it easier to identify and eliminate overlaps.

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

See question 28. We must simply determine where the information is mandatory and most relevant (in the examples given, the information is mandatory in the audited annual financial statements under IFRS, and it would therefore be appropriate for the information to only appear in the financial statements).

2.5. Enhancing electronic delivery of documents

32. The following consultation questions pertain to the “notice-and-access” model under securities legislation and consideration of potential changes to this model:

a) Since the adoption of the “notice-and-access” amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

In Canada, the Management Proxy Circular has to be printed. This constitutes an unnecessary burden, as the document is available on SEDAR and often on the issuer's website. In our experience, only 5% of investors request hard copies.

b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

We submit that document delivery requirements should be replaced by a document availability requirement, which could be met by filing a document on SEDAR and posting it on the issuer's website.

Given that scenario, the CSA should develop a campaign to inform investors.

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c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?

Printing and mailing documents is outdated and costly and does not deliver the material in a timely manner. This is exacerbated by the fact that many investors hold securities in different accounts and receive more than one copy of the mailed documents.

Issuers could perhaps inform investors via email of the availability of a new document (provided that the shareholder has given the issuer an email address).

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

Notwithstanding the improvements that have been made to National Instrument 54-101, there is still work to be done to adapt the transmission (or availability) of documents to today's technological reality.

The CSA should use all the necessary resources to enhance SEDAR for both those who use it for disclosure and investors who wish to consult it.

It is crucial that SEDAR become a user-friendly, easily accessible, state-of-the-art database.

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Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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Dear Sirs/Mesdames:

Re: Canadian Securities Administrators Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

Aequitas NEO Exchange ("NEO") was launched in 2015. As part of our preparation we worked with staff of the Canadian Securities Administrators (the "CSA") to ensure that NEO is considered a senior exchange and that issuers listed on NEO would be "non-venture issuers" for the purposes of various securities laws. It is in that context that we are responding to the request for comments by the CSA in Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* dated April 6, 2017 (the "Consultation Paper"). We appreciate the opportunity to provide our comments.

General Considerations

We commend the CSA for this initiative seeking to reduce the regulatory burden for publicly listed

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companies.

We have been vocal advocates for revisions to the current reporting requirements for publicly listed companies in Canada, for the following reasons:

- they can be very costly for the issuers;
- they can be onerous on management of the issuers and take their attention away from running their businesses;
- they may inadvertently drive management into short term thinking and strategies that are not necessarily to the benefit of long term investors; and ultimately,
- they are generally regarded as only partially achieving their objective of putting investors in a position of making informed decisions, as the information they mandate can be overwhelming and sometimes difficult to understand.

Therefore, we strongly support any regulatory initiative that seeks to address these issues and challenges across all types of publicly listed companies, from small to large, as the majority of these issues applies to any company, regardless its size.

We do believe, however, that any regulatory initiative seeking to reduce undue regulatory burden should be assessed to ascertain whether it could negatively impact investor protection or be leveraged to enhance investor protection. We list below a number of initial suggestions for your consideration:

- while reducing the regulatory burden by reducing some current disclosure requirements, design a Fund Facts-like document for publicly listed companies that will provide investors with the key information about the issuer, in language they can easily understand, at a time that is relevant to their investment decision;
- ensure that reducing the regulatory burden will not lead to more companies going public that are not ready for it - the number of "orphan stocks" in the Canadian market is a testimony to going public too early and is detrimental to investors, the listed companies and the credibility of our markets; and
- support initiatives seeking to make the private market more efficient to the benefit of those companies that are not ready for a public listing and those investors that have the capacity to absorb higher risk investments and less liquidity.

Responses to specific questions in the Consultation Paper

While the above general considerations provide our overall point of view on many of the questions raised in the Consultation Paper, we wanted to provide some additional comments on a limited number of specific questions.

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Consultation Paper Section 2.1 - Extending the application of streamlined rules to smaller reporting issuers

Question 4: Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or Why not?

- As we discussed under our general considerations, we believe that all reporting issuers are impacted by being subjected to undue regulatory burden. While it may be true that larger companies are less affected by the cost burden or have more staff to manage the regulatory requirements that should not justify a different treatment and/or maintaining an undue burden.
- We also believe that further segmentation of reporting issuers would ultimately be detrimental to the market overall. It would result in more companies benefitting from or being imposed upon by different regulatory requirements. Today, many sophisticated institutional investors have policies in place whereby they will not invest in venture issuers, while any type of retail investor, accredited or not, can trade them. Further segmentation of reporting issuers could have the unintended consequence of causing institutional investors to exit or avoid investments in any new segment of listed companies that would be created, leaving the companies to rely more heavily on retail investment.
- Furthermore, we continue to believe that a substantial number of venture issuers went public too early, represent a risk profile that is substantially higher than for securities considered as non-venture, and are in a situation where their securities have become "orphan stocks", as noted above. We believe that investors should be provided with the key information about these companies, in language they can easily understand, at a time that is relevant to their investment decision.
- Finally, on a side note, we believe that the use of the terms "venture" and "non-venture" based on exchange listing is no longer appropriate in the Canadian public markets since it is based on the historic environment following the exchange consolidation in Canada after which there was one senior exchange in Toronto and one venture exchange in Calgary and Vancouver. A more appropriate description for a "non-venture" issuer might be a "senior issuer".

Question 6: If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

- Current venture requirements that would address some of the undue burden applicable to non-venture issuers should definitely be considered.
- When considering what requirements might be appropriate to apply to non-venture issuers, the CSA should carefully consider the contribution to, and impact on, investor protection and the cost-benefit assessment of such amendments. Certain obligations - for example, the requirement to file a current AIF, for management to certify as to the design, adequacy and weaknesses in D&CP and ICFR, and to meet enhanced governance requirements and governance disclosure requirements, should not be relaxed since issuers listing on a senior exchange should be expected to meet these higher standards. Other requirements might be

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able to be relaxed without significantly impacting investor protection. For example, it may be appropriate for the CSA to increase the threshold to trigger the Business Acquisition Report requirement.

Consultation Paper Section 2.2 - Reducing the regulatory burdens associated with the prospectus rules and offering process

Question 7: Is it appropriate to extend eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers?

- One of the differentiators of a senior listing versus a "venture" listing is that the issuer generally should have an established and demonstrated track record to enable investors to assess an investment in the issuer. Three years of financial statements is generally an appropriate standard for senior issuers. However, in cases where three years of financial statements may be less important to the assessment by investors, as the CSA points out in cases where pre-IPO revenues are under certain thresholds, two years of financial statements may be appropriate.

Question 8: How important is the ability to perform a three year trend analysis?

- Trends are difficult to identify on a two year basis – a three year trend analysis is generally more meaningful to the reader of the financial statements.

Question 9: Should auditor review of interim financial statements continue to be required in a prospectus? Why or Why not?

- Auditor review of interim financial statements can improve the accuracy and quality of financial statements, but comes at a cost (time, money and resources). For non-venture issuers who already must file quarterly certifications of the design, adequacy and weaknesses in D&CP and ICFR, arguably the interim financial statements for such issuers will already be of higher quality, and therefore an auditor review may be of limited additional utility. For venture issuers that do not certify as to the design, adequacy and weaknesses in D&CP and ICFR, an auditor review of interim financial statements may still serve a purpose from the perspective reliability and enhancing investor protection.

Question 10: Should other prospectus disclosure requirements be removed or modified, and why?

- We are supportive in general of periodic reviews by the CSA that consider whether disclosure and other requirements add to the investor protection framework. We agree that redundancy between disclosure in the prospectus, AIF, MD&A and elsewhere should be eliminated as much as possible, and disclosure that is not helpful from an investor protection point of view, or is otherwise readily available (historic trading prices), should be eliminated.

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Consultation Paper Section 2.3 - Reducing ongoing disclosure requirements

Question 19: Are there certain BAR requirements that are more onerous or problematic than others?

- Given the makeup of the Canadian public markets, there are many companies listed or eligible to list on TSX and NEO that have relatively modest size, assets and/or revenues. When applying the current 20% threshold to these smaller senior issuers, a BAR could be triggered for the acquisition of a target, which could be quite a small company. Smaller acquisition targets are less likely to have prepared historical financial statements to the standard required in a BAR. Preparing historical financial statements for the acquisition target to the standard required in a BAR can be onerous for the issuer, and in some cases cannot be achieved at all; in either case, this can become an impediment to completing a transaction. We feel that increasing BAR thresholds is appropriate for this reason.

Question 24: Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

- We believe that moving from quarterly to semi-annual reporting is a major opportunity to both reduce undue regulatory burden and reduce short-termism amongst publicly listed companies. Based on the experience to date in other jurisdictions, notably the UK, it should be applied to all reporting issuers.
- Issuers that feel it is important to keep their investors apprised about particular developments within their corporation within shorter time intervals can provide such information through the channels they deem most appropriate or voluntarily file quarterly financial statements.

Yours truly,

"Joacim Wiklander"

Joacim Wiklander
Chief Business Officer
Aequitas NEO Exchange Inc.

cc: Jos Schmitt, Chief Executive Officer
Cindy Petlock, Chief Legal Officer

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CSA Consultation Paper 51-404: *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (CSA Consultation Paper)*

This letter is submitted in response to the CSA Consultation Paper published on April 6, 2017. This letter is focused on the "at-the-market" (ATM) offering issues raised in the CSA Consultation Paper. We thank you for the opportunity to comment on this important topic.

ATM Offerings

ATM offerings are an established tool to raise equity in the U.S. From 2010 to the end of 2016 over $160 billion of ATM equity capacity was announced in the U.S. Over 500 U.S. public companies have filed at least one ATM prospectus supplement since 2010. Approximately 60% of the ATM issue capacity has been utilized.

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Not only are they an established way to raise equity, but the programs are becoming increasingly popular. Of the over 500 programs since 2010, U.S. public companies announced 198 ATM programs in 2015 and 209 ATM programs in 2016. ATM offerings are popular with issuers because they can provide a lower cost of capital relative to other financing options.

Recognizing the acceptance of ATM offerings in the U.S, since 2006 20 Canadian listed companies also listed in the U.S. have established ATM programs on their U.S exchange only (in other words excluding the possibility of issuances on a Canadian exchange), while only 13 Canadian listed companies have established ATM programs on a Canadian exchange.

We believe that ATM offerings have not become as popular in Canada as in the U.S. for several reasons, but including the regulatory requirement to obtain specific regulatory exemptive relief and when obtained the conditions typically imposed in connection with that relief. However, from our extensive discussions with issuers around ATM offerings we also sense that there is a much heightened interest among a broad range of issuers, big and small, in considering an ATM offering as part of their equity raising “tool box”. As such, we see ATM offerings as a very important topic to address in a review of the regulatory burden on issuers.

In practice, the exemptive relief obtained by Canadian issuers to allow ATM offerings contains some very typical standard relief. This includes relief from prospectus delivery and prospectus certificate requirements, and consequential relief in respect of certain of purchasers’ statutory rights. This relief has been granted on the basis of a typical set of conditions. Historically these conditions have included monthly reporting of trades. Recently an exemptive relief decision has been issued requiring quarterly disclosure, which is similar to the U.S. requirement, on the basis of the issuer’s stock satisfying certain trading liquidity tests. At a minimum, we would suggest that this exemptive relief package should be codified in securities legislation as part of a basic update of the ATM offering rules in NI 44-102 which would avoid the need for issuers to apply for exemptive relief for an ATM offering.

In the U.S. there are no specific volume limits on ATM offerings. NI 44-102 contains a 10% of market capitalization limit on the aggregate number of securities that can be distributed under an ATM program. In addition, the typical exemptive relief obtained by Canadian issuers for ATM offerings imposes a daily 25% of daily trading volume condition on ATM offerings. To date we see the aggregate 10% limit as not especially constraining on ATM offerings given that an issuer can re-file an ATM program once an existing 10% threshold is reached.

However, we see the 25% of daily trading volume limit (which does not exist in the U.S.) as being very constraining on an issuer’s ability to effectively utilize an ATM program because it hampers an issuer’s ability to fill reverse inquiries for larger blocks of shares from larger investors. Buyers of blocks are eligible for prospectus exempt trades in private placement circumstances, and we submit that block trades (a cross at market price) have less of an impact on the market price of a stock than continual small issuances by an issuer. This may also be the case relative to typical prospectus offerings that usually are done at a discount to market price. We therefore submit that for ATM offerings, the CSA should either allow unsolicited block trades as an exception to the 25% daily trading volume limit (as is the case for normal course issuer bids), or should do away with the 25% daily limit altogether.

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Thank you for allowing us to comment on this subject.

Yours truly,

CANACCORD GENUITY CORP.,

Ron Sedran, Managing Director
Canaccord Genuity Corp
161 Bay Street
Suite 3000
Toronto, Ontario
Canada M5J 2S1

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July 27, 2017

To: The various Commissions and Superintendents

Re: CSA Consultation Paper 51-404

I choose and manage my investments myself. Before retiring several years ago I spent close to 40 years working on hundreds of public companies as a public accountant. During my career I also completed secondments at the IASB and the OSC.

It is difficult to be a personal investor. It's apparent from what appears in analyst reports, what is said and written in business programming, etc that money managers, analysts and others have access to information that private investors do not have. In this environment it's important that securities regulators not worsen this imbalance.

I believe much of what is viewed as an excessive regulatory burden is self-inflicted pain. I read many interim and annual reports, prospectuses and other documents and find huge amounts of boilerplate, unhelpful, unnecessary and repetitive information, amongst other shortcomings in them. You would find it informative to do further study on this to get a feel for how much disclosure is unnecessary before concluding that requirements should be reduced. More education and guidance might help to reduce this problem.

I would be pleased to elaborate on any of the content of this response.

My responses to selected questions follow:

Q 1

It's not clear that any of the options, except perhaps those related to the elimination of duplication, preserve investor protection. I encourage more outreach to all investors but particularly personal investors. I expect that few personal investors are aware of the paper.

Q3

I think some existing requirements should be reconsidered. For example, the recent requirements for executive compensation disclosure don't seem to be accomplishing much. I find a compensation table and a graph showing comparative performance to be helpful but close to all of the rest of the disclosure isn't worth reading. I've a similar view of disclosure regarding governance.

Q4, 5 and 6

In theory yes, for obvious reasons. That being said, developing appropriate criteria has been a daunting challenge for years and I'm not sure the potential benefit of doing so is worth the trouble. I'm ok with the status quo.

Q 7 and 8

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In a very high percentage of cases the third year is easily available at little cost and it is almost always useful so there is no reason to drop the requirement simply because it is occasionally costly to provide.

Q 9

The interim financial statements are often the most important information in a prospectus so dropping the requirement for auditor review of them would be ill-advised.

Q 11 and 12

Much of what is in a short form prospectus is unhelpful. I can't think of anything I need other than the terms of the security being offered and something on recent developments.

Q 13

I don't object to a significant easing of the criteria for using the short form system. I cringe when I see a massive document for a small company that I already know a lot about or could easily find out about from its public documents if I feel the need more more information. The merits of having a system more closely linked to continuous disclosure have been apparent for years and it is time to move in this direction.

Q 18, 19 and 20

I don't find BARs very useful. I suspect most of those who read pro forma financial information don't realize the restrictive criteria placed on the ability to make a pro forma adjustment. I'm not advocating a loosening of those criteria because of the possibility of abuse of less restrictive ones.

Q 21 and 22

I don't like any of the suggestions in the paper. I fear that allowing something like a highlights document instead of md&a will allow too much discretion to tell me what an issuer wants me to know rather than what I want to know. The structure and requirements of md&a make that more difficult.

Q 23-26

Short-termism is pervasive in our society but any connection between the negative consequences of it and quarterly reporting is extremely close to zero. I view quarterly reports as the most important information I get from an investee and would be significantly disadvantaged compared to those with the resources to call, visit and otherwise get more timely information than I can get if quarterly reporting were to be dropped.

Coming at this differently, almost all public companies produce or should produce financial statements on a regular basis (often monthly) so it shouldn't be that difficult to provide financial statements with md&a to investors on a quarterly basis. Quarterly information will exist so if it isn't available publicly some of it will inevitably leak out on a selective basis.

Semi-annual reporting will not provide me with sufficiently frequent disclosure.

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Q 27-30

It seems self-evident that some or all of the duplications noted and additional ones that I expect accounting firms and others will identify should be eliminated. Having said that, I am concerned about abdicating responsibility for some of these disclosures to accounting standards setters and those who prepare financial statements. I also find it easier to find and use some of these disclosures in md&a rather than in the financial statements. Perhaps requiring a cross reference to the financial statement location or retaining some guidance in md&a on minimal disclosure requirements should be done.

AIFs are currently provided only well after the year-end, are not distributed to me or made easily available, and contain too much information to read. As a result, I only occasionally use them and only then it is typically just to look for some narrow piece of information. That being said, I acknowledge that they have some useful information for those with the time to spend on them. My preference, then, would be that the md&a, financial statements and AIF be combined into one document. Doing so would also seem to reduce the possibility of duplication and likely to reduce costs.

Q 31-33

I dislike the whole “notice and access” model. It is time-consuming and cumbersome to get the information I want to help me manage my investments but I do request to be sent annual and interim financial statements for most, if not all, investments I hold. I am much more effective reviewing a hard copy of lengthy documents with some complexity to them than trying to do so on-line. On-line reviews are more appropriate for a superficial review that’s not enough to facilitate an appropriate level of engagement as an investor. I think steps should be taken to make it easier to get hard copies of information on a more timely basis.

Proxy materials are particularly problematic. For a variety of reasons it doesn’t help me to offer ways to get access to them. The result is that I sometimes vote on matters by making assumptions about proposals rather than seeing them. Perhaps asking me whether I want to receive proxy materials at the same time I’m asked if I want hard copies of annual and interim financial statements would be possible and an improvement.

Kind regards,

James Saloman

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July 27, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o

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Dear Sirs/Mesdames:

Subject: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

Chartered Professional Accountants of Canada (CPA Canada) appreciates the opportunity to respond to the Canadian Securities Administrators (CSA) on the potential options to reduce regulatory burden set forth in CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (Consultation Paper).

The Canadian designation, Chartered Professional Accountant (CPA), is used by Canada's accounting profession across the country. The profession's national body, CPA Canada, is one of the

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largest in the world with more than 210,000 members, both at home and abroad. The Canadian CPA was created through the unification of three legacy accounting designations (CA, CGA and CMA). CPA Canada conducts research into current and emerging business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. CPA Canada also issues guidance and thought leadership on a variety of technical matters, publishes professional literature and develops education and professional certification programs.

In formulating our response to the Consultation Paper, we have drawn on our knowledge of corporate reporting practices and challenges and solicited the input of strategic advisors to CPA Canada and volunteer advisory groups representing both small and larger issuers, investors, and auditors. Our responses to select Consultation Paper questions are included in Appendix A to this letter and take into account perspectives raised by these stakeholders through the outreach we performed.

We understand that the Consultation Paper is only a first step in soliciting input on a range of potential options to reduce regulatory burden. We support the proposal to remove redundant disclosure requirements. We also support further efforts by the CSA to evaluate the effects of the other possible reductions in requirements on investor protection.

In this covering letter, we highlight CPA Canada's views on important areas we believe require closer examination. Our views fall into five broad categories:

1. Re-evaluation of existing reporting requirements

We support the CSA's efforts to reduce regulatory burden on reporting issuers to promote capital formation and reduce compliance costs while maintaining investor protection. However, we believe that reducing regulatory burden should not be isolated from the need for broader consideration of the overall effectiveness of the existing reporting regime. We believe, for example, that concerns about short-termism can be more effectively addressed by modifications to the existing regime than by eliminating quarterly reporting. Encouraging more disclosure of long-term goals and progress towards them could help to counter the focus of some investors on only short-term results.

We believe this is an opportune time to re-think reporting – to focus, modernize and streamline it. We encourage securities regulators to initiate a comprehensive evaluation of existing reporting requirements

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in the near term to ensure they continue to meet the evolving needs of investors, including demands for more integrated disclosure about how a company creates value over the short, medium and long term. Reporting requirements modified to be consistent with integrated reporting concepts could result in both a reduction of regulatory burden through a more cohesive reporting package and improved investor protection.[1]

We see opportunities for the CSA to re-examine requirements in the following specific disclosure areas:

- MD&A content

  We believe the content of the MD&A might be clarified to encourage more disclosure of:

  - reporting on business strategy and longer-term objectives
  - reporting on key financial and non-financial resources needed to achieve objectives[2]
  - key performance measures critical to successful implementation of corporate strategy and achievement of objectives
  - alignment of executive compensation with business strategy and objectives.

  Using an integrated reporting approach would likely involve taking relevant portions of documents such as the AIF, Information Circular and Statement of Executive Compensation and integrating them into the MD&A, thereby making some or all the requirements of these documents unnecessary.

- Reporting on environmental and social issues

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[1] In the context of this letter, "integrated reporting" refers to reporting that is largely aligned with or substantially influenced by the concepts, principles and disclosure recommendations in the International Integrated Reporting Framework.

[2] Non-financial resources might include, for example, technological developments and advances, workforce expertise, leadership/governance structure, organizational systems and processes etc.

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We believe there are opportunities to better integrate disclosures on environmental and social issues into regulatory reporting. Many large reporting issuers currently produce sustainability reports to meet stakeholder information needs. While some information provided in these reports is already required (e.g., CSA Staff Notice 51-333 *Environmental Reporting Guidance*), securities administrators could be more specific in their requirements. We are supportive of the CSA's initiative focused on the disclosure of the financial impacts and risks associated with climate change.[3]

- Forward-looking information (FLI)

  FLI is important to investors. Companies are sometimes reluctant to communicate their expectations for the future because of legal liability concerns. In order to facilitate more meaningful forward-looking disclosure, we encourage the CSA to reconsider its FLI requirements for the various continuous disclosure documents. We also encourage the CSA to clarify when forward-looking disclosure is required versus voluntary.

- Risk disclosures

  We believe there should be a more integrated and enhanced discussion of risk exposure and mitigation among the various continuous disclosure documents and encourage the CSA to look at options to improve risk disclosure. We consistently hear there is a substantial amount of disclosure regarding risks, but that much of it is unhelpful (i.e., unnecessarily long with much disclosure of self-evident risks, boilerplate, repetitive and accompanied by pages of caveats).

[3] A recent study by CPA Canada on climate-related disclosures made by Canadian public companies highlighted varying disclosure practices. Only a small percentage of disclosures included information on financial impacts. For the most part, disclosures did not address company plans to adapt to the longer-term impacts of climate change and the transition to a low-carbon future. In many instances, we questioned the practical use of the information disclosed by the companies surveyed.

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2. Focus on education and outreach

The Consultation Paper's focus on "reducing regulatory burden" inherently assumes a portion of existing requirements is excessive and can be eliminated with no adverse consequences to investors. We do not have the impression that reporting requirements have become unduly burdensome. Instead, we hear that a compliance-oriented mindset is contributing to "disclosure overload" (i.e., redundant, outdated, boilerplate, immaterial information) resulting from litigation concerns and pressures from regulators, lawyers, auditors and accounting standards setters. Accordingly, focusing on modifying or reducing regulatory requirements may not be an effective way to address this behavioural issue. We encourage a concurrent emphasis on improving the quality of corporate reporting through education, the issuance of guidance and other initiatives.

We see opportunities for greater education and outreach with capital market participants to illustrate how regulatory reporting can be communicated in a more effective and efficient manner. In this vein, we encourage securities regulators to provide greater focus and clarity around the disclosure objectives accompanying reporting requirements, including clarifications around the application of materiality. We believe this would result in more meaningful disclosure. We believe your consideration of the following would be helpful in doing this:

- CPA Canada's publication *Management's Discussion and Analysis: Guidance on Preparation and Disclosure* presents principles and a reporting framework to assist management and boards of directors when preparing and issuing MD&A reports.[4]
- Discussion Paper issued by the International Accounting Standards Board (IASB) in March 2017: *Disclosure Initiative – Principles of Disclosure.* We believe some of the principles discussed in the paper would be helpful in a regulatory disclosure context.[5]

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[4] https://www.cpacanada.ca/en/business-and-accounting-resources/financial-and-non-financial-reporting/mdanda-and-other-financial-reporting/publications/guidance-for-mda-preparation-and-disclosure
[5] http://www.ifrs.org/projects/work-plan/principles-of-disclosure/

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3. Impact of technology

We note that the Consultation Paper does not address the implications of technological innovation in great detail. For example, what would corporate reporting look like in a future where smart phones are the biggest source of corporate reporting information and constitute a continuous stream of data customizable by the user? That time may not be far off. As investors embrace big data, developments in XBRL, and analytics, the location of disclosures within a securities filing will inevitably become less important. As a result, evolving technology will enable greater flexibility in how companies choose to satisfy disclosure obligations and facilitate greater use of cross-references and hyperlinks. It may also result in additional information being available on a more timely and less costly basis. Investors may even demand more frequent rather than less frequent reporting.

We encourage the CSA to explore how regulatory requirements should be adapted in response to technological advancements.

4. Smaller vs. larger reporting issuers

The comments we received on extending the application of streamlined rules to smaller reporting issuers were mixed. Some stakeholders expressed concerns about disclosure obligations for smaller reporting issuers being different from those for larger issuers. These stakeholders thought such differences would contribute to confusion in the marketplace and make it difficult for companies to adjust back and forth between regimes. Others expressed support for fewer and easier-to-apply rules for smaller issuers because they thought such changes would improve access to capital. They cite a view that smaller issuers are an important growth engine for the Canadian economy and that current requirements are discouraging capital formation.

We are open to the possibility of bifurcating regulatory reporting requirements for smaller and larger TSX-listed issuers by recognizing the different characteristics of smaller companies and the needs of their investors. Determining the appropriate metrics and criteria to define a "smaller reporting issuer" will require careful consideration in addition to specific rules outlining the transition between reporting categories (i.e., transition from small to large issuer and vice versa). We heard a variety of views on how this might be done with no consensus on a particular approach.

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5. Importance of quarterly reporting

We heard that quarterly reporting provides important information for investors. Nevertheless, we acknowledge that some quarterly MD&A reporting in practice has deviated from its intended and stated purpose, which is to "update" the company's annual MD&A. In many instances, quarterly reporting is accompanied by unnecessary, lengthy and repetitive disclosures. Given the unprecedented availability of investment information in the Information Age and the need for quarterly reporting to be aligned with this, we encourage the CSA to focus on efforts to improve the quality of quarterly reporting as opposed to decreasing the frequency of such reporting. If the right focus is placed on the quarterly MD&A, it might achieve the same purpose as the "quarterly highlights" approach discussed in the Consultation Paper.

On the issue of whether an over-emphasis on quarterly reporting is resulting in short-termism, we did not hear that short-termism is a pervasive problem. Even if it is a problem, we also did not hear that allowing semi-annual reporting would contribute to alleviating the issue.

The U.K. semi-annual reporting model is cited as an example in the Consultation Paper. A recent study by the CFA Institute on the impact of reporting frequency on U.K. public companies found that over 90% of U.K. companies surveyed continued to report on a quarterly basis after the semi-annual reporting requirement was introduced in 2014. The same study also concluded that the shift from quarterly reporting to semi-annual reporting was "not an effective remedy for undue corporate emphasis on short-termism. If quarterly reporting leads company executives to focus on profits during the next three months, then a shift to semiannual reporting might plausibly lead corporate executives to focus on profits during the next six months – not on corporate investments with good prospects over the next three to five years."[6]

Additional research and study of the issue is required and CPA Canada is willing to assist in these efforts.

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[6] https://www.cfainstitute.org/learning/products/publications/rfbr/Pages/rfbr.v3.n1.1.aspx

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We appreciate the opportunity to participate in this important consultation. If you have any questions or would like to discuss our views further, please contact Gord Beal, Vice-President, Research, Guidance and Support (gbeal@cpacanada.ca).

Yours truly,

Joy Thomas, MBA, FCPA, FCMA, C. Dir.
President and Chief Executive Officer
Chartered Professional Accountants of Canada

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Appendix A – Responses to Select Consultation Questions

Please note that we have not responded to all the consultation questions.

General consultation questions

1. Of the potential options identified in Part 2:

a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

In our opinion, the following options would most meaningfully enhance disclosure and simplify compliance efforts by reporting issuers while preserving investor protection:

- Eliminate overlap in regulatory requirements and IFRS disclosures (see Questions 27-28).
- Explore reduced reporting requirements for smaller reporting issuers (see Questions 4-5).
- Consider the consolidation of the MD&A, AIF and financial statements into one document (see Question 29).

b) Which should be prioritized and why?

Priority should be given to eliminating overlapping disclosure requirements as it should be non-controversial, relatively easy to implement, and does not reduce information available in the capital markets.

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

We hope that the items we have identified in our response to question 1 a) could all be addressed in the short term.

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving

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investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

Please refer to our general comments on opportunities to re-evaluate existing reporting requirements.

2.1 Extending the application of streamlined rules to smaller reporting issuers

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

Our outreach activities resulted in a number of people supporting a size-based distinction between categories of reporting issuers and others supporting the current distinction based on exchange listing.

5. If we were to adopt a size-based distinction:

a) What metric or criteria should be used and why?

We expect that a substantial amount of study is needed to develop appropriate criteria.

b) – d) No response.

6. If the current distinction for venture issuers is maintained, should we extend less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

Without further study, we are unable at this time to comment on which companies should qualify for the reduced regulatory requirements.

2.2 Reducing the regulatory burden associated with the prospectus rules and offering process

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:

a) How would this amendment assist in efficient capital raising in the public market?

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Through our outreach, we heard from users that three years of financial statements is important for trend analysis. However, we also heard that the CSA should consider providing relief in the rare situations where it is not practicable to provide a third year of information. A cost-benefit analysis would be a key determinant in this decision.

b) How would having less historical financial information on non-venture issuers impact investors?

As discussed above, some users indicated that the third year of financial information is important.

c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?

We heard mixed opinions on the application of a size test for determining whether two years of financial statements are required. While some stakeholders supported consideration of a threshold, others believed that the application of a size test might cause confusion in the markets.

d) No response.

8. How important is the ability to perform a three year trend analysis?

Please see our response to Question 7.

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

Almost all the stakeholders we consulted agreed that auditor review of interim financial statements included in a prospectus is critical to investor protection and necessary to satisfy due diligence requirements.

Under Canadian auditing standards, auditors must perform review procedures on unaudited financial statements included in an offering document in accordance with Section 7150 *Auditor's Consent to the Use of a Report of the Auditor Included in an Offering Document*.

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We encourage the CSA to consult with the Auditing and Assurance Standards Board (AASB) when contemplating changes to auditor requirements under securities legislation. In such circumstances, it is critical to understand the implications for auditors and any conflicts or other issues with auditing and assurance standards.

10. Should other prospectus disclosure requirements be removed or modified, and why?

In general, stakeholders supported the requirement to include pro-forma financial statements for significant acquisitions. It was argued that this is the only way for investors to understand the preliminary allocation of the purchase price and the potential impact on future earnings.

Some stakeholders support further reductions in disclosure requirements for non-IPO prospectuses and see greater opportunity to incorporate information into a prospectus by reference to information readily available to investors elsewhere.

11. – 17. No response.

2.3 Reducing ongoing disclosure requirements

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

We heard from users that BAR disclosures (i.e., financial statements of the business acquired and pro-forma financial statements) provide relevant information in connection with significant acquisitions. Concerns were raised, however, about the timeliness of the BAR since it is filed in some cases after the quarterly report (including the acquisition) has been filed.

We also heard support to modify the test for determining when an acquisition is a major acquisition (in particular, increasing the threshold applied to the significance test) and for aligning the definition of a business with International Financial Reporting Standards (IFRS).

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19. – 20. No response.

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

We did not hear that there are *overly* burdensome annual and interim disclosure requirements. However, there is concern about the duplication of required disclosures and, in some cases, the inconsistencies across disclosure requirements. The issues associated with disclosures may be behavioural in nature and stem from (among other things) a perceived lack of flexibility in how regulatory reporting rules should be applied.

As indicated in our general comments, we encourage securities regulators to clearly articulate objectives for various disclosure requirements, supplemented with educational materials, to help issuers apply better judgment about what should be disclosed in their particular circumstances. This could also include clarifications with respect to the application of materiality to disclosures.

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

Please refer to our general comments on opportunities to re-evaluate existing reporting requirements, which include suggestions for targeted improvements in specific disclosure areas.

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

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26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

Please note the following comments relate to questions 23 to 26 inclusive:

We heard limited support for providing a semi-annual reporting option to all reporting issuers. There are different views on the cost/benefits of quarterly reporting from the perspective of reporting issuers and users. Additional research and study is needed before such an option is permitted.

Many of the views expressed during our outreach were similar to the views expressed during the consultation on National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* in 2011 where the shift to semi-annual reporting was also contemplated.[7]
We also heard that the relative importance of quarterly reporting is driven by a number of entity-, industry-, and market-specific considerations.

Those who believed semi-annual reporting should *not* be permitted had the following views:

- Preparation and dissemination of interim financial reports are relatively straightforward and do not represent a significant additional burden.
- Less frequent disclosure could result in more private conversations/selective disclosure.
- Discipline of quarterly reporting drives improved controls over financial reporting and governance.
- Quarterly financial reporting is crucial to investors in entities with highly cyclical operations such as those entities impacted by changes in commodity prices.
- The introduction of semi-annual reporting could impact the Canada-U.S. multijurisdictional disclosure system (MJDS) for cross-border issuers.

To the extent there was support for semi-annual reporting, it was not attributable to the problem of short-termism. Some arguments for semi-annual reporting included:

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[7] http://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20120913_51-103_rfc-venture-issuers.htm

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WITHDRAWN PER CSA STAFF NOTICE 11-346 DATED 14 SEP 2023

- a voluntary option for larger, more established entities with predictable results
- substantial reduction in costs to prepare and distribute quarterly reports
- reduction of the "Canada first" issue with respect to adoption of accounting standards (IFRS) as Canada generally is the first jurisdiction to report under new accounting standards because of quarterly reporting requirements.

2.4 Eliminating overlap in regulatory requirements

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

Stakeholders indicated there is no need for repetition of information. This would remove "clutter" in the disclosures and assist in ensuring important information is not obscured by duplicative disclosure requirements.

We support the CSA's efforts to identify and eliminate overlap in regulatory requirements and in International Financial Reporting Standards (IFRS). We encourage the CSA to work with the Accounting Standards Board (AcSB) in these matters and to continue to monitor accounting standards developments to limit instances of duplicative disclosures in the future.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

We heard there is overlap between the MD&A and IFRS requirements in the following areas:

- related-party transactions
- off-balance-sheet disclosures
- contractual obligations
- legal proceedings.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document?

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We heard opposition to consolidating the MD&A, AIF and financial statements on the grounds that it would be difficult for users to differentiate audited from unaudited information.

We also heard support for the consolidation option. Where there was interest in combining documents, different permutations were contemplated. These included:

- combining the MD&A, AIF and financial statements into an "Annual Report"-type document

  Support for this option centered on reducing duplicative disclosures and on improving readability and users' ability to navigate the various disclosure documents. It was acknowledged there may be some challenges when consolidating the three documents for the first time. It was recommended that relief in filing deadlines be considered for the year the requirement is implemented.

- combining the MD&A and financial statements into one document

  Support for this option centered on the complementary nature of the MD&A and financial statements. The AIF was viewed as serving a distinct purpose. Because of its "point in time" orientation, stakeholders who supported this option did not believe it was appropriate to combine it with the other two documents.

Despite the different views, CPA Canada believes there is merit in further study of whether combination or consolidation of some or all of these documents would be valuable to users. This could, in and of itself, reduce regulatory burden, but the issues around distinguishing what information is audited and what is not also need to be addressed.

30. No response.

2.5 Enhancing electronic delivery of documents

31. No response.

32. No response.

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33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

As described in our general comments, we encourage securities regulators to look beyond "enhancing" electronic delivery of documents and examine how investors access and consume information to develop principles for the electronic delivery of documents.

During our consultation, stakeholders also indicated opportunities to enhance electronic reporting in the following areas:

- Development of a "one-stop" portal is important. We heard that the System for Electronic Disclosure by Insiders (SEDI) is not user friendly.
- Inclusion of a centralized website where investors could get information to vote proxies would facilitate voting at shareholders' meetings.

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inter pipeline

VIA EMAIL

July 27, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Authorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
E-Mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Authorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montreal (Québec) H4Z 1G3
E-Mail: consultation-en-cours@lautorite.qc.ca

Re: Inter Pipeline Ltd. – CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "CSA Consultation Paper")

This letter contains our responses to certain of the questions identified in the CSA Consultation Paper that we believe would presently impact us the most. For ease of reference we have reproduced the questions below that we are responding to. Our responses are set forth below in italicized font.

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We are a major petroleum transportation, natural gas liquids processing and bulk liquid storage business based in Calgary, Alberta, Canada. We own and operate energy infrastructure assets in western Canada and Europe. We are a member of the S&P/TSX 60 Index and our common shares trade on the Toronto Stock Exchange under the symbol IPL.

We are very supportive of any initiatives that reduce the regulatory burdens associated with the prospectus rules and offering process, reduce ongoing disclosure requirements, eliminate overlap in regulatory requirements and enhance electronic delivery of documents. In particular, and for the reasons outlined in our responses below, we would encourage the Canadian Securities Administrators to eliminate the requirement for issuers to prepare and include pro forma financial statements in a prospectus or a Business Acquisition Report in connection with significant acquisitions, streamline the short form prospectus disclosure rules to reduce duplicative disclosure contained in other documents incorporated by reference into the prospectus, consolidate the management discussion and analysis and financial statements into one document thereby eliminating the overlap in disclosure between IFRS and Form 51-102F1, permit semi-annual reporting and remove the requirement to print and mail hard copies of documents to investors.

2.2 Reducing the regulatory burden associated with the prospectus rules and offering process

b) Streamlining other prospectus requirements

Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

We believe that auditor review of interim financial statements should continue to be required in a prospectus because it provides the additional assurance to the reader that such statements have been independently reviewed for accuracy of presentation and the consistent treatment of accounting policies.

Should other prospectus disclosure requirements be removed or modified, and why?

We believe that the requirement to include pro forma financial statements in a prospectus or a Business Acquisition Report should be eliminated on the basis that they are not only costly and time consuming to prepare but they also provide little to no value to the reader because of the significant assumptions and estimates that are required to be made in order to prepare them. These significant assumptions and estimates coupled with the fact that they are retrospective to a historical and specific point in time reduces the potential accuracy or reasonableness of the pro forma financial statements to a point that they provide limited information to the reader and could be potentially misleading. The preparation of pro forma financial statements can also be time consuming and costly, especially in situations where the target entity is a private issuer (either as a stand-alone entity or a subsidiary of other entity) with different fiscal periods, reporting timing, auditors and accounting policies or rules than the reporting issuer. Also, the prospectus requirement to incorporate by reference any

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Business Acquisition Report (which includes the financial statements included therein) for acquisitions completed since the beginning of the financial year in respect of the issuer's current AIF is filed until certain limited time exceptions are met increases the costs associated with the required ongoing third party review of the financial statements included therein despite the fact that there is often no change to such financial statements. This requirement should be revisited in an effort to reduce unnecessary auditor review and/or due diligence attendance fees in connection with public offerings.

c) Streamlining public offerings for reporting issuers

Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

We believe that the short form prospectus form requirements (and system in general) could be simplified to require disclosure of only those items that are "material" and not otherwise disclosed in the documents incorporated by reference and only those items that are specific to the offering itself such as use of proceeds, the details of the offering and any specific risk factors relating to the offering. This would eliminate a host of repetitive disclosure (i.e., consolidated capitalization, description of the business, description of authorized share capital, description of prior sales, general risk factors not specific to the offering, etc.) that is contained elsewhere in the public record. We believe that by doing so it would significantly reduce the preparation time and costs and the regulatory review process of offering documents in general. We also think that the general requirement to re-file a new base shelf prospectus every 25 months should be revisited as this is another area in our view that could reduce the regulatory burden on reporting issuers, without impacting investor protection. Rather than re-filing a new base shelf prospectus every 25 months a shelf prospectus supplement could simply be filed to update any new and material information not otherwise included in the original base shelf which could include increasing the total amount to be offered under the base shelf prospectus and the securities that can be offered under the base shelf prospectus from time to time. In our view this would save time and cost and will not compromise the integrity of the "Shelf Distribution" rules.

2.3 Reducing ongoing disclosure requirements

a) Removing or modifying the criteria to file a BAR

Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely

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information?

We believe that the requirement to include pro forma financial statements in the BAR disclosure should be eliminated on the basis that there are a number of significant assumptions and estimates required to be made in order to prepare them, rendering them not necessarily reliable or relevant for the reader. It can also be challenging to obtain the necessary information from the target in order to prepare pro forma financial statements as well as to gain an understanding of a target's accounting policies, which might be a different form of GAAP (i.e., US GAAP as compared to IFRS).

b) Reducing disclosure requirements in annual and interim filings

Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

The contractual obligations and capital spending profile disclosures are quite burdensome to prepare as they require a significant internal review and sign off process. These disclosures in our view should be discretionary and are better suited to be included in periodic press releases as in our experience that is where investors look to receive management guidance with respect to capital spending levels and related timing of such expenditures that may be relevant in making investment decisions.

c) Permitting semi-annual reporting

What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

Quarterly reporting provides frequent operating and financial updates to the readers, which may assist them in understanding how a company is performing. A major problem with quarterly reporting is the repetition of information already required to be disclosed in the financial statements relating to accounting. Quarterly reporting also increases the volume of disclosure which can be overwhelming to readers, and distracts from the ongoing periodic updates which are, in our view, more important for investment decision making purposes. In addition, as quarterly reporting is done on a consolidated basis there maybe unintended disclosure consequences given the additional assumptions required to be made on a consolidated basis. For instance, this type of reporting may have the unintended consequence of making a business appear to be more volatile than it actually is, especially in the case where foreign currency exchange rates for particular business fluctuates more frequently than other businesses within the same entity.

Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

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Semi-annual reporting should be an option for all issuers., However, quarterly highlights and a related news release of material quarterly financial and operational information should be provided on a quarterly basis. In our view this would provide investors and Analysts with the information they may require in order to make an investment decision.

Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

Yes, please see above.

Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

Yes, all issuers should have the option of providing quarterly highlights and report on a semi-annual basis.

2.4 Eliminating overlap in regulatory requirements

Would modifying any of the above areas in MD&A form requirements result in a loss of significant information to an investor? Why or why not?

We are in full support of removing duplicative disclosure and do not believe that modifying or removing any duplication would result in a loss of significant information to the investor. We believe combining financial reporting into one document comprised of the financial statements and MD&A would facilitate this approach and the risk of an investor not referring to relevant information contained in a separate document would be reduced.

Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

Areas of overlap with IFRS requirements include updates on financial instruments and risk management, liquidity, transactions between related parties and future changes in accounting policies including initial adoptions and critical accounting estimates. We believe that these items are best disclosed in the financial statements as required by IFRS and should not be required to be disclosed in the MD&A as well.

Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

Consolidating the MD&A and financial statements into one document reduces the need for duplication and creates clarity for readers regarding where to obtain financial

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related information. These documents are very closely linked, going hand in hand for readers to utilize for investment decision making. Consideration should be given to whether the AIF should also be combined with this document as it may result in a document that becomes too broad in scope or overwhelming for readers. We believe that an AIF should be separate and limited solely to focus on qualitative based operational disclosure (i.e. the specific businesses an issuer conducts and the regions in which the businesses are conducted). Anything financial orientated should be contained in the financial statements or MD&A rather than an AIF. The AIF disclosure could also be streamlined to remove duplicative director and officer related information, security trading history and prior sales and credit rating descriptions, all of which are available in other documents on websites that investors can readily access or obtain.

Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure in complete, relevant, clear, and understandable for investors.

See our response above. We believe that consolidating the MD&A and financial statements into one document would greatly reduce the overlap in the continuous disclosure rules.

2.5 Enhancing electronic delivery of documents

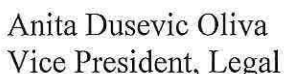
Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

We believe that securities legislation should deem that the posting of documents required to be sent to investors on SEDAR shall constitute evidence of good and proper delivery of such document to them thereby reducing the requirement for commercial printing and bulk mail outs and the associated cost therewith. In conjunction with quarterly updates described above, readers could then be reminded periodically of the recent documents posted to SEDAR and encouraged to review them on SEDAR.

Thank you for your consideration and please do not hesitate to contact us if you would like to discuss any of our responses.

Yours truly,

INTER PIPELINE LTD.



Anita Dusevic Oliva
Vice President, Legal

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CSE CANADIAN® SECURITIES EXCHANGE
The Exchange For Entrepreneurs

By Email

July 27, 2017

Canadian Securities Administrators C/O:

Me Anne-Marie Beaudoin, Corporate Secretary
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Re: CSA Consultation Paper 51-404 "Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers"

The Canadian Securities Exchange ("CSE") welcomes the opportunity to comment on the consultation paper prepared by the Canadian Securities Administrators ("CSA") with a number of proposals designed to reduce specific regulatory burdens for smaller reporting issuers in Canada. Although many of the considerations put forward by the CSA are not directly applicable to issuers listed on the CSE (as "venture issuers", the CSE's listed companies are already able to take advantage of a number of the measures proposed by the CSA), a few of the proposed measures merit a response from the perspective of the issuer community represented by the CSE.

The CSE has operated a recognized exchange for the trading of equity securities since 2004. The CSE currently lists 315 individual securities from approximately 300 issuer companies. Total market capitalization of the exchange exceeded $4 billion last year for the first time. Companies listed on the CSE have raised more than $500 million in the last 12 months, and are on pace to significantly exceed this amount for calendar year 2017. The companies are, by and large, early stage enterprises raising capital from the public markets for the first time. They have typically opted to raise money from the public markets in preference to private alternatives for a number of reasons, chief amongst them: cost of capital, control of the enterprise, liquidity for shareholders and the ease of raising additional funds. As smaller enterprises, these issuers are keenly concerned about the costs and management burden entailed in maintaining their status as reporting issuers and of raising additional capital. In preparing this submission, we have consulted with a number of issuers, and professional advisors, including lawyers, accountants, dealers and corporate finance professionals.

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As many of the proposed measures would not apply, the CSE will restrict its comments to specific proposals that bear directly on the CSE issuer community.

Part 2.1 Extending the application of streamlined rules to smaller reporting issuers (Consultation Questions 4, 5 and 6)

The CSE submits that eligibility for streamlined reporting standards should not be determined by what exchange the issuer is listed on. There is no basis to assume that all issuers on the CSE will be small- and micro-cap companies in perpetuity; nor is there any basis to assume that other exchanges would always list larger capitalization securities. Instead, a common threshold across all exchanges could be established based on other relief provided to issuers in securities law and related policies. For example, Part II of National Policy 46-201 affords relief for issuers from the escrow requirement for new offerings if they exceed $100 million in market capitalization.[1] Given that the consultation paper identifies the median market capitalization of a TSX-listed issuer as $112 million as of March 31, 2017, the $100 million number is a reasonable threshold to start the discussion.

Measures could be introduced to alleviate the risk of companies oscillating back and forth across the threshold from quarter to quarter. Instead of using the closing price on the last day of the quarter to do the capitalization calculation, an average price could be used as a reference point. Volume weighted average price for a month prior to the close of the quarter, for example, would limit the effect of short term price moves at the end of a quarter. It would also ensure that companies would approach the end of a quarter with assurance of which side of the selected threshold they will fall. A buffering period could also be provided: a company should be able to elect, for example, having exceeded the $100 million threshold, to maintain their “venture issuer” status for reporting purposes for at least the remainder of the calendar or fiscal year. To ensure that the investing public is aware of which reporting regime the issuer is following, issuers should be required to identify whether they are reporting as “exempt” or “venture” companies.

Part 2.3 Reducing ongoing disclosure requirements (Consultation Questions 23 – 26)

The CSE and all of the stakeholders it consulted in preparing this submission are unified in their opposition to the proposal to permit semi-annual financial reporting. The CSE believes that the financial position of a small capitalization company is often the single most relevant piece of information for investors; reducing the timeliness and quality of this information will likely deter investors from investing in these companies. This change would likely lead to an increase in cost of capital for affected issuers. We should also compare the burden on private companies: if these companies have outside investors, they are usually required by contract to report financials on a monthly basis. The burden on the public company is by comparison, considerably lower. The CSE submits that it would be unwise to permit any public issuer to provide their financial statements on a less frequent basis than currently.

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[1] Part II s2.2(1)(a) includes the exception for an exempt issuer, as defined in section 3.2, which includes 3.2(b) “has a market capitalization of at least $100 million. (in calculating market capitalization, multiply the total number of the securities of the same class as the securities offered in the IPO, which are outstanding on completion of the IPO, by the IPO price).”

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Part 2.4 Eliminating overlap in regulatory requirements (Consultation Questions 27-30)

The CSE does support efforts to streamline MD&A reporting for all public issuers. There is the potential for considerable overlap and redundancy among the financial reports, Annual Information Forms and the current MD&A requirements. Where possible, these areas of overlap should be identified and eliminated.

Part 2.5 Enhancing electronic delivery of documents (Consultation Questions 31-33)

The CSE supports efforts to reduce the costs of providing shareholders with required information through electronic sources in place of hard copy paper delivery. While shareholders should, for the time being, be able to request the provision of paper materials, we expect that the vast majority of shareholders would prefer to receive these materials in electronic form. Posting a number of these materials in a central place with links provided to shareholders should be sufficient for most, if not all, purposes.

We again thank the CSA for the opportunity to comment on these important issues, and would welcome the opportunity to further discuss these proposals at the convenience of the member regulatory organizations.

Yours truly,

Richard Carleton
CEO
Canadian Securities Exchange

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July 27, 2017

VIA EMAIL IN PDF AND WORD

comments@osc.gov.on.ca;
consultation-en-cours@lautorite.qc.ca

To the following Canadian Securities Administrators:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Authorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention:

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Me Anne-Marie Beaudoin
Corporate Secretary
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Re: Tourmaline Oil Corp. ("we", "us" or "our") – Written Submissions on Certain Consultation Questions Identified in the CSA Consultation Paper 51-404 - *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper")

Please accept this letter as our written submissions on certain of the consultation questions identified in the Consultation Paper. We have only provided submissions in respect of the questions we believe are most applicable to us and our business. These questions are reproduced below in bold and italics and our submissions are in blue font.

We are a Canadian senior crude oil and natural gas exploration and production company focused on long-term growth through an aggressive exploration, development, production and acquisition program in the Western Canadian Sedimentary Basin. We currently have a market capitalization of approximately $7 billion.

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2.1 Extending the application of streamlined rules to smaller reporting issuers

- ***Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?***
  - We believe that the current distinction between "venture issuers" and "non-venture issuers" is effective and an objective way to segregate reporting issuers.
- ***If the current distinction for venture issuers is maintained, should we extend less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?***
  - Yes. The elimination of the requirement for pro-forma financial statements should be extended to non-venture issuers. It is our belief that pro-forma financial statements can be confusing and even misleading as they are often not properly understood by investors thereby not achieving their intended objective.

2.2 Reducing the regulatory burden associated with the prospectus rules and offering process

b) Streamlining other prospectus requirements

- ***Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?***
  - Yes, this helps ensure consistent treatment of accounting policies as well as ensure the proper accounting for any recent transactions which may have occurred during the quarter.
  - We also believe that the mandatory review by an auditor also ensures that auditors are kept apprised of the information going into a prospectus and allows for the auditor to ensure proper accounting treatment before the financial statements are included in a public document which will be relied upon by investors. This is especially important as transactions become more complex and the accounting rules are often more guideline-based versus rule-based.
- ***Should other prospectus disclosure requirements be removed or modified, and why?***
  - We believe that the requirement for pro-formas should be revisited and consideration should be given to whether they add value. Pro-formas can be time consuming and costly to prepare and, as indicated above, are not easily understood by investors.
  - We believe that disclosure requirements should ensure that the information required provides the most relevant information to investors in a concise manner so that investors don't get "lost" in perhaps less relevant details.

c) Streamlining public offerings for reporting issuers

- ***Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.***
  - We believe that a short form prospectus need only include material information pertaining to the offering (i.e. use of proceeds, plan of distribution, description of securities being issued and specific risk factors relating to the offering) or other material information not presently contained in an issuer's public record or in the required documents incorporated by reference (i.e. material recent developments). In addition, when there is no material change to an issuer's consolidated capitalization, having to prepare and include a consolidated capitalization table is not meaningful disclosure in our view. Rather, a simple statement to such effect should suffice. In particular, "Item 2 - Summary Description of Business" and "Item 7A – Prior Sales" in the short form prospectus form can be eliminated as this information is easily accessible in other public documents.

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- ***Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers: (a) what should the key features and requirements of any proposed alternative prospectus model be? (b) What types of investor protections should be included under such a model (for example, rights of rescission) (c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?***
  - We believe the current model works, however, the disclosure presently required in a short form prospectus can be streamlined.
- ***As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and is so in what way?***
  - We believe that the requirement to file marketing materials separately on SEDAR is onerous and should be reconsidered in light of the fact that such information is contained in the short form prospectus itself which ultimately gets filed on SEDAR.

2.3 Reducing ongoing disclosure requirements

a) Removing or modifying the criteria to file a BAR

- ***Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?***
  - See previous comments on pro-forma financial statements. In instances of acquisitions, it can, at times, be challenging for the acquirer to receive all of the necessary information from the acquiree to prepare the financial statements in a timely manner and ensure they are free of any material misstatements.
- ***If the BAR provides relevant and timely information to investors: (a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements? (b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision? (c) What alternative tests would be most relevant for a particular industry and why? (d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus level disclosure? Why or why not?***
  - We believe that the significance test related to profit and loss can, at times, result in acquisitions that are relatively insignificant being included because of one-time events or the use of absolute values. We would recommend that consideration be given to an additional test, perhaps based on revenue, in a situation where an asset is only significant based on the profit and loss test.
  - We would also recommend that the significance test related to the investment test be based on the proceeds agreed to by both parties at a certain point in time, preferably the date of announcement. We have seen situations when a company is issuing shares for an asset through a share offering (short form prospectus), and the movement in the acquirer's share price from the deal announcement date to the deal close date was significant enough for the acquirer to have to reassess the significance test. In such a situation, an acquirer could potentially deem an acquisition to not be significant at the time when issuing a prospectus and trying to assess whether a BAR needs to be performed but the acquisition could subsequently be deemed significant at the close of the transaction based on the closing share price. In such a situation, the acquirer may find that not all necessary documents were prepared but this was unknown to the acquirer until after the close of the transaction.

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b) Reducing disclosure requirements in annual and interim filings

- ***Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?***
    - We believe that in certain situations, i.e. growth companies or specific industries, the requirement in the MD&A to compare to the same period of the prior year is not necessarily relevant and does not provide additional relevant information to investors. In an industry, such as oil and gas, the movement in commodity prices is far more relevant in describing the company's activities versus comparing to the same quarter of the prior year. In some instances, it could also be more relevant to compare to the prior quarter which provides for more timely information than the prior year.
    - We believe that the requirement to include the quarterly results of the most recently completed eight quarters provides relevant information which helps an investor to analyze trends and is not onerous. We do not believe that the discussion requirements to discuss the trend over the eight quarters is necessarily useful and as such the requirement should only focus on material items of note rather than in many cases a general discussion. All relevant information has already been previously published.
    - We believe that repeating prior year disclosure in some instances is not necessary. For example, in the PP&E section of the financial statement notes, the need to include all of the purchase price allocations for any significant acquisitions is not necessary as this information was already provided in full in prior year disclosure. A statement that the prior year included an acquisition of a specified amount should suffice and the preparer could refer to the prior year financial statements for full disclosure.

c) Permitting semi-annual reporting

- ***What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?***
    - We believe the benefits of quarterly reporting are that it provides timely and relevant information to investors. It also instills a certain discipline around the financial reporting process. Certain accounting assessments are required to be made each reporting period (e.g. impairment triggers, going concern) and there would be a concern that with less frequent reporting such analysis will not be completed as regularly which may delay the timely reporting of such important matters. The preparation of quarterly financial statements can however be time consuming which is why the reporting requirements should be focused on providing disclosure that is relevant and necessary to investors rather than considering the complete elimination of the requirement for quarterly reporting.
- ***Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?***
    - Perhaps semi-annual reporting could be an option for smaller reporting issuers i.e those with no revenue. We do believe however that in order to be comparable, all issuers of a certain size should be required to issue financial statements using the same reporting interval.
- ***Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?***
    - We do not believe that semi- annual reporting would provide enough timely and relevant information to investors. There would also be a concern that with the absence of quarterly reporting, although the information would likely still be disclosed (continuous disclosure requirement), it could potentially be done so with less due diligence around the disclosures.
- ***Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?***

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- Perhaps this could help some of the burden of preparing a full MD&A on a quarterly basis, but if this was an option, there should still be requirements on the minimum disclosure that should be included in the quarterly highlights.

2.4 Eliminating overlap in regulatory requirements

- ***Would modifying any of the above areas in MD&A form requirements result in a loss of significant information to an investor? Who or why not?***
  - We do support the concept of removing duplicative information and we do believe combining reporting into one Annual Report could facilitate this approach. This would be a good way of ensuring that all of the relevant information is in one single all-encompassing document. We do not however know how this would impact the auditor's review of the document and whether this would create additional time pressures if the auditors would then be required to tie-in the entire document to source documents? (i.e. AIF disclosure)
- ***Should we consolidate the MD&A, AIF(if applicable) and financial statements into one document? Why or why not?***
  - Yes. As previously discussed, one document reduces the need for duplication and creates clarity for investors regarding where to obtain information.

2.5 Enhancing electronic delivery of documents

c) Permitting semi-annual reporting

- ***The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this module: (a) Since the adoption of this "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A? (b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specially requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available? (c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies? (d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?***
  - We believe that all documents should be provided in electronic format unless specifically requested for paper delivery.
  - We do not believe that electronic delivery of materials pose any significant risks to investors.

Thank you for the opportunity to comment and we look forward to any upcoming changes that arise out of the responses to the Consultation Paper.

Sincerely,

Signed "Sarah Tait"

Sarah Tait
Controller
Tourmaline Oil Corp.

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27 July 2017

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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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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Dear Me Anne-Marie Beaudoin,

CSA Consultation Paper 51-404- Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Ernst & Young LLP is pleased to provide comments to CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers.

We commend the CSA's initiative to review the regulatory burden on reporting issuers and agree that Canada's approach to regulation needs to reflect the realities of business for Canadian reporting issuers to remain competitive. We support considering options to reduce regulatory burden associated with both capital raising in the public markets and the ongoing costs of remaining a reporting issuer, without compromising investor protection or the efficiency of the capital market. Listings on Canada's major exchanges are in long term decline with fewer IPOs and delistings in prior years contributing to a systemic reduction in public companies. This trend is not isolated to Canada; US listings have fallen by almost a half over the past 20 years and the US Securities and Exchange Commission has identified capital

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formation and reducing regulation as key priorities. The CSA's review is timely and needs to be responsive to ensure the competitiveness and sustainability of public markets in Canada.

Overall recommendations

We have summarized our key recommendations below. For responses to the individual questions that are relevant to our areas of expertise and experience please see the Appendix to this letter.

Priorities to address in the short-term

We believe the following areas should be prioritized by the CSA in the short term to reduce regulatory burden while preserving investor protection:

(I) Business acquisition reports

The CSA should perform a broad review of BAR (Business acquisition report) requirements to assess the relevance and usefulness of current significance tests and thresholds. In our experience the profit or loss significance test often leads to anomalous results that may not be indicative of significance. We recommend the current three significance tests be replaced with two significance tests based on the greater of revenue and fair value of the investment test:

Revenue test- An issuer could compare its proportionate share of revenue of the entity being evaluated to the issuer's consolidated revenue for the most recently completed year. We believe this test would be more effective than a significance test based on profit or loss.

Fair value investment test- An issuer could compare the fair value of its investment in the entity being evaluated against (1) the issuer's fair value i.e. market capitalization (if readily available) or (2) the carrying amount of the issuer's consolidated total assets if fair value is not readily available. Existing asset and investment significance tests based on book values may not measure the economic significance of the transaction or entity as effectively as a test based on fair value.

(II) Eliminating regulatory overlap

Eliminating overlap in current regulatory requirements should be prioritized, especially related to areas of similarity between disclosure requirements of IFRS in financial statements and Management's Discussion & Analysis (MD&A). There is also overlap between the Annual Information Form and compensation disclosures. Consideration should be given to allowing issuers to cross reference non-financial statement disclosures to the notes to the financial statements where such disclosures are made (but not vice versa due to potential confusion about auditor association and increased auditor liability). The volume of information included in annual and interim filing documents should also be reduced to focus more on key information needed by investors and analysts. Information related to previous periods such

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as quarterly results can be easily obtained through SEDAR filings and provides no incremental value in current filings.

We support a Company profile approach to improve the format and delivery of information to investors. A Company profile would segregate reference information from periodic and transaction filings and organize company disclosures consistently and logically to help investors find information easily. Common themes could include company's description of business, securities, corporate governance, executive compensation, risk factors and exhibits. The Company profile form would be filed on SEDAR and updated when material changes occur. This approach would reduce the volume of disclosure in periodic reports by segregating informational disclosures that may not be necessary for investors on a recurring basis.

(III) Reducing regulatory burden associated with prospectuses and offerings

We support extending the eligibility criteria for the provision of two years of financial statements to smaller issuers such as start-up enterprises or emerging growth companies that intend to become non-venture issuers in an IPO prospectus. In our experience the third year of financial information is relevant to analysts and investors for more mature enterprises.

In our role as auditors, we are not aware of significant issues relating to the short form prospectus filing system. We support efforts to reduce duplication in short form prospectus filings, however, we would characterize such changes as "tweaking" versus leading to a significant reduction in regulatory burden.

Priorities to address in the medium term

(I) Comprehensive review of regulatory reporting requirements

We encourage the CSA to undertake a two-step approach to streamlining regulatory reporting requirements for all reporting issuers. Firstly, we believe the CSA should perform a comprehensive review of regulatory requirements such that rules are streamlined across the whole population of reporting issuers. This review should assess investor needs and the relevance and effectiveness of the current reporting framework in rapidly evolving markets. After performing this review, consideration should then be given to what further streamlining is necessary for smaller reporting issuers given this unique aspect of Canadian capital markets.

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(II) Replacement of SEDAR and enhanced use of technology

The System for Electronic Document Analysis and Retrieval (SEDAR) used by issuers to publicly file securities documents and other information has not been significantly updated in over 20 years. We observe that SEDAR is largely a repository of pdf format filings, many of which are categorized as "other". We recommend that the CSA conduct research and outreach to see what changes or innovations could be made to SEDAR to make its data more useful to all stakeholders including issuers. In so doing, the CSA should consider the features and formats of other public data platforms.

We appreciate the opportunity to comment on the Consultation paper. Please contact Eric Spiekman (Professional Practice Director) if you wish to discuss our comments.

Yours sincerely,

Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants

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Appendix

General Consultation Questions

1. Of the options identified:
(a) Which meaningfully reduce regulatory burden while preserving investor protection?
(b) Which should be prioritized and why?
2. Which of the issues identified could be addressed in the short-term or medium-term?
3. Are there any other options that are not identified which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers? Should these constitute a short-term or medium-term priority for the CSA?

See comments in the main body of this letter.

Extending application of streamlined rules to smaller reporting issuers

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

We would encourage a two-step approach to streamlining regulatory reporting requirements:

(I) Perform a comprehensive review of regulatory requirements for all reporting issuers such that rules are streamlined across the whole population of reporting issuers.

(II) Determine what further streamlining is necessary for smaller reporting issuers.

We understand the logic of a size-based distinction as under the current model two companies of similar size can have very different regulatory requirements depending on their exchange listing. However, the current model has the advantage of transparency, simplicity and is well understood by stakeholders. The current model also has the advantage of allowing the issuer to choose where they list and thus the level of required disclosures. In our view, the cost-benefit of changing the current exchange listing distinction should be assessed only after performing a comprehensive review of regulatory requirements for all reporting issuers. Such a comprehensive review might also consider whether a framework focused on providing only material disclosure rather than different disclosures based on exchange or size is a viable model recognizing that what is material disclosure to investors is not necessarily always based on exchange or size.

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5. If we were to adopt a size-based distinction:

(a) What metric or criteria should be used and why? What threshold would be appropriate and why?
(b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?
(c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?
(d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

As noted in our response to #4 above we believe the cost-benefit of changing the current exchange listing distinction should be assessed after performing a comprehensive review of regulatory requirements for all reporting issuers.

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

See responses to #4 and #5 above.

Reducing audited financial statement requirements in an IPO prospectus

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers in an IPO prospectus? If so:

(a) How would this amendment assist in efficient capital raising in the public market?
(b) How would having less historical financial information on non-venture issuers impact investors?
(c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?
(d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

We believe it is appropriate to extend the eligibility criteria for the provision of two years of financial statements to smaller issuers such as start-up enterprises or emerging growth companies that intend to become non-venture issuers in an IPO prospectus. In our experience the third year of financial information is relevant to analysts and investors for more mature enterprises.

8. How important is the ability to perform a three year trend analysis?

See response to #7 above.

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Streamlining other prospectus requirements

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

   In our experience, auditor involvement in interim financial statements through performance of an interim review assists in improving the quality of the financial reporting and enhancing confidence in prospectus filings. Interim review procedures are substantially less in scope than audit procedures, and we believe the added cost is justified by the benefit to stakeholders.

   Interim review procedures are required by underwriters as part of their due diligence procedures and often by directors in discharging their governance responsibilities. Existing Canadian Standards in the CPA Handbook also require completion of interim review procedures prior to the auditor consenting to use of the audit report in an offering document.

10. Should other prospectus disclosure requirements be removed or modified, and why?

   We have observed that the CSA has sometimes taken a very broad interpretation of "issuer" when applying the requirements of NI 41-101, as it relates to whether financial statements associated with historical acquisitions of the issuer fall under Item 35 or Item 32 of NI 41-101. The consequences of historical acquisitions falling under Item 32 (disclosures for the issuer) rather than Item 35 (significant acquisitions) are generally additional periods of audited statements being required, as well as more limited options regarding the accounting standards and auditing standards required to be applied. While the Companion Policy (Part 5.3) refers to acquisitions significant at "over the 100% level", we have observed that in practice the CSA has required many or most historical acquisitions to be analyzed under Item 32 rather than Item 35, even if they do not meet the significance thresholds in NI 51-102 Part 8. This can result in significant additional time required for companies to compile the financial statement disclosure necessary for an IPO prospectus, and in some cases the additional sets of financial statements may be viewed by underwriters and potential investors as having minimal informational value. We recommend that the CSA revisit these requirements, or at a minimum provide additional clarity to companies so that the necessary information can be identified and compiled.

   The "regular" certification requirements under 52-109 become applicable for the first financial period that ends after an entity becomes a reporting issuer. This means that for a TSX-listed entity that goes public in the third quarter, a full annual certificate is required less than six months from the date of the IPO. We note that this requirement is more onerous than similar US Securities and Exchange Commission requirements. We recommend that the CSA consider modifying these requirements to allow newly public entities, especially those listing on the TSX, additional time to comply with the full 52-109 certification requirements.

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Streamlining public offerings for reporting issuers

11. Is the current short form prospectus system achieving the appropriate balance (i.e. between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

    In our role as auditors, we are not aware of any significant issues with respect to the short form prospectus system's operation. We support efforts to reduce duplication in short form prospectus filings, however, we would characterize such changes as "tweaking" versus leading to a significant reduction in regulatory burden.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

    In our view the current short form prospectus offering system generally works well and the qualification criteria are not particularly onerous.

Potential alternative prospectus model

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

(a) What should be the key features and disclosure requirements of any proposed alternative prospectus model?

(b) What types of investor protections should be included under such a model (for example rights of rescission)?

(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Overall, we support exploring a prospectus offering model for reporting issuers that is more closely linked to continuous disclosure with expanded ability for reporting issuers to incorporate by reference. It will be important under such a model to revisit auditor consent requirements under securities rules and professional standards.

Facilitating at-the-market (ATM) offerings

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?
15. Which elements of the exempted relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

We have no comments at this time.

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Other potential areas

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

    Given the importance of the Multi-Jurisdictional Disclosure System (MJDS) between Canada and the United States to our capital markets it is critical that any changes made by the CSA do not jeopardise the continuation of the MJDS system.

17. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada for (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

    We have no comments at this time.

Reducing ongoing disclosure requirements

Removing or modifying the criteria to file a BAR

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

    We believe that pro forma financial statements generally provide useful information to investors. For example, pro forma financial statements can be useful in assisting stakeholders to understand complex financings and implications for capital structure going forward. It may be useful for the CSA to provide more robust guidance regarding how pro forma financial statements should be prepared as the current NI 51-102 and NI 51-102CP guidance is very limited and this may be contributing to inconsistencies in their preparation on common issues.

19. Are there certain BAR requirements that are more onerous or problematic than others?

    The profit or loss significance test for a BAR often leads to anomalous results that may not be indicative of significance. For example, non-recurring charges or gains in either party's income statement can cause the test to be failed in a case where the acquisition does not appear significant from a common sense standpoint. Similarly, we have observed that smaller reporting issuers are disproportionately affected by anomalous results, particularly if their annual results fluctuate between income and losses or they operate at close to "break-even".

    We have also observed practice issues in regards to acquisitions of parts of legal entities. In practice, when a business is acquired which was formerly integrated in a much larger legal entity, it can be very difficult for a company to prepare full financial statements, due to the significant co-mingling of costs and other activities. Such financial statements can involve many assumptions regarding cost allocations, especially with respect to indirect

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costs, which can lead to financial statements that contain information that is of limited predictive value to investors. We recommend that the CSA consider allowing a modified presentation of financial statements, such as a statement of revenues and direct expenses rather than a "full" income statement, as a "full" income statement can result in a significant amount of time and effort with limited benefit to investors and potential investors.

20. If the BAR provides relevant and timely information to investors:

(a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

See responses to #19 and #20(c).

(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

This question is best addressed by investors and analysts.

(c) What alternative tests would be most relevant for a particular industry and why?

We recommend the current three significance tests be replaced with two significance tests based on the greater of revenue and fair value of the investment test:

Revenue test*- An issuer could compare its proportionate share of revenue of the entity being evaluated to the issuer's consolidated revenue for the most recently completed year. We believe this test would be more effective than a significance test based on profit or loss.*

Fair value investment test*- An issuer could compare the fair value of its investment in the entity being evaluated against (1) the issuer's fair value i.e. market capitalization (if readily available) or (2) the carrying amount of the issuer's consolidated total assets if fair value is not readily available. Existing asset and investment significance tests based on book values may not measure the economic significance of the transaction or entity as effectively as a test based on fair value.*

(d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of a prospectus-level disclosure? Why or why not?

We agree with the proposal to align requirements with those in a BAR under 51-102 Part 8, or at least to align more closely with them, for example as it relates to GAAP and GAAS requirements. There are often practical difficulties with complying with prospectus level disclosure requirements in this situation, particularly the requirement that in most cases the financial statements of the target must be prepared in accordance with IFRS. For

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example, we have seen situations where financial statements previously prepared under US GAAP need to be restated to IFRS in advance of the filing of the information circular, as the target itself is most often not an SEC registrant and thus is generally ineligible to use US GAAP. This can result in delays in completion of transactions. As the pro forma financial statements will need to be based on IFRS, that information will help bridge between the historical US GAAP financial statements of the acquired entity and what the combined business will look like under IFRS.

Also we find the third oldest year often has limited informational value.

The CSA could also consider, as an alternative, aligning some but not all of the requirements. For example, the CSA could consider retaining the audit/review requirements in the prospectus rules, to the extent that the CSA views that there are public interest benefits to greater auditor involvement in these financial statements, but align the GAAP/GAAS requirements and the periods required to the NI 51-102 significant acquisition requirements.

Reducing disclosure requirements in annual and interim filings

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

    We agree the volume of information included in annual and interim filings should be reduced to focus on key information needed by investors and analysts. We support the proposal to remove the discussion of prior period results from the MD&A and to remove the summary of quarterly results for the eight most recently completed quarters in the MD&A. This information can be easily obtained through SEDAR filings and repeating this information provides no incremental value.

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

    We agree more clarity and guidance for preparers on disclosure requirements would be helpful.

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Permitting semi-annual reporting

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

    We are a proponent of the quarterly reporting system and believe that it provides discipline around the financial reporting process and is an important part of the audit committee's governance and oversight process. From our experience performing quarterly interim reviews, which are substantially less in scope than an audit, these provide a timely opportunity to discuss significant, complex or unusual transactions with management and the audit committee and many times lead to improved financial reporting, especially for smaller reporting issuers, as well as making for a more efficient audit at the year end.

    It is important to consult broadly with investors with respect to the usefulness and cost-benefit of quarterly reporting before initiating change given that the current system is aligned to quarterly reporting. The implications of moving out of step with the United States should also be carefully considered before initiating any changes.

    Market expectations for the speed and timeliness of financial information are ever increasing and it would seem inconsistent with global trends to move to a model which provides information on a less timely basis. It is our view that many reporting issuers would continue to prepare quarterly financial information in a semi-annual reporting model based on investor expectations and the need for comparability with peers many of which are based in the United States.

    The impact on corporate governance and particularly the oversight role of audit committees of a move to semi-annual reporting should also be carefully considered before initiating change.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

    In our experience timely identification and resolution of complex, significant or unusual transactions often leads to improved financial reporting. Moving to a semi-annual reporting regime would result in less timely information to investors and may also result in a greater volume of issues to be addressed at year-end with potentially unintended consequences for the quality of financial reporting due to time compression issues. Quarterly reporting instills a discipline that may be lost, especially for some smaller reporting issuers, if a change is made to move to a semi-annual reporting regime.

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25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely communication?

    This question is best addressed by investors and analysts.

    We encourage the CSA to perform an appropriately rigorous cost-benefit analysis before moving to a semi-annual reporting regime.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

    We agree that non-venture issuers should have the option to replace interim MD&A with quarterly highlights.

Eliminating overlap in regulatory requirements

27. Would modifying any of the areas (financial instruments, critical accounting estimates, change in accounting policies, contractual obligations, discussion of risks) in the MD&A requirements result in a loss of significant information to an investor? Why or why not?

    Eliminating overlap in current regulatory requirements should be prioritized, especially related to areas of similarity between disclosure requirements of IFRS in financial statements and Management's Discussion & Analysis (MD&A).

    There is currently duplication between the MD&A and the financial statements in the following areas which we believe should be eliminated by removing duplication in the MD&A:

- *Transactions between related parties*
- *Off-Balance sheet arrangements*
- *Critical accounting estimates*
- *Changes in accounting policies, including initial adoption*
- *Financial instruments and other instruments*
- *Contractual obligations table*

There is also overlap between the Annual Information Form and compensation disclosures. Consideration should be given to allowing issuer's to cross reference non-financial statement disclosures to the notes to the financial statements where such disclosures are made (but not vice versa due to potential confusion about auditor association and increased auditor liability).

In our view removing duplicative information will not result in any loss of significant information to an investor. A greater ability to cross reference in other disclosure documents to the financial statements could also help preparers to better focus the incremental disclosure provided in those other documents on the specific disclosure

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objectives and requirements that differ from the similar but not identical financial statement disclosures.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

See response to #27 above.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

Consolidating the MD&A, AIF (if applicable) and the financial statements may provide reporting issuers with an opportunity to streamline their disclosures, especially for larger reporting issuers. We support making the preparation of a consolidated document optional for all reporting issuers to accommodate any issuers that might have resourcing constraints making simultaneous completion of all the elements of a consolidated document more challenging. However, we acknowledge that making the consolidated document optional would reduce commonality in filing approaches amongst issuers. If this change is made the implications for auditor association and auditor reporting would also need to be evaluated and additional guidance provided by the Auditing and Assurance Standards Board.

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring disclosure is complete, relevant, clear and understandable for investors.

We support a Company Profile approach to improve the format and delivery of information to investors. A Company profile would segregate reference information from periodic and transaction filings and organize company disclosures consistently and logically to help investors find information easily. Common themes could include company's description of business, securities, corporate governance, elements of executive compensation, risk factors and exhibits. The Company profile form would be filed on SEDAR and updated when material changes occur.

A Company profile approach would reduce the volume of disclosure in periodic reports by segregating informational disclosures.

We have no comments at this time on questions 31-33.

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July 27, 2017

SENT BY ELECTRONIC MAIL

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8 Fax: 416-593-2318 Email: comments@osc.gov.on.ca	Me Anne-Marie Beaudoin Corporate Secretary Autorité des marchés financiers 800, rue du Square-Victoria, 22e étage C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3 Fax: 514-864-6381 E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper")

We welcome the Canadian Securities Administrators' (the "**CSA**") initiative to review the regulatory burden on reporting issuers and the opportunity to respond to the Consultation Paper. We are generally supportive of initiatives that will help reduce regulatory burden, without compromising investor protection or the efficiency of the capital markets. In this response, we will focus on the potential options to reduce regulatory burden that are most applicable to our business.

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Background

Precision Drilling Corporation ("**Precision Drilling**" or "**we**") provides onshore drilling and completion and production services to exploration and production companies in the oil and natural gas industry.

Headquartered in Calgary, Alberta, Canada, we are one of Canada's largest oilfield services companies and one of the largest in the United States ("**U.S.**"). We also have operations in Mexico and the Middle East.

Our common shares trade on the Toronto Stock Exchange ("**TSX**") and on the New York Stock Exchange ("**NYSE**").

Responses

Part 2.1 – Extending the application of streamline rules to smaller reporting issuers

We believe that there is a benefit to having issuers listed on the TSX subject to the same reporting regime because distinguishing issuers by exchange listing is a more readily identifiable and consistent distinction compared to size of issuer. Additionally, maintaining one reporting regime for TSX listed issuers allows investors the ability to better compare the reporting of all TSX listed companies and allows issuers to compare their own results against their peers (we have a relatively small number of TSX listed industry peers and our preference is for us and our investors to be able to compare results with those peers on a consistent basis).

In our experience, there is growing pressure on larger issuers from investors and non-regulatory entities, such as proxy advisory firms, to provide additional disclosure, beyond what applicable corporate and securities law require, on matters such as the composition of an issuer's board, an issuer's governance practices and executive compensation. In practice, there is a 'size-based' distinction on disclosure as smaller issuers may not face the same pressures to provide additional disclosure that larger issuers may face and there should be no need for further sized-based disclosure distinctions.

Part 2.2 – Reducing the regulatory burdens associated with the prospectus rules and offering process

Short form prospectus offering system

We support initiatives that would eliminate or modify existing short form prospectus disclosure requirements that are duplicative or do not provide investors with relevant information. Accordingly, price ranges and trading volumes of securities of public issuers readily available on an issuer's website or online could be removed from required disclosure.

Increasing business acquisition report ("**BAR**") significance thresholds would also simplify disclosure requirements for prospectuses that provide disclosure on proposed significant acquisitions. We expect that issuers would provide detailed disclosure of non-significant

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acquisitions in a prospectus. This would provide investors with adequate information regarding any such acquisition, without the more onerous requirements like audited financial statements of the acquired company and pro-forma financial statements required by a BAR.

To further streamline short form prospectus filing requirements, the CSA may consider whether it would be appropriate to require that non-resident directors/signing officers file one non-issuer submission to jurisdiction and appointment of agent for service at the time such director/officer is appointed to the board or becomes an officer, as applicable, that will apply to all security issuances under prospectus financings in the future, subject to a requirement to update information for changes. This would be an alternative to requiring the administrative burden of such submissions to jurisdiction and appointment of agent for each prospectus offering. Additionally, the CSA may consider whether the personal information form ("**PIF**") delivery requirement (in section 4.1(1)(b) of NI 44-101) and confirmation requirement (in section 4.1(2) of NI 44-101) for prospectus offerings is necessary. A prospectus (or documents that are incorporated by reference into a prospectus) will include information on director and executive officer cease trade orders, bankruptcies and penalties or sanctions. Since it generally must provide full, true and plain disclosure, investors will be provided with relevant information regarding directors and executive officers when making an investment decision. Removing the PIF delivery and confirmation requirements would help streamline the offering process without jeopardizing investor protection.

*Facilitating at-the-market ("**ATM**") offerings*

Issuers that have received a receipt for a base shelf prospectus should not be required to obtain exemptive relief for ATM offerings. While we currently have no intention to complete an ATM offering, we believe that access to capital raising alternatives, such as an ATM offering, should not be dependent on obtaining exemptive relief from securities commissions, in particular where such relief has become relatively standard. We suggest that an appropriate process for ATM offerings be codified into securities legislation which would provide for the necessary exemptions to the prospectus delivery requirement and withdrawal rights that issuers seeking exemptive relief request. The conditions for an ATM offering could include: (i) the reporting issuer has filed a prospectus supplement to establish the ATM offering; (ii) the distributions will be completed under an equity distribution agreement with registered dealers; (iii) quarterly reporting of securities under the ATM offering in either financials statements or MD&A; (iv) no ATM distributions if the issuer is in possession of material undisclosed information.

<u>Part 2.3 – Reducing ongoing disclosure requirements</u>

Removing or modifying the criteria to file a BAR

We are supportive of an increase to the significance tests that trigger the BAR filing requirement (e.g., from 20% to 40%). Additionally, the profit or loss significance test could be revised to focus on revenue to avoid insignificant transactions being considered significant. Particularly where either the reporting issuer or acquired business has a loss, the requirement to consider the absolute value may result in relatively insignificant transactions being considered significant.

Precision Drilling Corporation
Suite 800, 525 - 8th Avenue S.W. Calgary, Alberta, Canada T2P 1G1 Tel 403.716.4500 Fax 403.264.0251 www.precisiondrilling.com

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With respect to disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5, we would be in support of amendments that would allow for BAR type disclosure by a reporting issuer in respect of an issuer it is acquiring as an alternative to prospectus-level disclosure.

Reducing disclosure requirements in annual and interim filings

We would be supportive of removing the quarterly results summary of the eight most recently completed quarters in the MD&A. All such information is available to investors in MD&As from previous periods.

Permitting Semi-Annual Reporting

Many of our peers are U.S. companies that report under the U.S. regulatory regime, which requires quarterly reporting. Unless the U.S. regulatory quarterly reporting rules change, in order to ensure our reporting is comparable to our peers, we would continue to report financial results on a quarterly basis to ensure our investors and prospective investors have access to our financial information on a similar frequency to our peers.

Part 2.4 – Eliminating overlap in regulatory requirements

We are supportive of any initiatives that will eliminate overlapping regulatory requirements. Information regarding financial instruments, critical accounting estimates, changes in accounting policies and contractual obligations are generally included in financial statements and could be removed from MD&A.

Investors would likely benefit from having all information required in an AIF and MD&A and the financial statements included in one document. From a drafting perspective, we may be better able to express the development of our business in a concise manner by consolidating the AIF required disclosure of three-year history with the MD&A required disclosure of an issuer's overall performance for prior periods. The narrative on our overall performance is generally linked to our three-year history, as it makes sense to include such disclosure in one document. Additionally, having the AIF and MD&A in one document would mean that risk factors would be included in one document, which would be beneficial for investors and issuers.

In addition to the potential initiatives that the CSA identified, the CSA may consider whether it would be appropriate to remove the material change report requirement. Material change report disclosure provides information that was previously provided in a press release, and does not provide investors with any additional disclosure. Issuers could be required to incorporate by reference into a prospectus any press release that discloses a "material change" in order to ensure prospectus disclosure remains accurate and investors are provided with appropriate protections.

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Part 2.5 – Enhancing electronic delivery of documents

We have used Notice-and-Access for our previous two annual meetings. In our experience, we received a limited number of requests for paper copies of our proxy-materials. While we have received a limited number of requests for paper copies, our view is that mailing our registered and beneficial holders a notice-and-access notification of proxy-material availability will remain essential to investor communications. We would not oppose regulations that would remove the notice-and-access notification mailing requirements; however, we would likely continue to mail notification of proxy-material availability to our registered and beneficial shareholders.

Conclusion

Thank you for the opportunity to comment on the Consultation Paper.

Precision Drilling is pleased that the CSA is considering regulatory reform, and we look forward to any opportunities to provide comments on reforms in the future.

Sincerely,

Carey Ford
Sr. Vice President and Chief Financial Officer

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The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

July 28, 2017

BY EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Superintendent of Securities, Nunavut

The Secretary
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Ms. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Montréal, QC H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Request for Comments on CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-investment Fund Reporting Issuers* (the "Proposal")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposal.

[1]The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 149,603 members in 163 countries, including 143,386 CFA charterholders and 148 member societies. For more information, visit www.cfainstitute.org.

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We support the Canadian Securities Administrators' (the CSA) efforts in seeking to identify and consider areas of securities legislation that may benefit from a reduction of regulatory burden as it relates to non-investment fund reporting issuers. We support these efforts to the extent that duplicative regulations are eliminated and that information flowing from reporting issuers to the investing public is conveyed in a manner that reflects technological realities and consists of high quality disclosure.

We support the CSA in principle in so far as regulatory requirements are balanced against the significance of the objectives sought, and the value such requirements bring to investors. However, we worry about aspects of the Proposal aimed at reducing financial disclosure for smaller reporting issuers since that may limit usability of information for comparison purposes to make informed investment decisions and potentially have an adverse effect on investor protection. In our view, a focus on improving the quality of disclosure as opposed to reducing it would better serve investors in the long run.

We provide the following comments relating to each of the five areas set out in the Proposal.

Extending the Application of Streamlined Rules to Smaller Reporting Issuers

The Proposal is focused on the requirements associated with capital raising and the continuous disclosure regime. It specifically proposes scaling down disclosure requirements for smaller reporting issuers. Generally, issuers listed on a venture exchange benefit from less onerous regulatory requirements. The Proposal considers using a size-based quantitative metric (revenues, market capitalization, etc.) to distinguish between issuers and tailor regulation and reporting requirements based on the issuer's size. The CSA notes that a similar approach is used in the United States using a market capitalization metric for smaller issuers. We have certain concerns with this approach.

First, if regulatory requirements were to be scaled down using an approach based on size, investors will find it challenging to meaningfully compare issuers across disclosure regimes, and this may also deprive investors and analysts of pertinent information relating to those issuers for investment decision-making. We support scaled down disclosure for reporting issuers generally in so far as it eliminates duplicative or otherwise repetitive information, thereby improving the quality of disclosure. In our view, high quality disclosure is more meaningful for both investors and the public markets than any benefit that may be realized by less onerous disclosure.

Second, removing certain disclosure requirements for smaller issuers based on size may have a deleterious effect on investors when analyzing these issuers, many of which may have less experienced management and less developed internal/financial controls, and thus could benefit from stringent disclosure rules.

Third, a scaled down disclosure regime may create a dual-regulatory system for non-venture issuers that many investors may be unaware of and add confusion in the

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marketplace. Since smaller non-venture issuers compete for the same capital as more senior issuers, it is prudent that investors be equipped with the same breadth of issuer information in order to allocate capital rationally. Finally, we query whether a scaled down disclosure regime for smaller non-venture issuers would create an incentive for venture issuers to move away from venture exchanges and list on more senior exchanges.

In our view, an alternative to a scaled down disclosure regime for smaller reporting issuers would involve amending existing regulation of venture exchanges and making listing requirements easier to understand and more attractive to issuers. If the venture and senior exchange regimes were easier to understand and clearly delineated, it may attract the right companies to the appropriate exchange. In addition, investors may become better informed of the reasons a company listed on a particular exchange and develop commensurate expectations of issuer disclosure. We think that current issuers listed on senior exchanges already understand the costs associated with such listings, otherwise they would list on other (venture or foreign) exchanges with different regulatory burdens. A scaled down disclosure regime could have negative effects on the quality of disclosure and potentially increase, rather than decease, the cost of capital for issuers. Perhaps focusing efforts on improving the quality of disclosure through plain language, elimination of duplication, and simplification of exemptions may be a more effective way to reduce regulatory burden without compromising investor protection.

Reducing the Regulatory Burden Associated with the Prospectus Rules and Offering Process

The CSA sets out various options in the Proposal relating to smaller reporting issuers and the prospectus rules. First, the CSA proposes that IPO prospectuses include two years of audited financial statements for all issuers or for smaller reporting issuers, instead of the current three year requirement. In our view, more financial disclosure serves the interests of the investing public and provides greater transparency. Further, while removing the auditor review of interim financial statements may reduce some regulatory burden, we are concerned that an auditor's review of financial statements provides investors with confidence and can identify and rectify issues with financial and internal controls that are often faced by new public issuers.

The options set out in the Proposal have a central theme of removing certain prospectus disclosure requirements, including the short form prospectus requirement, or alternatively increasing the eligibility of issuers using it. Generally, we take the view that fulsome and current disclosure is preferable, including in the context of at-the-market offerings. In our view, it would be worthwhile to explore opportunities to make offerings easier for issuers such as exploring new prospectus exemptions tailored at issuers of a specific ongoing disclosure profile instead of eliminating disclosure requirements that provide pertinent information to investors.

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Reducing Ongoing Disclosure Requirements

Some of the measures in the Proposal are aimed at reducing ongoing disclosure requirements with respect to the Business Acquisition Report (the BAR) and to permit semi-annual reporting.

First, we recognize that the BAR provides helpful information in the context of certain transactions but is not as helpful in the context of other transactions. Many non-venture issuers satisfy the BAR requirements earlier than required or seek exemptions from them. We recognize that preparing the BAR takes time for issuers. However, we also understand that without a BAR, a company's analysis of the impact of an acquisition is not disclosed to the public. We would be pleased to learn more from regulators about the scope of exemptions that are sought and granted with respect to the BAR. Absent that information, in our view, it is important that BAR requirements are maintained but simplified. We are also uncertain what impact an increase in the significance threshold test for filing the BAR would have on issuers, namely, how many issuers would be impacted, and the aggregate benefit gained, if any.

Second, we understand that there have been various efforts in the past with respect to permitting semi-annual reporting in lieu of quarterly reporting with the view that quarterly reporting may be counter to long-term value creation. In this Proposal, the CSA explores the option of permitting issuers to report quarterly or semi-annually. Based on a recent study of public companies in the United Kingdom, researchers found no reason to believe that less frequent reporting would dissuade companies from engaging in the pursuit of short-term profit instead of long-term value creation.[3] Further, even when companies were not required to report quarterly, the study found that most companies continued reporting on a quarterly basis. We think that less frequent reporting of financial information is not beneficial to the capital markets. We also query whether permitting semi-annual reporting for certain issuers (or all issuers), will disharmonize reporting with issuers who are cross-listed on a U.S. based exchange and frustrate issuers who regard U.S. based investors as important to their businesses. Rather than making reporting less frequent for issuers, it is important in our view to streamline reporting metrics and requirements so smaller issuers can easily prepare them.

Eliminating Overlap in Regulatory Requirements

The CSA indicates that there are areas of similarity between IFRS disclosure and National Instrument 51-102 F1 *Management's Discussion and Analysis* Forms relating to financial instruments, critical accounting estimates, change in accounting policies and contractual obligations. In addition, the CSA notes that there is potential duplication such as disclosure of the risk factors required both in the MD&A and AIF Forms.

We strongly support streamlining the requirements of MD&A, the AIF and financial statements, and where possible, removing duplication and repetitive information. It may be

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[3] R. Pozen et al, *Impact of Reporting Frequency on UK Public Companies,* Research Foundation Briefs (March 2017) http://www.cfapubs.org/doi/full/10.2470/rfbr.v3.n1.1

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challenging for investors to clearly understand the relationship between, and navigate, the annual report including the MD&A and the AIF of issuers. In our view, streamlining the requirements and removing duplication may help investors improve accessibility of information and gain confidence in the available information. Higher quality disclosure is also more meaningful to investors, as investors are able to effectively discern information and make better investment decisions. However, any duplication and streamlining of disclosure requirements should ensure that disclosure is not otherwise eliminated.

Enhancing Electronic Delivery of Documents

We strongly support CSA's efforts in exploring various ways for electronic delivery of documents. Given the current technological realities and investors' wide access to the internet, it would save reporting issuers costs if information and disclosure is fully available online. We recognize that there may be exceptions and investor preferences on mailed delivery of documents, but in our view, those should be the exception and not the norm, applicable to all issuers.

The notice-and-access method is a great way to save issuers costs relating to printing circulars and proxy voting documents, in addition to printing financial statements and MD&A. To the extent that the CSA can support and facilitate systems for electronic disclosure of information and filings, it will save issuers costs, including improving or replacing current filing systems such as SEDAR with other systems to give investors meaningful and easier access to information. For example, we support the use of structured data protocols like Inline Extensible Business Reporting Language (iXBRL) that enhances the ability to analyze vast amounts of data precisely and automatically.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for*
CFA Institute Societies

The Canadian Advocacy Council for
CFA Institute Societies

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Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

July 28, 2017

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Me Anne-Marie Beaudoin
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Cc - Canadian Securities Administrators (CSA):
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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Dear Secretary and Me Beaudoin,

Re: CSA Consultation Paper 51-404
Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on CSA Consultation Paper 51-404 (the Paper), published April 6, 2017. CIRI membership represents over 200 non-investment fund reporting issuers with a combined market capitalization of $1.4 trillion. More information about CIRI is provided in Appendix 1.

General Comments

CIRI appreciates the opportunity to review the Paper and agrees in principle with the objectives of the CSA to reduce the regulatory burden on reporting issuers without compromising protection for investors or impacting the efficiency and transparency of Canada's capital markets. CIRI believes in high quality reporting and feels

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that duplicative and unnecessary reporting requirements contribute to lengthy, less meaningful disclosure. The emphasis should be on the quality of reporting, not the quantity, and how good disclosure can contribute to efficient and transparent capital markets. A reduction in reporting requirements, particularly moving from interim reporting to semi-annual reporting, moves markets towards a longer-term view, one that allows management to focus on delivering sustainable value creation for investors over the longer term.

CIRI will address each of the five regulatory options proposed in the Paper but will speak to only those consultation questions where CIRI believes it has expertise and experience. CIRI has surveyed its members on several of the issues raised in the Paper and cites member views in its responses where applicable.

Potential Options to Reduce Regulatory Burden

2.1. "Extending the application of streamlined rules to smaller reporting issuers"

CIRI believes that streamlined rules are appropriate for smaller issuers as they generally have less complex capital structures and operating frameworks. In addition, smaller issuers typically have fewer resources to devote to regulatory compliance and disclosure matters. Smaller issuers listed on non-venture exchanges would benefit from similar reduced regulatory reporting requirements applied to issuers listed on the venture exchange. CIRI survey respondents overwhelmingly agreed (89%) that reduced regulatory requirements should be made available to more small reporting issuers.

Consultation Question 4. *Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing?* **Consultation Question 5(a)**. *If we were to adopt a size-based distinction, what metric or criteria should be used?*

The CSA has introduced recent policy initiatives that include tailoring disclosure and other requirements to alleviate regulatory burden for venture issuers. Given that listing status is not defined by issuer size, it seems reasonable to select one or more alternative size-based metrics to determine what constitutes a smaller reporting issuer, independent of exchange. This could result in a desirable expansion of the number of issuers subject to reduced reporting requirements. This is a valid strategy for reducing regulatory burden across capital markets.

As for metrics by which to determine issuer eligibility for smaller issuer status, over 70% of CIRI survey respondents identified market capitalization as the most appropriate metric, followed by revenue (46%) and assets (33%). CIRI recognizes that market capitalization, especially for smaller issuers, can vary widely from period-to-period, particularly in sectors characterized by high growth or fluctuating product pricing or factors external to their operations. This would impact those issuers' eligibility for reduced regulatory requirements from year-to-year leading to inconsistent reporting to investors. If market capitalization is used, consider whether some mechanism such as a 12-month rolling average could be used to determine the cut-off for a smaller reporting issuer thereby helping to reduce volatility. Alternatively, multiple metrics to determine eligibility could be considered. This option was supported by one-third of respondents to the CIRI survey.

2.2. "Reducing the regulatory burdens associated with the prospectus rules and offering process"

Given the extensive time and resources required of issuers and their advisors with regard to the prospectus process, CIRI supports ways to reduce the regulatory burden associated with existing prospectus rules and the offering process. However, consideration should be given to the difference between prospectus requirements for an initial public offering versus a listed issuer's secondary offering given their pre-existing continuous disclosure record.

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Consultation Question 7. *Is it appropriate to extend the eligibility criteria for the provision of two years financial statements to issuers that intend to become non-venture issuers?*

CIRI does not support extending the eligibility criteria allowing non-venture issuers to provide two years of financial statements. The majority of CIRI survey respondents (61%) were not supportive of more issuers being exempt from providing audited financial statements for the second and third most recently completed financial years in the IPO prospectus.

Consultation Question 7(c). *Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required?*

If the CSA deems it appropriate to extend the eligibility criteria for the provision of only two years of audited financial statements to issuers that intend to become non-venture issuers, CIRI believes that a threshold or size-based criteria should be applied. A majority of CIRI survey respondents (60%) agreed that this approach is appropriate. CIRI members suggested that pre-IPO revenues would be an appropriate criteria to use in determining the threshold to be applied for this exemption. In addition, the CSA may also consider debt/equity levels of the issuer or applying the same criteria used to determine if an issuer meets the definition of a "smaller issuer", as discussed above under Consultation Question 4.

2.3(b) "*Reducing disclosure requirements in annual and interim filings*"

CIRI supports reducing the volume of information required in annual and interim filings to focus on key information that the reporting issuer's investors and analysts use and need.

Consultation Question 21. *Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision?*

CIRI is in favour of removing the detailed discussion of prior period results from management's discussion and analysis (MD&A) given that this information is readily available in the MD&A for the prior period. This view is supported by CIRI survey respondents with the majority (67%) indicating that detailed discussion of the prior eight quarters should be eliminated from interim reporting. This may help to focus investor attention on results achieved in the most recent reporting period. CIRI realizes that such discussion would be warranted in the case of a material change.

CIRI and our members believe it can be valuable for a summary of prior quarter results to be included in interim reporting documentation in order to assist readers to readily assess possible longer-term trends, cyclical impacts or the effects of seasonality on issuer results.

2.3(c) "*Permitting semi-annual reporting*"

CIRI believes that allowing issuers the option to report semi-annually should be seriously considered for all issuers. While the effort and resources required to provide accurate and timely financial and operational results varies widely depending on each organization's complexity, all reporting issuers would inevitably save time and costs by reporting semi-annually rather than quarterly. Of course, issuers must still meet the existing requirements for reporting material changes and fully disclosing material information in a timely manner.

Consultation Question 24. *Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?*

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CIRI and the majority of survey respondents (74%) agree that reporting semi-annually instead of quarterly should be an option available to all issuers. This would allow management to focus more resources on the business by eliminating the effort and cost involved in preparing quarterly reports. This also allows issuers to focus increasingly on long-term strategy and performance rather than allocating scarce resources to reporting of short-term results.

Short-termism, cited as an issue by Focusing Capital on the Long Term (FCLT) Global among others, found that 61% of executives and directors say that they would cut discretionary spending to avoid risking an earnings miss, and a further 47% would delay starting a new project in such a situation, even if doing so led to a potential sacrifice in value.[1] Moving to semi-annual reporting would free up more issuer resources, time and capital, to deliver sustainable value creation for investors over the longer term.

Semi-annual reporting has existed or been adopted successfully in a number of other jurisdictions such as Australia, Germany and the UK and they should be looked at as examples.

Consultation Question 26. *Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?*

If issuers feel that they need to communicate with investors more frequently than semi-annually, CIRI and the majority of CIRI survey respondents (64%) believe that they should have the option to provide quarterly highlights for Q1 and Q3 rather than a quarterly report complete with financial statements and MD&A. This quarterly highlights document should be somewhat prescriptive in nature in order to ensure consistency from period-to-period. We believe this type of interim disclosure will help investors, analysts and other stakeholders by presenting a more focused view of key metrics and will reduce repetition and redundancy.

For over 25 years, issuers in Australia have reported semi-annually. Issuers in the oil & gas and mining industries are required to issue production reports that are prescriptive in nature in Q1 and Q3 while many other issuers choose to publish trading or market updates that are non-prescriptive in nature in Q1 and Q3. The metrics in these non-prescriptive reports are unaudited.

Since 2014, issuers in the UK are only required to report on the half and full-year. However, many issuers (85%) still choose to use some variant of quarterly reporting, of which 10% still publish interim management statements while 13% have stopped formal quarterly reporting entirely. For those in between, the majority publish trading statements that include unaudited metrics.[2] A trading statement is an announcement that has limited, but sometimes very important, disclosure. The essential part of a trading statement is an update on an issuer's revenues (i.e. sales numbers, sales trends). It is not uncommon for companies to reveal some other performance indicators but it would not be usual to reveal any profit numbers unless a surprise requires that the market be given a profit warning. This allows issuers to report brief yet meaningful updates to their stakeholders without the effort and cost that is involved in preparing interim reports. This approach could be a viable option for the Canadian market.

The switch to semi-annual reporting has been well received by the investment community in the UK. In fact, The Investment Association's "members widely referred to quarterly reporting as a distraction that shifted company resources away from long-term strategic considerations. In particular, members expressed concern at the potential for the practice to promote myopic behaviour by senior management by channeling its focus on short-term fluctuations in performance, resulting in the risk of it managing the market, rather than managing

[1] *Finally, Evidence That Managing for the Long Term Pays Off*, Dominic Barton, James Manyika and Sarah Keohane Williamson
[2] *Interim Management Statements*, The Investor Relations Society

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the business."[3] Their "members prefer that companies adopt longer term horizons in reporting to shareholders" and they call "on companies to stop issuing quarterly reports and quarterly earnings guidance in favour of greater attention being given to longer-term performance and strategic issues."[4]

In 2015, modifications were made to securities law in Germany to allow all issuers to report semi-annually. Under exchange rules of the Deutsche Bourse, issuers in the Prime Standard were required to issue brief reports for Q1 and Q3. These reports are more contextual in nature and, if metrics are provided, they are unaudited.

Based on research of four indexes conducted by Deutscher Investor Relations Verband (DIRK), 43% of issuers adopted the brief report format. Over half (55%) of investors and analysts indicated that they found the change in reporting either positive or neutral while almost all (90%) indicated that they were not missing any information as a result of the change in reporting.[5] The experience in the UK and Germany provide strong support for the CSA to consider revising the mandated timeframes for reporting.

2.4. "*Eliminating overlap in regulatory requirements"*

CIRI has been a strong advocate of reducing regulatory overlap and continues to believe that a review of areas of overlap is worthwhile. CIRI, therefore, supports removing overlapping requirements without compromising the level of disclosure deemed necessary by the issuer's investors and other stakeholders. Overlapping regulatory requirements can lead to inconsistent disclosure and possible confusion among the users of such disclosure.

Consultation Question 29. *Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document?*

CIRI survey respondents strongly agreed (91%) that the MD&A, AIF and financial statements should be consolidated into one reporting document. Such a consolidation would eliminate a great deal of the redundancy that exists under current reporting requirements. In addition, it would eliminate duplication of effort at the issuer where multiple teams often gather the information required in these overlapping documents. The resulting document would be a concise, cohesive information source for the issuers' stakeholders, making it easier to find desired information.

In addition to eliminating such duplication, perhaps a more thorough review by the CSA would help to assess the value of some of the information currently requested in the AIF; information that investors and stakeholders may not find to be truly helpful with regard to their investment decisions.

2.5. "*Enhancing electronic delivery of documents*"

CIRI continues to support the concept of improved electronic delivery of documents. Issuers can achieve considerable cost savings if they can significantly reduce the volume of printed and mailed documents. The use of notice-and-access has been welcomed by reporting issuers who have been able to employ this method. The recently proposed changes to business corporations' legislation to minimize the restrictions on the use of notice-and-access for specific classes of reporting issuers (i.e. CBCA companies) will, if enacted, allow more issuers to be able to take advantage of it.

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[3] *Public Position Statement: Quarterly Reporting and Quarterly Earnings Guidance*, The Investment Association
[4] *The Investment Association Long Term Reporting Guidance*, The Investment Association, May 2017
[5] *Die Quartalsmitteilung der Zukunft*, Deutscher Investor Relations Verband (DIRK), 2016

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Consultation Question 32(a). *Since the adoption of the "notice-and–access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?*

A substantial majority (72%) of CIRI survey respondents indicated that they continue to incur significant costs (both direct and indirect) associated with printing and mailing under current securities regulations and legislation. The recently proposed changes under Bill C-25 will, if enacted, assist those CBCA companies that previously were unable to implement notice-and-access. We urge regulators and government to modify existing regulations as required in order to provide all issuers the ability to utilize notice-and-access thereby ensuring consistency across all jurisdictions and recognizing today's reality of electronic communication.

Consultation Question 32(b). *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery?*

CIRI survey respondents were divided on whether issuers should be allowed to deliver disclosure documents electronically to investors without prior notice and consent. However, CIRI survey respondents very strongly (89%) indicated that under notice-and-access, investors should be required to opt in for the delivery of paper documents as opposed to having to opt in for delivery of electronic documents.

Enhancing Share Ownership Disclosure

Establishing rules and regulations that allow issuers to focus on the long-term has long been advocated for by FCLT Global among others. The organization believes that asset managers should engage with issuers in order to create value over the long term. For this to be efficient and effective, it would be beneficial for there to be greater transparency of share ownership information so that issuers can proactively identify and engage with investors.

CIRI continues to seek ways to work with regulators to enhance issuer-shareholder engagement through improved disclosure of shareholder identification and ownership of shares of reporting issuers. CIRI believes that this issue is key to establishing a credible marketplace and is important to maintain and improve a fair and efficient Canadian capital market while protecting investors by fostering increased transparency. The value for investors that can be created through the reduction in the regulatory burden can only be enhanced by increased transparency of share ownership that generates increased communication and understanding between reporting issuers and their ultimate owners.

CIRI takes the position that good governance practices can be developed through open dialogue between reporting issuers and their shareholders. Such dialogue is essential in order for issuers to hear and understand investor issues and concerns and to address such concerns. This two-way communication can only be fully effective if a mechanism exists for issuers to identify their shareholders.

The importance of share ownership transparency through disclosure has been recognized in other global jurisdictions such as the United Kingdom and Australia. Shareholders in both these countries, which have capital markets not dissimilar to Canada, are required to make their shareholder positions known, to the benefit of all shareholders. In the UK, under corporate law, an issuer has the legal right to request disclosure of the identity of any person with an interest in their shares, which allows the issuer to identify their beneficial owners. Disclosure requests by issuers can be made at any time and are subject to penalties for non-compliance.

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In Australia, an issuer has the legal right under corporate law to obtain disclosure of their beneficial owners through the share register, which is also available for public review. If shares are held as a nominee by an intermediary on behalf of one or more beneficial owners, the issuer can request the nominee disclose the relevant interest of the underlying investors. Persons who contravene disclosure rules are liable to compensate a person for any loss or damage the person suffers because of the contravention, unless they can prove inadvertence or mistake or that they were not aware of a relevant fact or occurrence. Issuers are required to maintain a register of the resulting disclosed interests, which is open for public inspection.

CIRI is aware that capital markets are increasingly international in nature and that the global interconnectedness of markets continues to evolve and increase. The increasing mobility of capital has created a parallel need for improved harmonization and global coordination of financial market regulation. CIRI believes that such harmonization should extend to the improved disclosure of share ownership positions among Canadian shareholders and that the CSA may wish to consider what regulatory initiatives may be appropriate considering the situation in other global markets such as the UK and Australia.

The reality is, share ownership information is so important to issuers that they pay service providers to identify their shareholders. However, as a result of our disclosure rules in Canada, the data is largely flawed, always outdated and costly to procure. For some issuers, this cost is too much to bear and so there is inequality among issuers' ability to identify their shareholders.

In addition, CIRI believes that there is inequality or at best an inconsistency regarding shareholder disclosure requirements that also represents a lack of transparency in capital markets. Specifically, shareholders in Canada are not required to disclose their ownership positions until they have accumulated more than 10% of a reporting issuer's issued and outstanding shares. However, shareholders, either singly or as a group holding 5% of shares have the right to requisition a meeting of shareholders while the reporting issuer does not have the right to know the identity of these requisitioning shareholders. This seems to CIRI to represent a fundamental disconnect.

CIRI has been pleased to provide the CSA with its comments regarding its proposed options to reduce regulatory burdens in the public marketplace. Should you wish to discuss this submission further, please let me know.

Yours truly,

Yvette Lokker
President & CEO

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APPENDIX A

The Canadian Investor Relations Institute

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined

Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include: Human Resource and Corporate Governance; Audit; Membership; and Issues.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in over 200 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of investors and shareholders in capital markets outside of North America. The President and CEO of CIRI has been a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.

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BY E-MAIL July 28, 2017

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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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

We submit the following comments in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "**Consultation Paper**") published by the Canadian Securities Administrators (the "**CSA**") on April 6, 2017.

Thank you for the opportunity to comment on the Consultation Paper. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are

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submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

We have organized our comments below with reference to the specific consultation questions posed in the Consultation Paper. We have also provided additional comments related to the reduction of regulatory burden for non-investment fund reporting issuers following our responses to the consultation questions.

As a preliminary comment, we applaud this effort by the CSA to reduce the regulatory burden that Canadian securities laws may impose on existing and prospective reporting issuers. It is our view that regulatory transparency will lead to a more streamlined system for all issuers and thereby encourage capital markets activity in Canada. Any amendments to Canadian securities law, including the national and multilateral instruments and policy statements, should serve to clarify and modernize current rules in an effort to ensure that issuers are able to assess the cost of undertaking an offering and complying with Canadian securities law up front. We submit that such rules should not be subject to significant CSA Staff discretion and interpretation which effectively reduces the benefit of any transparency and predictability in Canadian capital markets.

In addition, notwithstanding the importance of investor protection, the broad availability of public capital markets is a public good. The indication in some studies that public markets and the number of IPOs are in decline is a concern and we believe that the regulators have a role to play in helping to stem or reverse this trend. Canadian regulators should also aim to ensure that Canadian capital markets remain competitive with their U.S. counterparts.

A. General Consultation Questions

1. *Of the potential options identified in Part 2 [of the Consultation Paper]:*

(a) *Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?*

(b) *Which should be prioritized and why?*

2. *Which of the issues identified in Part 2 [of the Consultation Paper] could be addressed in the short-term or medium-term?*

3. *Are there any other options that are not identified in Part 2 [of the Consultation Paper] which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.*

Based on our experience, we believe that, while all of the options identified in Part 2 of the Consultation Paper could serve to reduce regulatory burden on reporting issuers, addressing the financial statement requirements for initial public offering

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("**IPO**") prospectuses and prospectuses generally, and removing or modifying certain of the criteria to file a business acquisition report and/or include acquisition financial statements would meaningfully reduce the regulatory burden on reporting issuers. These options should be prioritized as they would make the Canadian capital markets regime more appealing to issuers considering undertaking an IPO or acquisition while still meeting and even furthering the goals and objectives that underpin their regulatory regimes. In addition, we believe that certain of the proposed options would be easier to implement than others and that those options should be quickly implemented, even if the resultant effect/benefit is incremental. These options would include eliminating overlap in regulatory requirements (2.4) and reducing disclosure requirements in annual and interim filings (2.3(b)).

In addition to those options identified in Part 2 of the Consultation Paper, we think that the regulatory burden on reporting issuers could be reduced by modernizing the rules with respect to the dissemination of information. As an example, issuers are required to publish news releases both on SEDAR and through a wire service. Issuers also generally post news releases on their own websites. In our experience, the filing of press releases in multiple locations can be time consuming and expensive for issuers and increasing the likelihood of errors, particularly given the different formatting required for various outlets. The requirement that issuers pay for and format information to conform to wire release conventions is antiquated and unnecessary. We suggest that the CSA consider a disclosure system similar to that currently used in the United States whereby information may be disclosed by any one of the following methods: a broadly distributed press release, the filing of a Form 8-K with the U.S. Securities and Exchange Commission (the "**SEC**") or a conference call, press conference or webcast with advance notice to the public.

In this regard, we also note that the guidance found in National Policy 51-201 *Disclosure Standards* ("**NP 51-201**") may no longer be reflective of current market reality, particularly as it relates to the disclosure of information. As an example, NP 51-201 states that the use of an issuer's website for the dissemination of information will not, by itself, satisfy the requirement that information be generally disclosed.[1] NP 51-201 also notes that "[i]nvestors' access to the Internet is not yet sufficiently widespread such that a Web site posting alone would be a means of dissemination 'calculated to effectively reach the marketplace'." As a second example, we note that NP 51-201's guidance regarding when information has been "generally disclosed" is also inconsistent with current technology and evolving market practice as it acknowledges that case law with respect to the amount of time required by public investors to analyze information in a press release is dated and inappropriate for modern technology. We respectfully suggest that, as a starting place, the CSA revisit NP 51-201 and reconsider the guidance provided therein.

[1] See NP 51-201, section 3.5(6).

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B. Extending the Application of Streamlined Rules to Smaller Reporting Issuers

4. *Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?*

5. *If we were to adopt a size-based distinction:*

(a) *What metric or criteria should be used and why? What threshold would be appropriate and why?*

(b) *What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?*

(c) *What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?*

(d) *How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?*

6. *If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?*

We are of the view that a size-based distinction for issuers may be useful in addition to the current exchange-based distinction, provided that the method of determining size is clear, consistent and easy to apply, providing issuers with a reasonable expectation with respect to their reporting requirements, particularly as they relate to the preparation of financial statements. We respectfully submit that anything other than a simple and easily applicable distinction may be onerous and costly to issuers. Importantly, we would suggest that any new size-based distinction be in addition to and similar to the current exchange-based distinction, so that appropriately situated TSX-listed issuers can enjoy the same benefits as TSX-V listed issuers.

We suggest that the CSA look to the United States' model as providing an example of where a size-based distinction has benefitted issuers; however, additional consideration should be given to the manner in which issuers will enter and exit a particular reporting category/classification. One difficulty of a size-based system is that issuers have to monitor their eligibility as unexpected changes to an issuer's business, including increases in revenue, changes to market cap, and market volatility, could lead to increased or different reporting obligations. If a size-based distinction is to be adopted, we recommend that consideration be given to including an appropriate transition period applicable to issuers who might potentially find themselves in a different category in the middle of a fiscal year so as to avoid issuers moving frequently between different classifications. In the alternative, we recommend that particular consideration be given to the most appropriate point in time or period to apply any size-based test threshold so as to provide issuers with

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sufficient time to switch between reporting requirements. We note that one advantage of the current exchange-based classification system is that issuers have the ability to choose which requirements they would like to abide by through selecting the exchange on which they wish to be listed.

We reiterate that any test used to categorize issuers should be transparent and based on a metric that is objective and generally consistent for all issuers. The metric should also be easily calculated by capital markets participants.

C. Reducing the Regulatory Burdens Associated with the Prospectus Rules and Offering Process

Reducing the Audited Financial Statement Requirements in an IPO Prospectus

7. *Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:*

(a) *How would this amendment assist in efficient capital raising in the public market?*

(b) *How would having less historical financial information on non-venture issuers impact investors?*

(c) *Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?*

(d) *If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?*

8. *How important is the ability to perform a three year trend analysis?*

As a preliminary matter, we suggest that the CSA undertake a cost-benefit analysis to determine whether three years of financial statements provide a meaningful material benefit to investors. Reducing the number of years required to be included in financial statements in an IPO prospectus would significantly reduce the time and cost to issuers seeking to undertake an IPO, as the longer period of financial statements required adds to the resources required by the issuer. We submit that the cost is not offset by the benefit of the additional year of disclosure.

We would also suggest that the CSA consider providing additional guidance or revising its requirements regarding the inclusion of financial statements for historic acquisitions. Form 41-101F1 requires that financial statements and interim reports include certain financial statements of any business or businesses acquired by the issuer within three years before the date of the prospectus that a reasonable investor would regard as being the “primary business” of the issuer.[2] Staff of the Ontario Securities Commission have stated that an issuer pursuing an IPO must include in its

[2] Form 41-101F1, section 32.1(1)(b).

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prospectus a three-year financial history of the business an investor is investing in, even if this financial history spans multiple legal entities over the three year period.[3]

While the term "primary business" is not defined in Canadian securities law, the CSA have provided guidance in the Companion Policy to National Instrument 41-101 *General Prospectus Requirements* ("**NI 41-101**") as to when a reasonable investor would regard the primary business of the issuer to be the acquired business thereby triggering the requirement that the acquired business' financial information be included in the financial statements in the prospectus. Issuers must consider the facts of each situation to determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business. Examples of such scenarios include a reverse takeover, a qualifying transaction for a Capital Pool Company, or an acquisition that is a "significant acquisition" at the over 100% level.[4] Despite these examples, in July 2015 Staff of the Ontario Securities Commission published guidance that the financial history of acquired businesses that are <u>in the same primary business as the issuer</u> need to be included in the three-year financial history included in an IPO prospectus, with one exception. Furthermore, there is no significance test for acquisitions that fall within the definition of an issuer under item 32.1 of Form 41-101F1 (i.e., a business acquired by an issuer where a reasonable investor reading the prospectus would regard the primary business of the issuer to be the acquired business).[5] We respectfully submit that such an interpretation of the term "primary business" is inconsistent with the policy objectives of NI 41-101, and it has been our experience that staff of certain other major Canadian securities regulators do not share the OSC's interpretation. OSC Staff's position undermines certainty as it contradicts the guidance provided in the Companion Policy which does not interpret a primary business as simply being in the same or similar business in which the issuer operates but rather a business equivalent in size to the issuer or a resulting business. Similarly, an immaterial acquisition of assets or shares in the "same primary business" as the issuer should not require the preparation of audited IFRS financial statements. From a practical perspective, issuers may not typically require target financial statements when negotiating an acquisition, particularly where the acquisition is relatively insignificant. In such cases, the cost of obtaining the target's financial statements may not be justified and the financial statements may not be relevant to the issuer as the issuer may have satisfied itself through diligence and other factors. We respectfully submit that if the issuer itself does not require the target financial statements in order to make the acquisition in the first instance, such information is unlikely to be considered material to investors.

When determining whether an acquisition is one of a "primary business", the OSC has also suggested undertaking a pre-filing. Based on our experience, however, we

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[3] OSC Staff Notice 51-725 *Corporate Finance Branch 2014-2015 Annual Report* (July 14, 2015) ("**Staff Notice 51-725**"), page 13.

[4] Companion Policy to NI 41-101, section 5.3(1).

[5] Staff Notice 51-725, page 14. The only exception to the significance threshold is if the business is over 100% when compared to the primary business of the issuer, in which case, it is important for investors to have the financial history of this business even though it is not the same as that of the primary business of the issuer.

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respectively submit that the pre-filing process does not always provide certainty or a timely process for issuers. Importantly, the pre-filing process can be costly and result in transaction delays as it often results in issuers being required to seek exemptive relief. While we understand that the CSA do not consider time or money to be acceptable barriers to compliance with the financial statement requirements, we respectfully submit that that this is inconsistent with the principles and purposes of Canadian securities laws, particularly as it does not foster fair and efficient capital markets. Costs and benefits should always be considered, particularly as there can be a significant financial burden for issuers to comply with these financial statement requirements. We suggest that a cost-benefit analysis be undertaken to determine whether the benefits of primary business financial statements outweigh the burden on the issuer, particularly where such financial statements are backward looking and do not reflect the financial results of the combined company.

Another outcome of interpreting "primary business" in the manner described by the OSC above is that, unlike significant acquisition financial statements and pro forma financial statements included in a BAR, issuers are prohibited from using US GAAP to prepare the primary business financial statements. The result is that a relatively insignificant portion of a business could require an issuer to undertake the very expensive task of translating pre-existing financial statements into IFRS, assuming such financial statements were even available in the first instance. In addition to financial costs related to the translation of financial statements from US GAAP to IFRS, this requirement could also result in divergent disclosure for the same business where a vendor had previously publicly filed financial statements for the acquired business in US GAAP.

In certain instances we would also suggest that alternative disclosure may be a better remedy than the shortening of the financial statement requirements. For example, in the case of REIT issuers, a financial forecast may provide more relevant information than historical financial statements given the nature of a REIT's business.

We also suggest that the CSA consider adopting a process for the confidential filing of prospectuses. We note that this would be consistent with policy changes adopted by the SEC on June 29, 2017 which permit all issuers to confidentially submit draft registration statements for review by the SEC staff in certain circumstances. Prior to this policy change, emerging growth companies under the *Jumpstart Our Business Startups Act of 2012* (the "**JOBS Act**") were eligible to submit draft IPO registration statements on a confidential basis. Notably, Canadian issuers who may file registration statements with the SEC under the multijurisdictional disclosure system are permitted to use the new confidential submission process. A confidential submission process will permit issuers to begin the CSA's review process without publicly disclosing confidential financial and strategic information and would allow issuers to withdraw from the IPO process without making a public filing. As such, a confidential filing process would reduce some of the risk associated with undertaking an IPO and may encourage issuers to enter the public market in Canada.

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Streamlining Other Prospectus Requirements

9. *Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?*

10. *Should other prospectus disclosure requirements be removed or modified, and why?*

As to prospectus disclosure requirements, we respectfully submit that any line items in the form of prospectus (Form 41-101F1, Form 44-101F1, etc.) that are third party facts should not be required to be included in the prospectus. For example, Item 13.2(1) of Form 41-101F1 requires that issuers that are traded or quoted on a Canadian marketplace identify the marketplace and the ranges and volumes traded or quoted on the marketplace on which the greatest volume of trading or quotation for the securities generally occurs. This information is publicly available and can generally be obtained from the applicable marketplace's website without cost. As such, the issuer should not be required to include the information in the prospectus.

We would also suggest that the CSA consider revisions to its rules and guidance related to promoters. Persons who are promoters of an issuer within the meaning of Canadian Securities Laws are required, among other things, to sign an issuer's prospectus in such capacity.[6] Furthermore, the CSA have the discretionary authority to require any promoter of the issuer within the two preceding years of any prospectus filed by the issuer to sign any such prospectuses. As a consequence, those persons assume joint and several liability for prospectus misrepresentations up to a maximum amount equal to the gross proceeds of the offering. In our experience, difficulty arises for issuers in determining whether a founder or another party will be considered by the CSA to be a promoter, particularly in respect of the meaning of "founding, organizing or substantially reorganizing the business of an issuer" in the context of an IPO. Limited guidance has been provided by the CSA in this regard.[7]

It has been our experience in connection with various prospectus offerings that CSA Staff's interpretation of the definition of "promoter" is broader than what is provided for in the legislation, essentially taking the position that most IPOs must have a promoter. In addition, we have experienced instances where CSA Staff have asserted that a promoter will remain a promoter until some intervening event effects the relationship between the promoter and the issuer, including changes in share ownership, board representation and involvement in the management of the issuer. Such facts and circumstances ignore the reference to the "two preceding years" found in securities legislation and may lead to an individual being considered a promoter of an issuer for an indefinite period of time. We respectfully submit that, if Staff's interpretation is inconsistent with or contrary to the current legislation, the

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[6] See e.g., section 58 of the *Securities Act* (Ontario).

[7] See e.g., section 2.7 of the Companion Policy to NI 41-101 in respect of promoters of issuers of asset-backed securities and OSC Staff Notice 45-702 *Frequently Asked Questions Ontario Securities Commission Rule 45-501 – Exempt Distributions* which also provides some guidance as to who is considered to be a promoter for the purpose of paragraph 2.1(1)(b) of Rule 45-501.

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legislation be amended or, at the very least, a clear position on this issue be enumerated in a Staff Notice or other policy document.

Streamlining Public Offerings for Reporting Issuers

Short Form Prospectus Offering System

11. *Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.*

12. *Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.*

We respectfully submit that consideration be given not only to revising and/or removing certain of the short form prospectus disclosure requirements, but to the capital raising and short form prospectus offering system in its entirety. Based on our experience, we submit that there are a number of requirements that may be superfluous to raising capital in Canada that are not specific disclosure obligations. For example, we question whether the notice of intention to be qualified to file a short form prospectus prescribed by section 2.8 of NI 44-101 serves a useful purpose. While not an overly burdensome filing, it can at times represent a 10 business day delay in accessing Canadian capital markets. Provided that a reporting issuer has a current AIF and is in compliance with its continuous disclosure obligations, such issuer should be permitted to file a short form prospectus. Another example of a procedural requirement which may prevent quick access to Canadian capital markets is the requirement that the issuer file a personal information form (a "**PIF**") for each director, officer and promoter of the issuer at the same time as a preliminary prospectus is filed. Directors and officers will often not have a current PIF on file with the OSC or TSX. As a lengthy questionnaire, the PIF is sometimes difficult to complete, particularly on a short timeline (i.e., in a bought deal context). We suggest that there be alternate ways to obtain PIF information and that the required information could be condensed to only that which is absolutely necessary. For example, all new directors and officers could be required to file a PIF with the securities regulator at the time of joining the board/management team of the issuer. We would also suggest that the number of years for which a PIF remains valid be extended from three years to 5/10 years.

Consideration should also be given to the prospectus receipting process and whether it can be streamlined or automated. Based on our experience, issuers may have difficulty filing a prospectus and all related documents prior to 12:00 p.m., often because of translation requirements or as a result of the issuer being located in a different time zone. There may as a result be challenges to obtaining a receipt on a same day basis for the prospectus.

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Finally, we respectfully submit that the current two-business day right of withdrawal provided to investors under a prospectus offering is archaic and inconsistent with a number of different types of offerings, including at-the-market offerings and cross-border offerings. As settlement times are generally being reduced for secondary market trades, we submit that this may be an appropriate time to consider reducing or removing the withdrawal period for treasury offerings. In particular, we believe that the two-business day right of withdrawal creates undue uncertainty for issuers and underwriters as the two-business day period can be difficult to calculate, and in some instances, may give rise to regulatory arbitrage. We further note that this right of withdrawal is rarely, if ever, used.

With regard to specific disclosure requirements that should be considered redundant, and as noted in our response to questions 9 and 10 above, we respectfully submit that line items in the prospectus requirements that are readily attainable facts that are publicly available should not be required to be included in the prospectus.

Facilitating At-The-Market (ATM) Offerings

14. *What rule amendments or other measures could be adopted to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?*

15. *Which elements of the exemptive relief granted for ATM offering should be codified in securities legislation to further facilitate such offerings?*

Based on our experience, we respectfully submit that there are a number of amendments to the ATM offering rules that could be adopted in order to streamline ATM offerings in Canada. None of these proposed amendments should compromise investor protection as they would not affect the statutory liability of the issuer or the agent for a misrepresentation in a prospectus. Furthermore, as exemptive relief orders for ATM programs are generally issued as a matter of course, we do not believe that codifying the exemptive relief would cause any harm to Canadian capital markets. When compared to the United States, Canadian ATM offering rules are generally more restrictive. Particularly as the SEC eliminated certain restrictions as far back as 2005 that had previously governed ATM offerings in the United States, including, for example the requirement that the number of securities registered for ATM offerings could not exceed 10% of the existing aggregate market value of the issuer's outstanding voting stock held by non-affiliates. Currently, there is no limit on the number of securities that can be registered on the shelf registration statement for an ATM offering in the United States. However, Canadian ATM rules still impose a 10% cap making cross-border ATM offerings difficult. We suggest that the CSA consider whether this 10% cap remains necessary in light of the changes to the system and experience in the United States.

We also suggest that, consistent with the exemptive relief typically granted, the following amendments to the ATM rules be adopted:

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- Remove the requirement to physically deliver a prospectus to a purchaser in an ATM offering, as purchasers on the TSX (or other marketplaces) are unknown;

- Modify the statement in a prospectus supplement describing statutory rights, as ATM purchasers have (i) no two day right of withdrawal from purchase after delivery of prospectus, and (ii) no right of action for rescission or damages against the agent for non-delivery of prospectus (in each case, given no actual delivery);

- Modify the forms of certificates for the issuer and agent in the prospectus supplement (and/or the base shelf prospectus for the issuer) to refer to disclosure "as of the date of a particular distribution of securities"; and

- Modify the legends in the base shelf prospectus for an ATM to refer to the exemption from the delivery requirement.

We submit that there should not be daily limits on the number of securities that may be sold on a marketplace in Canada and that issuers should not be required to file duplicative reports disclosing the number, average price, proceeds and commissions for ATM sales in a particular month. Historically, exemptive relief has required that the issuer file a monthly report on SEDAR to this effect and include similar information in annual and interim financial statements and MD&A. In an effort to simplify ATM offerings, reporting of ATM sales should only be required in a single disclosure document.

Other Potential Areas

16. *Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by (i) Canadian issuers and (ii) foreign issuers?*

17. *As noted in Appendix B [to the Consultation Paper], in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?*

With respect to pre-marketing and marketing rules, we submit that the rules governing "standard term sheets" and "marketing materials" are too strict and difficult to comply with, especially where more complex products are being offered (i.e., the three line rule for standard term sheets does not facilitate innovation in Canadian capital markets). We also note the requirement that "standard term sheets" and "marketing materials" only include information concerning the issuer, the securities or the offering that is disclosed in, or derived from, the prospectus. We respectfully submit that a materiality standard should be included in this

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requirement to provide that only material information need be disclosed in, or derived from, the prospectus.

In connection with a shelf prospectus offering, we respectfully submit that issuers should not have to file marketing materials until the filing of their prospectus supplement. Requiring issuers to file marketing materials prior to filing a prospectus supplement denies the issuer the ability to confidentially solicit interest before a deal is certain.

We also submit that the "testing the waters" exemption for IPO issuers should be amended. As is the case under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Market* ("**MI 51-105**"), the regulators have clarified that having only listed debt will not result in an issuer being an "OTC issuer", which was required due to the reference to an issuer having a FINRA ticker symbol. Such clarifications and other amendments made under blanket orders addressing issues raised by MI 51-105 need to also be reflected in this definition.

D. Reducing Ongoing Disclosure Requirements

Removing or Modifying the Criteria to File a BAR

18. *Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?*

19. *Are there certain BAR requirements that are more onerous or problematic than others?*

20. *If the BAR provides relevant and timely information to investors:*

(a) *Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?*

(b) *To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?*

(c) *What alternative tests would be most relevant for a particular industry and why?*

(d) *Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?*

Based upon our experience, we submit that the BAR requirement can often limit an issuer's ability to access Canadian capital markets to raise acquisition financing. With this in mind, we support an increase to the significance test thresholds for non-venture issuers to 50%, particularly given the 2015 increase to the thresholds for venture issuers to 100%.

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We respectfully suggest that the BAR requirements be amended to provide an exemption from BAR level financial statement disclosure where historical financial statements for the acquired business or portion thereof are not reasonably available. In such circumstances, issuers should be permitted to omit historical financial information about an acquired business without seeking relief provided that the business being acquired (or portion thereof) is under a particular threshold or alternative disclosure is provided.

We support the CSA reconsidering the current significance tests, in particular the "profit or loss test", which can be difficult to apply. Notably, the application of the profit or loss test can sometimes lead to confusing results when using the absolute value of the loss from continuing operations of the target as required by section 8.3(7) of NI 51-102. Based on our experience, there is some question as to how this rule should be applied. Under section 8.3(7) the question is whether absolute value should be read to mean that a loss of $10 million, for example, is a positive $10 million for the purpose of the calculation or if it should mean zero. While it likely makes sense to use both absolute numbers where an acquirer and a target both suffered a loss, it may otherwise make more sense to use zero. However, unlike in other sections of NI 51-102[8], this section does not permit the use of zero and as such, the application may lead to some confusing results.

We also respectfully suggest that the CSA provide additional clarity as to what is considered to be a "business" for the purpose of the significant acquisition tests. It is not clear to us that the acquisition of assets should constitute a business, thereby requiring the issuer to create financial statements that have not previously been prepared or seek relief from the BAR requirements.

Finally, we note that is some instances the CSA have imposed a "super significance test" on issuers which has resulted in additional financial statement requirements. This "super significance test" is not currently found in NI 51-102 and its use results in uncertainty for issuers. We respectfully submit that to the extent members of the CSA have unwritten significance tests such tests either be formalized or abandoned.

Reducing Disclosure Requirements in Annual and Interim Filings

21. *Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?*

22. *Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.*

[8] See e.g., section 8.3(1) of NI 51-102.

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We respectfully submit that issuers should not be required to provide the same disclosure in two documents. As long as an issuer's interim filings clearly identify the annual filing (or the portions thereof) which an investor should review, removal of duplicative requirements would not deprive and actually facilitate an investor's access to relevant information.

Any clarification of the current rules is generally appreciated. As noted above, we are of the view that an increase in certainty and predictability for issuers will have a positive effect of Canadian capital markets.

Permitting Semi-Annual Reporting

23. *What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?*

24. *Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?*

25. *Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?*

26. *Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights*?

We submit that issuers should be required to report semi-annually with the ability to provide quarterly financial statements, filings, updates or highlights as desired. This would promote less short-termism in issuers' filings. Issuers would still be required to disclose material changes in a timely manner.

E. Eliminating Overlap in Regulatory Requirements

27. *Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?*

28. *Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?*

29. *Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?*

30. *Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear and understandable for investors.*

As noted above, we support the removal of duplicative information between the various NI 51-102 disclosure documents. We believe that the consolidation of the MD&A, AIF and financial statements into one document would be an efficient way to achieve this goal and would be more reader-friendly for investors. The current

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requirement to issue annual and quarterly MD&A and financial statements already imposes a meaningful burden on issuers that the AIF requirement exacerbates. One consolidated document would also serve to assist issuers with compliance and consistent disclosure. Alternatively, merging the AIF into an issuer's annual MD&A and removing duplicative content could also reduce regulatory burden for issuers. Under this approach, any current MD&A disclosure that is already included in the issuers financial statements should be removed. Potential examples of duplicative disclosure include risk factor disclosure and details regarding share capital, legal proceedings, credit facilities and dividends.

F. Enhancing Electronic Delivery of Documents

31. *Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?*

32. *The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential change to this model:*

(a) *Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?*

(b) *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?*

(c) *Would changes to the "notice-and-access" model described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?*

(d) *Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?*

33. *Are there other ways electronic delivery of documents could be further enhanced through securities legislation?*

Based on our experience, issuers and underwriters/dealers generally want to be able to deliver prospectuses and other disclosure documents electronically by email. We generally support the electronic delivery of prospectus and other disclosure documents and submit that deemed delivery will facilitate the use of electronic methods of delivery.

We also submit that it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial

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statements and MD&A electronically available without prior consent but with a short notice in the case of special meetings, directors' circulars and take-over bid circulars. We support electronic delivery of all continuous disclosure documents with an annual notice to investors indicating that documents will be available on SEDAR unless paper copies are requested. We note that the electronic delivery of disclosure documents is beneficial to the environment and particularly timely given the increased focus on environmental related disclosure and governance in Canadian capital markets.

G. Additional Comments

In addition to our responses to the consultation questions above, we respectfully submit the following:

- As noted above, the guidance provided in NP 51-201 regarding the meaning of "generally disclosed" is inconsistent with current market reality. We suggest that the CSA consider eliminating duplicative dissemination of information. For example, in the case of material change reports ("MCRs"), the disclosure of a material change can be disseminated by the filing of an MCR or the filing of a press release. Both methods should not be required.

- We also suggest that the list of "designated foreign jurisdictions" included in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("**NI 71-102**") be expanded so that a greater number of issuers can take advantage of the alternative disclosure requirements found in NI 71-102. The limited number of jurisdictions named therein risks excluding countries that have the same or substantially similar requirements for prospectuses or similar offering or disclosure documents as those countries that are listed. For example, in the European Economic Area (being all 28 members of the European Union, Norway, Lichtenstein and Iceland) (the "**EEA**"), the requirements for prospectus approval and the contents of prospectuses have been harmonized under Directive 2003/71/EC, as amended. However, only a limited number of those EEA states are considered to be "designated foreign jurisdictions". As well, there is a mutual recognition system in place across the EEA whereby prospectuses that are approved by regulators in any EEA country can be "passported" to any other EEA country for the purpose of making offers of securities in those countries. We respectfully submit that the limited list of European countries is outdated and created without a clear set of criteria, and does not take into account either the harmonization or the mutual recognition with respect to prospectuses in Europe.

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Thank you for the opportunity to comment on the Consultation Paper. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Laura Levine,
on my own behalf and on behalf of

Robert Carelli
Keith R. Chatwin
Ramandeep K. Grewal
Jeff Hershenfield
Timothy McCormick
Simon A. Romano
Mihkel E. Voore

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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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
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Dear CSA members,

Thank you for this opportunity to comment on how Canada can reduce the costs of capital-raising for venture-stage issuers, and strengthen its status as the best place in the world to raise mine equity finance. The Prospectors & Developers Association of Canada (PDAC) has long been an advocate for reforms to the regulations governing capital-raising in Canada, given the important role capital markets play in financing mineral exploration in Canada and around the world.

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PDAC is the leading voice of Canada's mineral exploration and development community. With over 8,000 members around the world, operating in all sectors of the mining industry, the PDAC's mission is to promote a globally-responsible, vibrant and sustainable minerals industry. One of our top priorities is to facilitate access to capital for our members, who have struggled through a five-year capital crisis, particularly with respect to companies undertaking early-stage exploration. This is why PDAC advocates for regulatory reforms that will:

1. Facilitate capital-raising from a broader base of investors
2. Reduce the costs of capital-raising and regulatory compliance
3. Strengthen investor confidence in Canadian capital markets, through improved enforcement and criminal prosecution of fraud

Regulators and exchanges in Canada cannot take for granted that Canada will forever remain the predominant source of capital for mining and exploration companies. Accordingly, PDAC appreciates any initiatives designed to simplify the process of raising capital in Canada and to facilitate investor protection. In particular, PDAC welcomes initiatives that help Canada strengthen its niche within international financial markets as a leader in facilitating access to capital for small-cap, venture-stage, pre-revenue companies involved in the high-risk, high-reward business of mineral exploration.

There are a number of interesting proposals contained within 51-404. In response, PDAC has generated a number of recommendations that are summarized in Annex A, and described in detail in Annex B.

I would like to draw your attention to three recommendations. The first relates to one of the primary barriers companies face when attempting to use a short-form prospectus, which requires the filing of an Annual Information Form and also a current technical report for each material property. This requirement, which is rooted in NI 43-101, leads many juniors to either issue securities by way of private placement (and often pay higher sales commissions and include warrants or other sweeteners), or by way of a (more expensive and time-consuming) long form prospectus.

PDAC is proposing that the CSA modify NI 43-101 requirements so that a current technical report would only be required if the new disclosure (whether set out in a long form prospectus, annual information form (AIF) or other disclosure document), discloses for the first time:

- mineral resources, mineral reserves or the results of a preliminary economic assessment on a material property that constitutes a material change in relation to the issuer, or
- a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

This change would allow exploration-stage mining issuers to participate in the short form prospectus system (by filing an AIF), or file a long form prospectus, without incurring the expense and delay of obtaining an updated technical report containing information that does not constitute a material change in the affairs of the issuer.

The second major recommendation to which I would like to draw your attention is related to the barriers companies face in effecting an access-to-market (ATM) offering. These barriers (explained

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further in Annex B) make the implementation of the ATM system in Canada almost impractical, and as a result many dual-listed issuers tend to do their ATM offerings only in the U.S. We are proposing that the CSA codify the following elements of exemptive relief for ATM offerings in securities legislation:

- Provided that the issuer publicly discloses that it has engaged a dealer to effect an ATM offering, and sales pursuant to the ATM offering meet the requirements currently specified in NI 44-102 for ATM offerings (including the requirement that the securities sold under the ATM offering do not exceed 10% of the aggregate market value of the issuer's outstanding securities), the issuer and the selling agent are exempt from the Prospectus Delivery Requirement.

- Provided that the issuer files on a timely basis information concerning the number and average price of securities distributed pursuant to the ATM (including information concerning gross proceeds, commissions and net proceeds), and revised the wording of the issuer's and underwriter's certificate to state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering, the Prospectus Delivery Requirement and the Certification Requirement do not apply to an ATM offering, and a purchaser shall have no right of withdrawal by reason of the non-delivery of the prospectus.

Finally, you asked which types of issuers should be allowed to participate in a 'streamlined' (i.e. venture-friendly) regulatory regime. In our view, participation should be restricted to issuers that do not have material revenue, unless the market capitalization of such an issuer exceeds $250 million.

PDAC is encouraged by the release of this paper and welcomes the opportunity to comment. We hope our ideas are helpful and we would welcome the opportunity to engage in further dialogue, either formally or informally.

If you have any questions about, or comments on, the ideas outlined below, please don't hesitate to contact me.

Best regards,

Andrew Cheatle
Executive Director, PDAC

Cc: Michael Fowler, Chair, PDAC Securities Committee
Mark Wheeler (BLG), Member, PDAC Securities Committee

This submission was prepared by Jim Borland and Mark Wheeler, with the help of Sandy Hershaw, James McVicar, Catherine Wade, Ran Maoz and Nadim Kara.

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ANNEX A
Overview of PDAC recommendations

*Recommendation #1 (*as outlined in responses to question 1a and 10 below)

Modify NI 43-101 requirements so that a current technical report would only be required if the new disclosure (whether set out in a long form prospectus, annual information form (AIF) or other disclosure document), discloses for the first time:

- mineral resources, mineral reserves or the results of a preliminary economic assessment on a material property that constitutes a material change in relation to the issuer, or
- a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

Recommendation #2 (as outlined in response to questions 14 and 15 below)

Codify the following elements of exemptive relief for ATM offerings in securities legislation:

- Exempt the issuer and the selling agent from the Prospectus Delivery Requirement, provided that the issuer publicly discloses that it has engaged a dealer to effect an ATM offering, and sales pursuant to the ATM offering meet the requirements currently specified in NI 44-102 for ATM offerings (including the requirement that the securities sold under the ATM offering do not exceed 10% of the aggregate market value of the issuer's outstanding securities)

- Exempt ATM offerings from the Prospectus Delivery Requirement and the Certification Requirement, and stipulate that a purchaser shall have no right of withdrawal by reason of the non-delivery of the prospectus, provided that the issuer:
  - Files on a timely basis information concerning the number and average price of securities distributed pursuant to the ATM (including information concerning gross proceeds, commissions and net proceeds), and
  - Has revised the wording of the issuer's and underwriter's certificate to state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering

Recommendation #3 (as outlined in response to question 5a below)

Participation in a 'streamlined' (i.e. venture-friendly) regulatory regime should be restricted to issuers that do not have material revenue, unless the market capitalization of such an issuer exceeds $250 million.

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Recommendation #4 (as outlined in response to question 7 below)

Allow venture issuers to provide two years of audited financial statements, as opposed to three.

Recommendation #5 (as outlined in response to question 9 below)

Auditor reviews of interim financial statements only be required for an IPO prospectus, and not for subsequent prospectus filings.

Recommendation #6 (as outlined in response to question 13 below)

An alternative model for an abbreviated form of prospectus should permit (but not necessarily require) the incorporation by reference of documents which have previously been filed by the issuer on SEDAR, including financial statements, material change reports and information contained in the summary of a technical report filed under NI 43-101.

Recommendation #7 (as outlined in responses to questions in section 2.5 below)

Update NP 11-201 and NI 54-101 to allow the utilization of the latest cloud based data and document management strategies and technologies.

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PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

ANNEX B
Detailed response

SECTION 1

GENERAL DISCUSSION QUESTIONS

1. Of the potential options identified in Part 2:

(a) *Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?*

All potential options identified in Part 2 offer opportunities to reduce the regulatory burden, and we give our priorities below. In addition, one change that would have a particularly meaningful, beneficial impact for mineral exploration companies would be a modification to the requirement in National Instrument 43-101 ("NI 43-101") to file a current technical report in support of specified public disclosure.

PDAC is proposing that, once a technical report has been filed by an issuer, a new technical report would only be required if the new disclosure (whether set out in a long form prospectus, annual information form (AIF) or other disclosure document), discloses for the first time:

- mineral resources, mineral reserves or the results of a preliminary economic assessment on a material property that constitutes a material change in relation to the issuer, or
- a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

This change would allow exploration-stage mining issuers to participate in the short form prospectus system (by filing an AIF) or file a long form prospectus without incurring the expense and delay of obtaining an updated technical report containing information that does not constitute a material change in the affairs of the issuer.

(b) *Which should be prioritized and why?*

Certain questions under Section 2.2 offer the potential for the greatest meaningful impact for issuers in the mineral exploration sector because relatively minor changes could open opportunities for smaller issuers to access capital. In particular, Questions 10, 11, 12 and 14 raise issues that would have a

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meaningful impact on smaller issuers by making, in practical terms, short form prospectus and ATM offerings available to them.

Section 2.1 (a size-based distinction) is also a high priority because it is fundamental to other changes. Affirmation of a size-based distinction will not, by itself, reduce the regulatory burden but is necessary to maximize the benefits of other potential options outlined in the discussion paper. A size-based distinction is already accepted in Canadian securities regulations (and in the U.S.), so adjustments to reflect evolving changes in capital markets and to better define the distinction should be relatively easy to achieve.

Section 2.5, enhancing the electronic delivery of documents, also provides opportunities for meaningful improvement. In fact, options outlined in this section are essential simply to keep up with current business practices and technological advances. Section 2.4 also offers options that would be beneficial for our sector. We have outlined some changes we feel would be helpful and achievable but, like section 2.5, believe this is an area for continuous review and updating in response to evolving capital markets.

Section 2.3 also offers some options that would reduce the regulatory burden and would likely be easy to achieve. These changes are welcome but are likely to have less impact than those in Section 2.2.

While we have set out below a relatively simple amendment to NI 43-101, we suggest that it would also be appropriate for the CSA to conduct a comprehensive review and analysis of the requirements of NI 43-101, with a view to reflecting current best practices and eliminating burdensome requirements which do not provide meaningful information or protection to investors.

2. **Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?**
    - Modifying NI 43-101 as outlined in our response to 1(a)
    - Determining the size-based metrics to determine which issuers should be subject to the reduced regulatory burden.

3. **Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.**

    Modifying NI 43-101 as suggested in our response to Question 1(a) above, and as outlined in more detail in our response to Question 10 below, would have a significant impact on the regulatory burden on reporting issuers while preserving investor protection.

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2.1 EXTENDING THE APPLICATION OF STREAMLINED RULES TO SMALLER REPORTING ISSUERS

CONSULTATION QUESTIONS

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

Yes, a size-based distinction between categories of reporting issuers would be preferable to the current distinction based on exchange listing. Given the variety of exchanges and alternative trading platforms that are now available to reporting issuers, exchange based listing is no longer appropriate, and in some cases, is irrelevant.

Nonetheless, it continues to be important to distinguish companies (currently considered venture issuers) which are subject to reduced continuous disclosure requirements. They may, indeed, be characterized by size; i.e., smaller issuers.
It would be unwise, however, to characterize all smaller issuers as simply at an early stage of development. Many companies – particularly innovative, discovery-oriented companies in a variety of sectors – prefer to develop assets and sell them for sustaining capital and share-price appreciation with no desire or intention to generate operating revenue.

If we were to adopt a size-based distinction:

(a) What metric or criteria should be used and why? What threshold would be appropriate and why?

We suggest that the key metric for determining which issuers should be subject to reduced reporting requirements be 'revenue from operations'. issuers which do not have material revenue should be allowed to satisfy the reduced requirements currently applicable to venture issuers, unless the market capitalization of such an issuer exceeds $250 million, in which case it would be required to satisfy the usual (full) requirements.

(b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

To avoid confusion with respect to reporting issuers having to report under different regimes from year to year, companies operating within the 'streamlined' regime could be asked to show three years of metrics indicating that the company would be capable of operating in the more onerous regulatory regime on an extended basis.

Companies eligible for the streamlined regulatory regime should not be automatically graduated to a more onerous one.

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(c) *What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?*

Venture issuers, regardless of how they are defined in the future, should clearly disclose their status on all their continuous disclosure documents and web sites. A TSX Venture Exchange listing ostensibly does the same thing, but as noted in 4, an exchange-listing distinction is no longer appropriate.

This self-identification should be succinct, with prescribed wording in order to be manageable. The reporting issuer's disclosure regime should also be listed on its SEDAR profile. An explanation of the applicable reporting regime should be posted on SEDAR and on CSA member websites for all investors to review. In addition, where a reporting issuer posts its disclosure documents on its website, the reporting issuer should have a link on its website to the explanation of the applicable reporting requirements. This would ensure that all investors are receiving the same information with respect to the applicable reporting requirements when they are reviewing any disclosure documents of a reporting issuer.

(d) *How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?*

The distinctions between the reporting requirements should be clearly set out in plain language on SEDAR and on CSA member web sites. Reporting issuers could also be listed on SEDAR by disclosure category, which would then allow investors to compare companies based on the same disclosure requirements and metrics.

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

We should not move beyond our current two-track system. Creating a third track comprised of non-venture issuers using venture issuer disclosure standards would only add confusion to the capital markets. Issuers should be grouped by the disclosure standard under which they are held accountable. CSA member web sites and SEDAR should provide adequate explanations of those standards so that investors will be able to understand the differences.

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PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

2.2 REDUCING THE REGULATORY BURDENS ASSOCIATED WITH THE PROSPECTUS RULES AND OFFERING PROCESS

(A) REDUCING THE AUDITED FINANCIAL STATEMENT REQUIREMENTS IN AN IPO PROSPECTUS

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers?

Yes, particularly for issuers that do not yet generate operating revenue, or that have been generating operating revenues for less than two years.

If so:

(a) How would this amendment assist in efficient capital raising in the public market?

For issuers that have been generating operating revenues for less than two financial years, providing audited financial statements for more than two years would provide little useful information to investors. For such issuers, requiring a third year of audited financial statements adds to the cost of going public without necessarily providing valuable information to investors.
If an issuer has more than two years of operating revenue, it may elect to include a third year of audited financial statements in a prospectus.

(b) How would having less historical financial information on non-venture issuers impact investors?

For most early stage issuers, having two years of historical audited financial statements rather than three years would have little or no impact on investors. For those issuers which, at the time of their IPO, have more than two years of relevant operating history, the issuer may voluntarily provide, or their underwriter might require, that more historical financial information be provided.

(c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?

Yes. For issuers that have not generated normal operating revenue prior to the time of their IPO, one full year of audited financial statements would in most cases be sufficient. In the mining sector historical financial information is of relatively little value for exploration and development stage companies, other than to establish 'burn rate' (the rate at which cash is being spent). The 'burn rate' may be materially different after the issuer becomes public. In addition, past expenditures on exploration and development may not be indicative of current market value or of future expenditures.

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On the other hand, for mining issuers that have been in production for several years, the existing requirement of three years' historical information is appropriate.

8. **How important is the ability to perform a three year trend analysis.**

The importance of a three year trend analysis is highly dependent on the nature of the issuer's business and its stage of development. A three year trend analysis may be useful for producing companies, to help with identifying trends in operating costs (although not for revenues, as mining revenues are generally dependant on commodity prices, which are usually beyond the control of an issuer). For pre-production issuers, the three year analysis is not important.

(B) STREAMLINING OTHER PROSPECTUS REQUIREMENTS

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

No. Auditor review of interim financial statements should only be required for an IPO prospectus, and not for subsequent prospectus filings. The requirement for auditor review of interim financial statements inhibits quick access to the short form prospectus system. Issuers that don't routinely have their interim financial statements reviewed by their auditors, but are considering filing a short form prospectus, have to plan ahead (and perhaps signal to the market their intention to file a prospectus).

10. Should other prospectus disclosure requirements be removed or modified, and why?

In National Instrument 43-101, the requirement to file a current technical report in support of a preliminary long form prospectus, an annual information form and other base disclosure documents specified in subsection 4.2(1) should be modified to align with the requirement for a preliminary short form prospectus.

Specifically, once a technical report has been filed in respect of a material property, a new technical report should only be required in support of the disclosure document if the disclosure document discloses for the first time (i) mineral resources, mineral reserves or the results of a preliminary economic assessment on the property that constitute a material change in relation to the issuer, or (ii) a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

This change would allow exploration stage mining issuers to participate in the short form prospectus system (by filing an AIF) or file a long form prospectus, without incurring the expense and delay of obtaining an updated technical report with information which does not constitute a material change in the affairs of the issuer.

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(C) STREAMLING PUBLIC OFFERINGS FOR REPORTING ISSUERS

(i) Short form prospectus offering system

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

The system is not achieving the appropriate balance.

The current system works reasonably well for larger issuers that file an AIF. Having done that, they can file a short form prospectus reasonably quickly and efficiently. For issuers that wish to be in a position to file a prospectus very quickly, the short form base shelf prospectus procedure is available.

For smaller issuers, the current system does not work well. For junior mining companies with multiple properties, the time and expense required to file a current technical report for each material property makes it difficult for them to file an AIF. If they don't file an AIF, they can't participate in the short form prospectus system. They then have to either issue securities by way of private placement (and usually pay higher sales commissions and include warrants or other sweeteners), or file a long form prospectus, which requires a current technical report (as of the date of filing) for each material property, and takes much longer (increasing the risk of missing a financing window).

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

Yes. It would be desirable for the CSA to eliminate the requirement, for junior mining companies, that a current technical report be filed (or already be on file) for each material property at the time an AIF is filed. As noted above in the response to question 10, this could be accomplished by modifying the provisions of NI 43-101 so that an updated technical report need only be filed in support of an AIF if the AIF discloses for the first time (i) mineral resources mineral reserves or the results of a preliminary economic assessment on the property that constitute a material change in relation to the issuer, or (ii) a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

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(ii) <u>Possible alternative prospectus model</u>

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?

The existing long form prospectus model was developed prior to the internet age, when it was difficult for investors to obtain previously filed disclosure material. As a result, the long form prospectus was required to contain all material information in a single document. Today, public disclosure documents are readily available to investors on SEDAR and issuers' websites.
An alternative model for an abbreviated form of prospectus should permit (but not necessarily require) the incorporation by reference of documents which have previously been filed by the issuer on SEDAR, including financial statements, material change reports and information contained in the summary of a technical report filed under NI 43-101.

(b) What types of investor protections should be included under such a model (for example, rights of rescission)?

We propose that the types of investor protections currently applicable to long form prospectuses and short form prospectus be included in the model for an abbreviated form of prospectus.

(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Yes. In practice, larger issuers will likely continue to file an AIF and use the short form prospectus regime, or the base shelf prospectus system, in order to be able to file and clear a prospectus quickly. However, issuers that do not file an AIF should be able to file an abbreviated form of prospectus which, by incorporating previously disclosed information by reference, provides all material information, but without unnecessary duplication.

(iii) <u>Facilitating at-the-market (ATM) offerings</u>

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

We note that under existing securities legislation, ATM offerings may only be effected under the base shelf procedures set out in NI 44-102, since only NI 44-102 provides an

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exception to the requirement in section 7.2 of NI 41-101 that prospectus offerings must be at a fixed price. We suggest that securities legislation be amended to permit ATM offerings by way of short form and long form prospectuses, in order that a broader range of issuers may use this distribution method.

As noted in the Discussion Paper, there are provisions in existing securities legislation which make it impractical to effect an ATM offering in Canada (even under the base shelf procedures) without first obtaining exemptive relief.

Specifically, the following requirements of existing securities legislation applicable to prospectus offerings are incompatible with an ATM offering:

- The requirement to deliver to the purchaser of a security distributed pursuant to a prospectus a copy of the latest prospectus and any amendment to the prospectus (the "Prospectus Delivery Requirement"); since distributions under an ATM are made through a stock exchange, the identity of the purchaser is unknown to the selling dealer, such that delivery of a prospectus is impossible;

- The requirement that the issuer's and underwriter's certificates in the prospectus state that the prospectus provides full, true and plain disclosure of all material facts as of the date of the latest prospectus supplement (the "Certification Requirement"). Since an ATM is a continuous distribution, the certification should more appropriately state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering.

- The requirement that the prospectus contain a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in the form prescribed by item 20 of Form 44-101F1 (the "Statutory Rights Requirement"). Since the prospectus will not be delivered to purchasers under an ATM, the statement that a purchaser has a right of rescission or damages if the prospectus is not delivered is not appropriate.

While such exemptive relief is usually granted on a routine basis, it takes time and money to obtain such relief. The result is that dual-listed issuers tend to do their ATM offerings only in the U.S.

We suggest that this be addressed in the short term by way of blanket relief, and in the long term by adoption of a new rule for ATM offerings.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

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We suggest that the following elements of exemptive relief for ATM offerings be codified in securities legislation:

- Provided that the issuer publicly discloses that it has engaged a dealer to effect an ATM offering, and sales pursuant to the ATM offering meet the requirements currently specified in NI 44-102 for ATM offerings (including the requirement that the securities sold under the ATM offering do not exceed 10% of the aggregate market value of the issuer's outstanding securities), the issuer and the selling agent are exempt from the Prospectus Delivery Requirement.

- Provided that the issuer files on a timely basis information concerning the number and average price of securities distributed pursuant to the ATM (including information concerning gross proceeds, commissions and net proceeds), and revised the wording of the issuer's and underwriter's certificate to state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering, the Prospectus Delivery Requirement and the Certification Requirement do not apply to an ATM offering, and a purchaser shall have no right of withdrawal by reason of the non-delivery of the prospectus.

(D) OTHER POTENTIAL AREAS

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

The definition of "foreign issuer" (particularly clause (a)) in NI 71-101 and "foreign reporting issuer" (particularly clause (a)) in NI 71-102 are too restrictive and should be revised to permit issuers to access the Canadian system (as foreign issuers or foreign reporting issuers) even if they are incorporated federally or under a provincial or territorial statue so long as the connection to the Canadian market is minimal. Determining what is meant by the term "minimal" is currently based on the test of Canadian resident holders of the securities of the issuer.

This "connection" test is difficult, if not impossible, to meet given the book based system and the underlying assumptions that Canadian dealers hold for Canadian investors. A more compelling connection test would be (i) are the securities of the issuer available for trading in Canada (ii) has the issuer conducted a public offering in Canada within a specified period i.e. 2-3 years.

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17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the premarketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

We do not have a position with respect to the pre-marketing rules.

2.3 REDUCING ONGOING DISCLOSURE REQUIREMENTS

(A) REMOVING OR MODIFIYING THE CRITERIA TO FILE A BAR

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

While a BAR may provide information which is relevant for secondary market investors, by the time a BAR is filed the information is no longer current. Since the threshold for venture issuers for the asset test and the investment test is 100%, most transactions which require that a venture issuer file a BAR will also require shareholder approval. The management information circular distributed in connection with a shareholder meeting to approve a significant transaction will typically provide the financial information, including pro forma financials, which a BAR provides. A BAR containing substantially the same information which is filed up to 75 days after closing the transaction does not provide relevant or timely information. Moreover, after the transaction is completed, the resulting issuer will then file actual financial statements showing the actual effect of the transaction on the balance sheet, which is generally more useful to investors.

19. Are there certain BAR requirements that are more onerous or problematic than others?

The BAR requirements can be onerous or problematic where acquisitions are other than of an entire entity. Having to do carve-out or constructed statements are time consuming and expensive, particular for smaller transactions where the records of the target business may not have been maintained at accepted standards.

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20. If the BAR provides relevant and timely information to investors:

(a) *Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?*

As noted above, we do not believe that the BAR usually provides relevant and timely information. For small reporting issuers, and particularly for pre-revenue generating issuers, the profit or loss test is not appropriate, since that test can be triggered when the acquired business has relatively small profits.

(b) *To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?*

We suggest that increasing the significance thresholds to 50% for non-venture issuers would still provide investors with sufficient information about significant transactions.

(c) *What alternative tests would be most relevant for a particular industry and why?*

As noted above, we do not believe that the BAR usually provides relevant and timely information, and do not think that an alternative test would solve the problem.

(d) *Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?*

If a transaction meets the 100% significance test, we suggest that prospectus level disclosure is generally appropriate. However, as noted above, where only some of the assets of the vendor are acquired, the preparation of carve-out historical financial statements can be very burdensome, and for pre-revenue issuers does not provide very useful information. For acquisitions of non-revenue generating assets, we suggest that a pro forma balance sheet showing the effect of the transaction should be sufficient.

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(B) REDUCING DISCLOSURE REQUIREMENTS IN ANNUAL AND INTERIM FILINGS

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

PDAC believes it would be possible to reduce the regulatory burden imposed by disclosure requirements by avoiding duplication. This would not have any impacts on investors, as our proposals would simply eliminate redundancies.

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

Generally, Form 51-102F1 is difficult to follow and to understand exactly what is required to be disclosed. Any clarification of the form requirements would be helpful. MD&A has become an extensive document often repeating information that appears elsewhere in an issuer's disclosure record. Streamlining disclosure in any way that avoids repetition would be beneficial.

(C) PERMITTING SEMI-ANNUAL REPORTING

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

Quarterly reporting does provide the market place with more current information and does assist with comparability with those companies reporting in the United States. However, a cost benefit analysis needs to be considered. Depending on the issuer, quarterly reporting can be burdensome and can require the use of financial and management resources that could be better used in advancing the issuer's business.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

The option to move to semi-annual reporting should be provided for venture issuers operating in a 'streamlined' regulatory regime. The marketplace will then be able to dictate whether venture issuers will choose quarterly reporting or semi-annual reporting.

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25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

The experience in the UK and Australia would suggest that semi-annual reporting has been sufficient. As noted above, if semi-annual reporting is optional for venture issuers then the market can and will influence an issuer's selection. In certain industries quarterly reporting may be more relevant and important than others. Ultimately the users of the information will dictate the reporting periods.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

The focus of this submission from the PDAC is on ways to reduce the regulatory burden for venture issuers.

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2.4 ELIMINATING OVERLAP IN REGULATORY REQUIREMENTS

The annual audited financial statements and related footnotes are the base documents for preparation of the unaudited quarterly statements and the Form 51-102F1 MD&A. Many of the disclosure tables in Form 51-102F1 are an exact duplicate of the financial statements. To avoid both error and extra management time all tables that need to be duplicated from the financial statements into the MD&A should be eliminated. The calculation on % change and discussion of trends is also redundant for many of the early stage, pre-revenue companies that make up most of the small-cap issuers on the exchanges. After eliminating all the numeric tables, the MD&A would then provide investors with a qualitative discussion of material financial events and trends.

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

The annual audited financial statements and related notes provide comprehensive information concerning financial instruments, critical accounting estimates, changes in accounting policies and contractual obligations. There is very little benefit to investors in having this information repeated or rephrased in MD&A. We suggest that for larger reporting issuers the MD&A form be streamlined such that it provides a succinct and qualitative discussion of material financial events and trends, with reference to the relevant sections in the financial statements. For smaller reporting companies, this would be in the form of financial highlights.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

The quantitative information in the MD&A is typically an exact copy of IFRS financial statements.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

No. A consolidated disclosure document which included financial statements would likely require that the issuer's auditor assume responsibility for the MD&A and other information contained in the consolidated disclosure document. While it is common for auditors to advise on MD&A content (including providing comfort to underwriters with respect to certain financial information contained in the MD&A), much of the information contained in MD&A (and certainly in an AIF) is outside the purview of the auditor's role. The problem is not that an investor may need to review three separate documents rather than one consolidated document - the problem is that the same information is repeated in multiple places, and the total volume can obscure the pertinent information.

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30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

A practice has developed of repeating risk factors in multiple documents – it is not uncommon for the same risk factors to be set out in MD&A, the AIF, and then again in a short form prospectus. While such risk disclosure may be full and true disclosure, it is generally not plain disclosure. The sheer length of the risk factor section often results in investors ignoring it entirely. More research with investors is required to better understand the efficacy of current disclosure documents in performing their desired functions, in order to identify ways to make disclosure documents more effective.

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2.5 ENHANCING ELECTRONIC DELIVERY OF DOCUMENTS

Low cost cloud computing, data storage and readily accessible mobile applications represent a significant opportunity to reduce regulatory compliance costs for issuers while providing superior disclosure, transparency and security for shareholders, investors, regulators and all stakeholders. Targeted cloud based data vaults can now be developed for issuers, shareholders and regulators (SEDAR) to automate delivery of all Issuer documents with secure shareholders and regulators' data storage sites. For reference Broadridge (primary supplier of notice and access for issuer proxy material) has recently developed a Communication Cloud that contemplates the following:

> With one connection, reach customers through a variety of channels, including digital mailboxes, online banking, apps, traditional electronic and app presentment, and the latest cloud-based ecosystems, like Amazon Drive, Box, Dropbox, Evernote, Microsoft OneDrive, Fiserv, Jack Henry iPay and more – even postal delivery. With the Communications Cloud's proprietary algorithms and "network effect", you can increase digital adoption and customer engagement.[1]

As discussed below, it is recommended NP 11-201 and NI 54-101 be updated to allow the utilization of the latest cloud based data and document management strategies and technologies.

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

Utilizing the recommendations of technology consultants will be the most efficient way to update NP 11-201.

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

Notice and access systems work effectively and should be expanded to all issuer documents including financing documents. In the view of the PDAC, few investors continue to prefer paper delivery.

The notice and access system as outlined in NI 54-101 should be adopted for all issuer documents including management circulars, management reports, financials, and all material disclosure documents to ensure that all shareholders have access to all information. The delivery of paper documents should be eliminated except for low cost

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[1] Accessed from http://go.broadridge1.com/communications-cloud?oldurl=http://www.broadridge.com/product-insight/a-better-connection.html on July 26, 2017.

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streamlined paper notices sent to registered beneficial shareholder addresses on an annual basis. If an issuer decides they prefer delivery of paper documents, this should be by exception only and at the discretion of the issuer.

PDAC also recommends the creation of a new issuer notice and access process for prospectuses, offering memoranda and private placement subscription documents. At this time, only select investors receive these financing documents. From a timely disclosure, transparency and fairness perspective, all financing documents should be available electronically to all shareholders at the same time if they have elected to be part of a comprehensive financing documents notice and access system.

To further optimize the notice and access technology platform for issuers, there should be a transitory move to one class of shareholder by: (i) eliminating all paper certificates and (ii) for CDS shares, eliminating the Objecting Beneficial Owner (OBO) Shareholder category. The proposed one class of digital shareholder (Non-Objecting Beneficial Owner (NOBO)) will ensure direct, efficient, fair and timely distribution of all material information to all shareholders. This will also allow an appropriate transition in the future to blockchain shareholder records.

Objections by intermediaries to eliminating paper certificates or the OBO shareholder category should be carefully reviewed by the CSA to ensure that the status quo is not maintained for short term vested reasons. For example, the often cited reason for the OBO shareholder request for confidentiality does not encourage important direct communications between the issuer and shareholder. It is likely that many OBO shareholders do not have a strong reason for selecting this category other than receiving unnecessary mail.

An up to date notice and access system will eliminate the rationale of not receiving mail for OBO shareholders. Paper certificates are redundant - Australia eliminated this category many years ago.

(b) *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?*

Yes. Notice should be sent that all issuer documents will only be available through notice and access systems. Educational information developed by CSA members can notify investors and shareholders that all documents can be accessed through readily available SEDAR systems. Issuers can maintain a system to send select paper documents to investors and shareholders upon request.

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(c) *Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?*

No. There is very little risk of undermining investor protection with notice and access systems. If notice and access is expanded to include financing documents these systems may provide better disclosure and investor protection.

(d) *Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?*

Technology consultants should be engaged by CSA to update NI 54-101 and NI 51-102 to include the latest technologies.

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

As noted above, client communication systems such as those being developed by Broadridge should be reviewed and incorporated into policy.

In addition, we suggest that SEDAR should be more readily accessible to investors. While issuers' public disclosure often states that additional information can be found at www.sedar.com, to access such information the investor must go through multiple steps – choosing English or French, then choosing "Issuer Profiles" from seven choices on the home page, then choosing between Companies and Investment Fund Groups, then scrolling down a very long list of company names to find the issuer profile, then finally clicking on "View this Company's Documents". Issuers should be encouraged, and perhaps required, to provide a hyperlink (or website address for hard copy documents) which takes the investor directly to the issuer's profile page on SEDAR. This may require modifications to SEDAR.

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Via E-Mail

July 28, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Authorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention:

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E-Mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs:

Re: CSA Consultation Paper 51-404 – ***Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers***

*We are writing in response to your consultation paper of April 6, 2017 (the "**Consultation Paper**"). The following addresses the points raised therein.*

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Please note that the comments provided herein are those of certain members of our firm's securities group and should not be taken to represent the position of the firm generally nor of any of our clients, who have not been consulted in connection herewith.

As a general and over-arching comment, we would suggest that in considering the modification of the prospectus requirements, that you have regard to the evolution of the regulatory regime applicable to the distribution and resale of securities as it currently exists. The current short form prospectus requirements rely heavily on the continuous disclosure regime. Investors purchasing securities in the secondary market now have the benefit of the secondary market liability provisions. As a result, the distinction between purchasers purchasing securities under a prospectus and those purchasing securities in the secondary market and the nature of their protections has appropriately coalesced and, we would submit, the regulatory regime should follow. Additional requirements for the issuance of securities by way of prospectus, should include only those requirements that are necessary above and beyond the protections afforded to purchasers in the secondary market. These would include only those necessitated by the terms of the offering. We also believe that the prospectus system should permit and require underwriter due diligence and the attendant liabilities. Given the foregoing, the nature and need for the exempt market should continue to be evaluated.

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

As discussed in further detail below, we believe that the following potential options identified in Part 2 of the Consultation Paper are most likely to achieve the stated goals of the CSA's consultation:

- *reducing the audited financial statement requirements for an initial public offering;*
- *streamlining other prospectus requirements (for both reporting issuers and non-reporting issuers);*
- *removing or modifying the criteria to file business acquisition reports; and*
- *eliminating overlap in regulatory requirements.*

(b) Which should be prioritized and why?

We believe that reducing the audited financial statement requirements for an initial public offering and removing or modifying the criteria to file business acquisition reports should be prioritized. We would expect that both of these options would have an immediate impact and would be relatively easy to implement. Other options such as eliminating overlap in regulatory requirements should be carefully implemented over time to ensure that the stated goals are achieved.

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

As indicated in our response to question 1(b), reducing the audited financial statement requirements for an initial public offering and removing or modifying the criteria to file business acquisition reports could be addressed in the short-term while other initiatives such as eliminating overlap in regulatory requirements could be addressed in the medium term.

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3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

We support any initiatives intended to reduce regulatory burden on reporting issuers as we believe that the regulatory burden (and regulatory uncertainty) in Canada is an impediment to a healthy public market; however, we recognize that much of the regulatory burden and uncertainty is beyond the jurisdiction of the CSA.

We do believe that proxy advisory groups such as Institutional Shareholder Services and Glass Lewis add to the expense and frustration for reporting issuers. Trying to comply with the ever changing set of voting and corporate governance guidelines issued by these groups is difficult, time consuming, and expensive for reporting issuers given that such guidelines are often different and at odds with those prescribed by applicable laws. Failing to comply with their guidelines can have significant implications for reporting issuers such as not having their equity compensation plans approved or receiving a majority of "withhold" votes against their director nominees. While the transparency of their voting guidelines has improved to some extent in recent years, there are still aspects of the guidelines that are difficult for reporting issuers to access and evaluate.

The guidelines imposed by these groups amount to pseudo regulatory requirements due to the impact that such groups can have on the voting at shareholder meetings. We believe that the CSA should continue to engage with such groups to ensure that the activities by these groups are transparent, free from conflict of interest and supportive of the public markets in Canada.

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

We do not believe that moving to a sized-based disclosure regime would be more beneficial to the current distinction based on exchange listing. A sized-based distinction is problematic for a number of reasons including but not limited to the following:

(a) ***Size Determination.*** *The way in which size of an issuer is ultimately determined may not be appropriate for all issuers across all industries (i.e. oil and gas issuers vs. mining issuers vs. real estate investment trusts, etc.). It would be difficult to provide a single method of determining an issuer's size which would apply fairly and consistently across all industries.*

(b) ***Anomalous Results.*** *It would be expected that some issuers who undertake significant changes during the financial year (significant acquisitions, dispositions, share consolidations or splits etc.) may end up with an anomalous result from the application of the size determination calculation. As a result, it is foreseeable that there would be a number of issuers applying for relief therefore increasing the burden on securities regulatory authorities.*

(c) ***Current Regime is Consistent with the Regulatory Differences between the Stock Exchanges.*** *The current exchange-based disclosure regime is consistent with the structure of the different exchanges which structure has been purposefully and thoughtfully crafted. The venture exchange is intended for issuers who are early in their development , smaller in size, and have fewer institutional shareholders who would otherwise demand increased disclosure.*

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The senior exchange on the other hand, is intended for seasoned issuers who have both the experience and resources to address the incremental disclosure requirements that accompany their listing on the exchange (and such issuers are also likely required to have increased disclosure from their institutional shareholder base).

While we concede that there are some issuers who based on their size and financial position should be on the senior exchange, this process is typically regulated by pressures from the issuer's institutional shareholders.

(d) ***Fluctuation between Reporting Regimes****. Unless an appropriate mechanism is devised, some issuers will fluctuate between the different disclosure regimes year to year. Not only does this increase the regulatory burden on the issuer in so far as preparing its disclosure is concerned, it will be detrimental to investors who will not receive consistent disclosure on the issuer.*

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

Yes, we believe that certain burdensome regulatory requirements applicable to only non-venture issuers should be eliminated. In particular we would suggest: (i) increasing the significant acquisition thresholds for non-venture issuers, (ii) removing the requirement to include pro forma financial statements in BAR disclosure as such pro forma financial statements for significant acquisitions can be confusing and misleading to investors and are expensive and time consuming to prepare; (iii) extending the eligibility criteria for the provision of two years of financial statements in an initial public offering for issuers that intent to become non-venture issuers.

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:

(a) How would this amendment assist in efficient capital raising in the public market?

We are supportive of extending the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers. Although providing three years of financial statements may not be an issue for issuers who have an established business with a sufficient financial history prior to pursuing an initial public offering, the requirement for three years of financial statements does impose a burden on recently formed issuers who have acquired (or who intend to acquire) a business or businesses. Item 32 of Form 41-101F1 requires that three years of financial history must not only be provided for the issuer but also for "predecessor entities" and other business that may be considered the "primary business" of the issuer; however, the business or businesses that have being acquired (or that the issuer intends to acquire) often may have not previously prepared financial statements and may not have the necessary financial records for the preparation of such financial statements. As a result, the issuer has to expend considerable time and resources in creating such historic financial statements or potentially delay or not pursue an initial public offering. This burden is exacerbated when an issuer has made multiple acquisitions that as a result of the guidance in section 5.3 of the Companion Policy to 41-101 could all be considered as primary businesses as a result of exceeding 100% on the significance tests. As a result of this guidance, if an issuer completed an acquisition of a business within 3 years of the date of the prospectus, which at the time exceeded the 100%

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threshold, the issuer would need to include financial statements for such business even if such business now represents a relatively small portion of the issuer's current business. Although reducing the requirement of providing financial statements from three years to two years would not completely solve this issue, we believe it would assist in alleviating the burden.

(b) How would having less historical financial information on non-venture issuers impact investors?

This question is better addressed to investors and analysts; however, we do believe that a third year of historic financial information, especially for a predecessor entity or acquired primary business, is not overly useful or relevant information for investors.

(c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?

We believe it would be more advantageous to implement a uniform requirement for all issuers. Imposing a threshold provides for less certainty in the IPO process for issuers and may result in issuers taking certain actions to avoid exceeding the threshold.

(d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

As indicated above, we do not believe a threshold is appropriate.

8. How important is the ability to perform a three year trend analysis?

This question is better addressed to investors and analysts.

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

Review of interim financial statements is helpful as it requires issuers to critically review their backup documentation, provides an additional layer of review for the issuer and provides an additional safeguard to investors.

It is our experience that auditor review imposes an increased level of diligence on issuers in the preparation of their interim statements which is of benefit to the issuer and the investor. Investors also benefit from the checks and balances that result from the auditor reviewing the financial statements against the issuer's working papers. The review also provides an additional level of comfort to the underwriters or agents involved in a prospectus offering.

We do not believe that the costs of the auditor review outweigh the benefit to issuers, investors and underwriters.

10. Should other prospectus disclosure requirements be removed or modified, and why?

See item 11 below.

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please

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identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

We are supportive of eliminating or decreasing the prospectus disclosure requirements to only those items which are relevant to the investors and which are not otherwise repeated in any of the documents incorporated by reference. We feel that certain of the required disclosure items are either not relevant to investors or are already found in the issuer's Annual Information Form or other core documents incorporated by reference.

We believe the following items could be eliminated from the short form prospectus disclosure requirements without any detriment to investors while at the same time decreasing the amount of preparation required on behalf of the issuer: (i) description of the business (found in the Annual Information Form); (ii) description of authorized share capital (found in the Annual Information Form); (iii) prior sales (found in the financial statements); (iv) trading data (found in the Annual Information Form or generally available on exchange websites); (v) general risk factors (found in the Annual Information Form); and (vi) plan of distribution (tends to be boilerplate and only extraordinary items should be included).

In addition to the disclosure items above, we would suggest that consideration be given to removing the requirement to file an amendment to a final prospectus after closing of a base offering but prior to the exercise of the over-allotment option granted to the underwriter, which requirement arises pursuant to Section 57(1) of the Securities Act (Ontario) and comparable provisions in other jurisdictions. This requirement applies notwithstanding that at closing of the base offering all subscribers to the offering (including those in respect of the over-allotment position) would have been issued the securities subscribed for and the only party acquiring securities under the over-allotment position would be the underwriter(s) to fill any short positions created. All securities issued under the offering, including securities sold to create the over-allotment position, are deemed to be issued under the prospectus regardless of how the over-allotment option is ultimately filled (NI 41-101, S. 11.1 and Form 41-101 F1, Item 1.4(2)). Therefore, all subscribers to the offering have statutory rights of action under the prospectus. All securities are allocated to accounts at the closing of the base offering, including in respect of the over-allotment position (which, by definition, has to be determined at the closing of the offering (NI 41-101, S. 1.1, definition of "over-allocation position"). Preparing and filing an amended prospectus results in costs and expenses for the issuer, underwriters and regulators and it is unclear as to any resulting benefit as it would appear that the only party with any rights under the amended prospectus will be the underwriters. This requirement may also affect or limit activities that the issuer might otherwise engage in that might result in a material change to ensure that a material change does not occur requiring such an amendment. We would suggest that this requirement could be eliminated by either: (i) only requiring an amendment to a final prospectus if a material change occurs prior to the completion of the distribution under the prospectus other than in respect of securities issued under the over-allotment option, (ii) permit the issuance of the securities under the over-allotment option to the underwriters pursuant to the exemption in Section 2.33 of NI 45-106 (Acting as underwriter) or pursuant to the exemption in Section 2.42(1)(a) of NI 45-106 (on exercise of a right previously granted)(which alternative may require clarification or change to section 1l7 of 45-106 CP to clarify that this exemption may be utilized by an underwriter for such purpose; or (iii) provide guidance in the appropriate companion policy tha the "distribution" for this purposes ceases on closing of the base offering, notwithstanding that securities may be issued by the issuer on exercise of the over-allotment option.

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12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

It is our understanding that the short form prospectus offering system is currently available to all listed issuers provided that the issuer has filed the appropriate financial and other disclosure (including an Annual Information Form or other similar document).

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?

As previously discussed, we believe that in reviewing the prospectus regime and the private placement regime, considerations should be given to how the continuous disclosure and prospectus regimes have evolved, particularly that the prospectus regime relies very heavily on continuous disclosure and that secondary market liability provisions have been adopted. Key considerations of formulating an alternative prospectus regime include determining how to communicate the details of the offering (press release, notice or scaled down version of a short form prospectus) and, ensuring that underwriters are given sufficient time to properly conduct due diligence and addressing underwriter liability.

(b) What types of investor protections should be included under such a model (for example, rights of rescission)?

We believe that existing investor protections should be maintained, including rights to damages and rescission in the event of a misrepresentation and rights of withdrawal. Any alternative system would need to ensure that the underwriters have the ability to conduct appropriate due diligence and that the underwriters would be subject to similar liabilities to which they are subject to under the short form system.

(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

The current short form prospectus regime's qualification criteria should be sufficient to ensure that issuers availing themselves of the alternative regime have an appropriate disclosure base.

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

Codifying the elements of the exemptive relief commonly granted for ATM offerings would significantly streamline the process for ATM offerings. If the securities regulatory authorities are generally willing to grant the relief to allow for ATM offerings there does not appear to be any reason to not provide for the elements of the relief directly in the legislation provided that all the same conditions of such relief are also codified in the legislation.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

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All of the elements of the exemptive relief commonly granted for ATM offerings should be codified to facilitate ATM offerings.

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

Canadian issuers who undertake cross-border financings through MJDS are subject to the SEC rules regarding the timing of pricing and launching the offering. These rules are not consistent with the Canadian rules and as a result, issuers and their advisors are required to expend a significant amount of time and effort in ensuring the offering is launched in compliance with both Canadian and SEC rules.

In particular in the context of a bought deal offering the Canadian rules allow an issuer to commence soliciting expressions of interest prior to filing the short form prospectus subject to complying with Part 7 of National Instrument 44-101 – Short Form Prospectus Distributions, however, to the extent that the offering is an MJDS offering an issuer cannot avail themselves of the ability to solicit expressions of interest prior to filing the short form prospectus as the issuer is required to file the prospectus in the U.S. prior to soliciting expressions of interest. Although we realize that this is beyond the jurisdiction of the CSA, we believe it would be beneficial to Canadian issuers to the extent that the CSA could work with the U.S. Securities and Exchange Commission to further streamline the MJDS rules so that a Canadian issuer could utilize the Canadian rules for soliciting expressions of interest when pursuing an offering under the MJDS rules.

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

In respect of issuers that are short form eligible and undertake bought deal offerings, it has been our experience that dealers have been hamstrung by the requirement to work within the four corners of the term sheet when communicating with potential investors. The result of this rule is that dealers typically send out an email with no content other than the term sheet and are unable to include the press release announcing the offering or answer any questions regarding the offering or the issuer unless such information is otherwise available in the term sheet. This approach is not practical given the nature of the dealers' business and as a result we expect that this rule is consistently breached, whether knowingly or unknowingly. Further, the inability of dealers to respond to questions from their clients is not helpful to potential investors.

In respect of issuers completing an initial public offering or a marketed deal, we note that there is a requirement that everything in the term sheet be in the prospectus. Issues arise when dealers wish to use a term sheet with a price range while the prospectus filed with the securities regulatory authority contains bullets for pricing. Furthermore, in cases where the issuer or the dealers notice that the prospectus contains an immaterial error, the issuer and/or dealers are not allowed to include the corrected information in the marketing materials or term sheet unless they first file an amended and restated prospectus to rectify the immaterial error, which given the immaterial nature of the change seems particularly onerous and unnecessary.

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It has been our experience that the rules surrounding the content of what constitutes a "standard term sheet" are overly strict and do not provide any additional protections to the investor. Issuers and dealers can spend an inordinate amount of time to attempt to fit within the four corners of a "standard term sheet" and those issuers who pay dividends or issue securities other than common shares (subscription receipts or preferred shares for example) are unable to do so. Furthermore, the requirement to file a "template term sheet" that is not made public on SEDAR until such time as the preliminary prospectus is filed seems redundant as the prospectus contains all the information otherwise contained in the template term sheet. We would suggest that the rules as to what may be included in a standard term sheet be relaxed and that only true marketing materials (such as investor presentations) should be required to be filed on SEDAR.

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

Although this question is better addressed to investors and analysts, we question whether pro forma financial statements in the BAR disclosure provide relevant information. Given the significant assumptions and estimates required to be made in order to prepare pro forma financial statements, in many cases such pro forma financial statements may not be relevant for the reader.

In addition, as discussed below we believe increasing the thresholds for significant acquisitions and eliminating the "profit or loss test" would help eliminate the requirement to prepare BAR disclosure in situations where the materiality of an acquisition is questionable therefore reducing requirements for issuers to provide disclosure that is not relevant to investors.

19. Are there certain BAR requirements that are more onerous or problematic than others?

The BAR requirements and the corresponding requirement under Form 41-101F1 and Form 44-101F1 to include BAR type disclosure in a long-form or short form prospectus can place issuers who are required to finance the purchase price of an acquisition by raising money through a prospectus financing at a significant disadvantage relative to issuers who do not need to complete a prospectus financing to fund the purchase price (or for issuers for which the acquisition will not be significant).

If an acquisition is significant for an issuer and the issuer is required to complete a prospectus financing to fund the purchase price of an acquisition generally the issuer will be required to launch the financing concurrently with announcing that it has entered into a definitive acquisition agreement. If the issuer is completing any form of public offering other than a bought deal, the issuer will be required to file a short form prospectus concurrently with announcing the financing. If the issuer is completing a bought deal financing the issuer will be required to file a short form prospectus within four business days of announcement of the financing. In accordance with Form 44-101F1 the prospectus will be required to include BAR level disclosure including audited financial statements and, in the case of an acquisition of oil and gas assets, estimates of reserves and related future net revenue attributable to the assets being acquired. As a result, the audited financial statements and estimates of reserves and related future net revenue, if applicable, will be required to be ready to go at the same time as the purchaser and the vendor enter into the definitive agreement for the acquisition. As a result, this requires both the purchaser and the vendor to expend both time and money in preparing the audited financial statements and estimates of reserves and related future net revenue, if applicable, even before they have entered into a definitive agreement. As a result, a vendor may

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choose to pursue a transaction with a purchaser who is not required to include BAR disclosure over a purchaser who is required to prepare BAR disclosure even if both purchasers are offering the same consideration or in some cases even if the purchaser who is not required to prepare BAR disclosure is offering less than the purchaser who is required to prepare BAR disclosure.

Further, it is unclear why the disclosure requirements of a prospectus are different than the general disclosure requirements for those purchasing in the secondary market where, such purchasers will not have access to the information contained in the BAR for up to 75 days from the date of completion of the acquisition.

20. If the BAR provides relevant and timely information to investors:

(a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

"The Profit or Loss Test" under Section 8.2(c) and 8.4(c) may, as a result of certain circumstances, result in certain acquisitions being deemed to be significant when the relative size of the business being acquired is potentially not material for the issuer. As an example an oil and gas issuer could have significant daily production and revenue but could have incurred a small loss for the year. If that issuer was purchasing a business that had significantly lower daily production and revenue but was profitable it could result in the acquisition being considered significant even though it wouldn't necessarily have a material impact on the issuer.

Our experience has been that the Profit or Loss Test has given rise to numerous questions as to the applicable methodology even from auditors of the issuer.

We would support eliminating the Profit or Loss Test as a criteria for the BAR requirements. We also do not believe the Profit or Loss Test should be replaced with another test as the investment test and asset test should capture the majority of acquisitions that are significant for issuers.

(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

Although we would defer to the views of institutional investors on this issue, we do believe that the significance thresholds could be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision.

We would defer to the view of institutional investors on the threshold at which an acquisition should be considered significant under applicable securities laws, although we believe that the 20% threshold is not. The disclosure obligation as to material information is always applicable and this should be looked at as something that mandates additional disclosure over and above such disclosure obligations.

(c) What alternative tests would be most relevant for a particular industry and why?

It would be difficult to adopt alternative tests for all various industries however, if alternative tests were adopted, we believe that the significances tests for oil and gas issuers should

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address the impact of the acquisition on the reserves and/or production of the issuer as opposed the tests which are seemingly based on book value only.

(d) **Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?**

Yes, we believe the disclosure under Item 14.2 of 51-102F5 should be modified to align with those required in a BAR, instead of prospectus-level disclosure. If an issuer is acquiring a business that is significant and the shareholders of the issuer are required to vote on the transaction, it is not relevant to include prospectus level disclosure about the business being acquired because shareholders are not making a decision to invest in that business (for example, prospectus level disclosure about directors and officers, historical business practices, compensation matters that will not be ongoing following the acquisition). The relevant information for shareholders is the impact that the acquired business will have on the issuer. As such the relevant information is the information included in a BAR. Most of the other information that would be required if the issuer were to include prospectus level disclosure about the business would be completely irrelevant to a shareholder making a decision on whether to vote to approve the transaction or not as such information would not be applicable to the issuer going forward.

21. **Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?**

As submitted elsewhere in our response, we are supportive of the elimination of duplicative disclosure in various continuous disclosure forms. However it is our experience that the disclosure requirements in respect of annual and interim filing documents are not overly burdensome as most issuers are well versed in the requirements and use their previously filed documents as a base for updating their disclosure.

22. **Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.**

Although we have not considered this issue in detail, we support any efforts to clarify continuous disclosure requirements.

23. **What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?**

We believe quarterly reporting is beneficial to both investors and issuers. Quarterly reporting provides investors with consistent financial, operational and other information on a periodic basis permitting them to evaluate their investment with the benefit of recent comparative information. Quarterly reporting is beneficial to the issuer in that the issuer is continually reviewing their financial and operational results allowing them to identify any discrepancies and address important accounting assessments such as impairment.

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We would suggest that notwithstanding the above comment, the CSA should consider the views of institutional investors and analysts in respect of their view on the benefits of quarterly reporting.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

We do not believe semi-annual reporting would be sufficient to provide investors with appropriate disclosure on the issuer's financial and operational position. Permitting semi-annual reporting would likely encourage issuers to provide or certain investors to seek out additional financial and/or operational information regarding the issuer resulting in the potential for selective disclosure.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

We defer to the views of institutional investors and analysts on this issue.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

We defer to the views of institutional investors and analysts on this issue.

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

We defer to the views of institutional investors and analysts on this issue. As discussed, we support any efforts to eliminate any duplicative disclosure including critical accounting estimates, financial instruments, changes in accounting policies and contractual obligations.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

We believe that the CSA should consult with the Canadian Accounting Standards Board to address any overlap in any continuous disclosure requirements with existing IFRS requirements.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

We would be supportive of the consolidation of the MD&A and financial statements into one document. We believe that it would be beneficial to the investor to have one fulsome document containing the items found in the MD&A and financial statements while at the same time eliminating repetitive or overlapping disclosure. Combining these documents would avoid investors piecing together information and prevent the potential for inconsistent disclosure between the two documents. However, consideration should be given to whether the consolidation of these two documents would increase the amount of work and expense associated with the audit and review of annual and interim financial statements. At a minimum, an effort should be made to eliminate duplicative or repetitive requirements for preparation of financial statements and MD&A.

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

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We believe that the following areas of overlap exist between the Annual Information Form requirements and the Information Circular requirements:

(a) Director & Officer Cease Trade Orders, Bankruptcies, Penalties and Sanctions (Item 10.2 of 51-102F2) and Election of Directors (Item 7.2 of 51-102F5). This disclosure may be dealt with by a cross reference or a requirement to update in any future filings if there has been a change; and

(b) Interest of Management and Others in Material Transactions (Item 13 in 51-102F2) and Interests of Informed Persons in Material Transactions (Item 11 in 51-102F5).

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

No comment.

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

No comment.

(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

Given the evolution of the nature of access to information, we do not believe electronic delivery of certain continuous disclosure documents should require consent from the securityholder. In the case of financial statements and MD&A, we believe a press release announcing the release of such information is sufficient. However, in the case of meeting materials, we believe that it is necessary to provide securityholders with a paper proxy containing the control number or other means to allow securityholders to vote. Requiring a securityholder to access information such as their proxy control number themselves would be expected to lead to decreased voter participation.

(c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?

We do not believe so given that secondary market liability attaches to the documents and that the documents are readily available online or upon request.

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(d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

We understand that the requirement to include a toll free phone number in the notice and access notice is expensive for issuers and is not helpful to investors. It has been our experience that such method of requesting documents is rarely used and as such, providing the issuer's phone number with a contact should be sufficient for this purpose

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

Consideration should be given as to whether there is value in requiring issuers using notice-and-access for the first time to be subject to the extended time period prescribed by Section2.7.2 of National Instrument 54-101.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP

(signed) "*Bronwyn M. Inkster*"

Bronwyn M. Inkster

BMI/cpl

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Premium Brands

July 28, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Dear Sirs/Mesdames:

RE: CSA CONSULTATION PAPER 51-404 CONSIDERATIONS FOR REDUCING REGULATORY BURDEN FOR NON-INVESTMENT FUND REPORTING ISSUERS

We are writing you in response to the request for comments on the Canadian Securities Administrators' ("CSA") Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reports Issuers ("CP 51-404").

Premium Brands Holdings Corporation (the "Corporation") is an investment platform focused on acquiring and building food focused businesses in partnership with talented entrepreneurial management teams. Through its various subsidiaries and affiliates, the Corporation owns a broad range of specialty food manufacturing and premium food distribution and wholesale businesses with operations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Nevada, Ohio, Arizona, and Washington State.

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We appreciate the opportunity to provide comments on CP 51-404 and have provided comments on selected questions as set out below. While we understand and agree with some of the proposals to reduce the regulatory burden on issuers, we firmly believe in the importance of fulsome disclosure to investors and the market, and appreciate the balance that the CSA is looking to achieve.

2.3(b) Reducing disclosure requirements in annual and interim filings

21. *Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?*

- Given our corporate structure, and the number of subsidiaries and divisions in our business, our quarter end process is highly involved, and requires much time and effort to ensure all required and relevant information is disclosed. We support and agree with the removal of any requirements that are duplicative or not relevant. Given the amount of information and resources available to investors today, we believe that there is room to reduce issuers' disclosure requirements.

2.3(c) Permitting semi-annual reporting

23. *What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?*

- We believe that quarterly reporting is key in providing investors with important and necessary information for their investment decisions. The quarterly reporting process helps ensure that information that is reflective of important business trends are disclosed to the market on a timely basis. And in particular, with respect to businesses that are seasonal in nature such as ours, quarterly reporting allows such trends to be more readily transparent and discussed, and helps avoids burying such trends and other important information in disclosure covering a longer period.

24. *Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?*

- As some stakeholders have commented, semi-annual reporting may be appropriate in some limited cases (for example issuers with no operating business or no revenue), but the determination as to who this may or should apply to, is best answered by investors.

2.4 Eliminating overlap in regulatory requirements

27. *Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?*

- We are supportive of removing disclosure requirements that are currently available to investors in multiple documents. Overlap in an issuer's AIF and MD&A, or MD&A and financial statements, and any overlap with IFRS requirements should be removed.

Thank you for the opportunity to provide comments to CP 51-404. If you have any questions or comments, please to not hesitate to contact the undersigned.

Yours truly,

(Signed) "Gwun Yee"
Gwun Yee
In-House Legal Counsel
Premium Brands Holdings Corporation

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July 28, 2017
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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o

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Me Anne-Marie Beaudoin
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Autorité des marchés financiers
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E-mail: consultation-en-cours@lautorite.qc.ca

RE: **CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers***

Ladies and Gentlemen:

We appreciate the opportunity to submit the below comments on Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "**Consultation Paper**"). Our comments appear directly underneath the applicable questions reproduced from the Consultation Paper. We have limited our comments to addressing Questions 14 and 15 from Part 2.2 of the Consultation Paper.

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14. *What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?*

As set forth below in more detail, we recommend that Part 9 of National Instrument 44-102 – *Shelf Distributions* ("**NI 44-102**") be amended, and that any necessary consequential amendments to provincial and territorial securities legislation be made, to (i) eliminate the 10% of aggregate market value of equity securities size restriction on at-the-market distribution programs included in section 9.1(1) of NI 44-102 and (ii) adopt the facilitative aspects of the exemptive relief that has historically been granted by members of the Canadian Securities Administrators[1] (the "**Prior Exemptive Relief Decisions**").

The 10% aggregate market value cap in section 9.1(1) of NI 44-102 should be eliminated.

Section 9.1(1) of NI 44-102 (the "**10% Cap**") provides that "equity securities may be distributed by way of an at-the-market distribution using the shelf procedures if the market value of equity securities distributed does not exceed 10% of the aggregate market value of the issuer's outstanding equity securities of the same class as the class of securities distributed … calculated … as at the last trading day of the month before the month in which the first trade under the at-the-market distribution is made."

This restriction should be eliminated. The principal effect of this provision is to require issuers and agents for at-the-market distributions ("**ATMs**") to execute a new equity distribution agreement and file a new prospectus supplement to continue an existing ATM program once the initial 10% Cap been exhausted. Under the current regime, the 10% Cap also requires the issuer to refresh its exemptive relief for the new ATM tranche and, as a corollary, issue and file an additional press release for the "new" ATM program pursuant to section 3.2 of NI 44-102.[2]

These additional steps impose burdens on issuers seeking to utilize ATMs without any apparent corresponding regulatory benefit. It is not clear, for example, why the equity markets are better served or informed by a separate press release for each 10% ATM tranche than by a single press release at the inception of an ATM program that covers 20% of an issuer's market capitalization. The principal factor limiting the size of ATM programs that issuers are willing to undertake is (and would continue to be if the 10% Cap is eliminated) the risk of downward pressure on the issuer's share price that may

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[1] See e.g., *Re TransCanada Corporation*, 2017 ABASC 113; *Re B2Gold Corp.*, 2016 BCSECCOM 291; *Re Parkland Fuel Corporation*, 2016 ABASC 138; *Re Oncolytics Biotech Inc.*, 2016 ABASC 21; *Re Artis Real Estate Investment Trust*, 2014 CanLII 63950 (MB SEC); *Re NAL Energy Corporation*, 2011 ABASC 240; *Re Resverlogix Corp.*, 2011 ABASC 479; *Re NAL Oil & Gas Trust et al.*, 2009 ABASC 606; *Re H&R Real Estate Investment Trust, et al*, 2009 CanLII 39069 (ON SEC); *Re TriStar Oil & Gas Ltd. et al*, 2009 ABASC 295; *Re Progress Energy Trust et al.*, 2008 ABASC 204; and *Re Pengrowth Energy Trust*, 2007 ABASC 711.

[2] The Prior Exemptive Relief Decisions have typically included a representation that "upon entering into the Equity Distribution Agreement, the Issuer will immediately: (a) issue and file a news release pursuant to section 3.2 of NI 44-102 indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and disclosing where and how purchasers may obtain a copy; and (b) file the Equity Distribution Agreement on SEDAR…".

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result from announcing an ATM program of a certain size. Said another way, issuers are sufficiently incentivized by equity market dynamics to limit the size of their ATM programs in a manner that makes sense for each particular issuer. The "one size fits all" 10% Cap does not appear to achieve any regulatory goal that is commensurate with the additional cost and burden placed on issuers.

We additionally note that, although there was formerly a similar 10% of non-affiliate market capitalization limit on the number of equity securities that could be registered for ATM programs under the rules of the U.S. Securities and Exchange Commission (the "**SEC**"), this restriction was completely eliminated as part of the SEC's 2005 Securities Offering Reforms.

The facilitative aspects of the Prior Exemptive Relief Decisions should be codified in Part 9 of NI 44-102 and elsewhere as required.

The Prior Exemptive Relief Decisions typically provide relief from the prospectus delivery requirement under applicable securities legislation[3] (the "**Prospectus Delivery Requirement**") and (ii) the certain prospectus form requirements (collectively, the "**Prospectus Form Requirements**") that would normally be applicable to a distribution of securities using the shelf procedures in NI 44-102.

Part 9 of NI 44-102 and, to the extent required, the provincial and territorial securities legislation should be amended to codify the Prior Exemptive Relief Decisions by:

- Providing that the Prospectus Delivery Requirement does not apply to ATMs[4];
- Providing that the withdrawal right[5] and the right of action for rescission or damages against a dealer that fails to comply with the Prospectus Delivery Requirement[6] are not applicable to ATMs;
- Setting forth revised forms of issuer and underwriter certificates consistent with the Prior Exemptive Relief Decisions that may be included in prospectus supplements for ATMs;
- Setting forth a different statement of purchasers' rights consistent with the Prior Exemptive Relief Decisions that may be included in prospectus supplements for ATMs;

[3] See, e.g., section 129 of the *Securities Act* (Alberta) and section 71(1) of the *Securities Act* (Ontario).
[4] One path forward that may merit consideration is the inclusion of an "access equals delivery" rule in Part 9 of NI 44-102 which would deem the Prospectus Delivery Requirement to have been satisfied if the prospectus supplement for an ATM program has been filed on SEDAR and investors have been directed to such prospectus supplement in some manner (by broadly disseminated press release or otherwise). Such an approach may obviate the need to amend the provincial securities statutes and would also mean that a more limited set of revisions to NI 44-102 may be required (potentially only revisions to the forms of issuer and underwriters certificates). This would be similar to the approach taken in the U.S. under SEC Rules 172 and 173 under the *Securities Act of 1933*, as amended.
[5] See, e.g., section 130 of the *Securities Act* (Alberta) and section 71(2) of the *Securities Act* (Ontario).
[6] See, e.g., section 206 of the *Securities Act* (Alberta) and section 133 of the *Securities Act* (Ontario).

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- Setting forth alternative versions, consistent with the Prior Exemptive Relief Decisions, of the statements required by items 2 and 3 of section 5.5 of NI 44-102 that may be included in prospectus supplements for ATMs; and

- Providing an exemption from Ontario Securities Commission Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions* to permit insiders to make purchases during ATM distributions.[7]

In addition, consideration should be given to codifying a mechanism whereby reporting issuers may incorporate by reference press releases and other documents into base shelf prospectuses, prospectus supplements or pricing supplements in cases where the filing of a material change report is not warranted. Such a mechanism would be similar to the "Designated News Release" concept that was included in *Re TransCanada Corporation*, 2017 ABASC 113, the exemptive relief decision for TransCanada Corporation's ATM program:

"*After the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a "material fact" …, the Issuer will identify such news release as a "designated news release" for the purposes of the Prospectus. This designation will be made on the face page of the version of such news release filed on SEDAR (any such news release, a Designated News Release). The Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Base Shelf Prospectus. A Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a "material change" ….*"

We would suggest that a new SEDAR reporting form or document categorization be created to facilitate incorporation of "material facts" into prospectuses for continuous offering programs. The relevant form or document could, perhaps, appear on SEDAR as a "material fact filing" and base shelf prospectuses could include forward incorporation by reference language whereby all "material fact filings" would be incorporated by reference into the applicable base shelf prospectus. This change could be implemented via additions to National Instrument 51-102 – *Continuous Disclosure Obligations*, and thus the new form (or SEDAR categorization) could be more broadly used to ensure that offering documents for all manner of continuous offering programs, including for MTN offerings, shelf takedown offerings and ATMs, contain full, true and plain disclosure of all material facts. In many ways, the new reporting form (or SEDAR categorization) would fill a gap in the existing continuous disclosure system that does not exist in the U.S., because the SEC reporting forms 6-K (for foreign private issuers) and 8-K (for U.S. domestic issuers) permit a much broader array of information to be filed or furnished to the SEC and thereby incorporated into registration statements.

Codifying the aspects of Prior Exemptive Relief Decisions enumerated above would eliminate the need, and the related burden and expense, for issuers and dealers to seek discretionary exemptive relief from CSA members in order to implement an ATM program and would add more predictability to the process of establishing ATM programs in Canada.

[7] See, *Re TransCanada Corporation -- s. 5.1 of OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions*, Ont. Sec. Bull. Issue 40/28.

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Despite the existing provisions of Part 9 of 44-102, ATM programs have not historically made up a significant component of capital markets financing in Canada, and are not generally well known to Canadian issuers and investors. This contrasts with the situation in the United States, where a large number of senior issuers regularly operate ATM programs and are able to raise significant capital thereunder. [8] Given that ATM programs can provide issuers with timely and cost-effective access to capital, we believe that the current incomplete regulatory framework for ATM programs in Canada, and the resulting need for exemptive relief, puts Canadian issuers at a disadvantage.

Certain requirements of Prior Exemptive Relief Decisions should not be adopted.

Prior Exemptive Relief Decisions have typically included three restrictions on the use of ATMs that should not be included in any codification of Canada's ATM regime: (i) the limitation on the number of common shares that may be sold on any trading day pursuant to an ATM of 25% of the aggregate trading volume traded on all marketplaces in Canada that day (the "**25% Daily Sales Cap**"); (ii) the requirement for the issuer to file, within seven calendar days after the end of any calendar month during which the issuer conducts an ATM, a report disclosing, in respect of any ATM sales, the number and average price of common shares sold, gross proceeds, commissions and net proceeds (the "**Monthly Reporting Requirement**"); and (iii) the requirement to issue and file a news release pursuant to section 3.2 of NI 44-102 upon entering into an equity distribution agreement for an ATM (the "**News Release Requirement**").

We do not view the 25% Daily Sales Cap as being protective of investors or the integrity of the capital markets. First and foremost, any issuer that proposes to make a large trade under an ATM program will have to consider if such trade would constitute a material fact or a material change and, therefore, whether a material change report would have to be filed or the ATM prospectus supplement would need to be amended prior to effecting the trade. This existing requirement of applicable securities legislation should be sufficient to protect against large, disruptive issuances of equity securities into the trading market without sufficient disclosure. Moreover, it is in the interest of both issuers and agents for ATM programs to minimize the market impact of ATM sales. ATM agents closely monitor the market's reaction to ATM trades and are keenly sensitized to any proposed trade that might significantly affect the market price of an issuer's equity securities.

We further note that (i) there is no restriction similar to the 25% Daily Sales Cap that is applicable in the United States under the SEC's rules; (ii) we understand that TSX representatives have recently indicated publicly that the TSX would be supportive of eliminating the 25% Daily Sales Cap and (iii) since the 25% Daily Sales Cap is imposed pursuant to the Prior Exemptive Relief Decisions, it is not applicable to "southbound only" ATMs by Canadian issuers under the multi-jurisdictional disclosure system ("**MJDS**"), and so its imposition would act as a disincentive for Canadian issuers to extend their ATM programs north of the border.

The Monthly Reporting Requirement should not be codified because disclosure of ATM sales on a monthly basis does not provide useful information to investors, and changes in capital structure are

[8] It is worth noting that discretionary exemptive or similar relief is not required to implement ATM programs in the United States. The SEC's ATM regime is contained entirely within SEC rules and the applicable statutes.

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already more meaningfully disclosed quarterly in management discussion and analysis filings. The Monthly Reporting Requirement is therefore duplicative and unnecessarily cumbersome. Furthermore, particularly for large capitalization issuers that attract significant analyst coverage, a lack of information regarding ATM sales in any particular monthly report could lead to speculation in the market as to the reasons why an issuer is not in distribution under its ATM program, and as to whether there is material undisclosed information regarding the issuer. Such speculation could cause unnecessary confusion and uncertainty in the market. In addition, U.S. ATM issuers are not required under SEC rules to provide monthly reports regarding issuances pursuant to ATMs. Such disclosures are provided in such issuers' quarterly and annual continuous disclosure filings. Deviating from the U.S. reporting approach could act as an incentive against MJDS-eligible Canadian issuers to extend their ATM programs north of the border.

The News Release Requirement is included in section 3.2 of NI 44-102. Its further inclusion in ATM enabling legislation is therefore not required.[9]

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

Please see our responses to question 14 above, set forth above.

If you have any questions regarding this submission please contact Tim Phillips at tim.phillips@blakes.com or 416-863-3842 or Trevor Rowles at trevor.rowles@blakes.com or 403-260-9750.

Yours truly,

(signed) Tim Phillips

(signed) Trevor Rowles

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[9] Section 3.2 of NI 44-102 provides that "[a]n issuer … that forms a reasonable expectation that a distribution of a tranche of equity securities will proceed under a base shelf prospectus that is not specifically restricted to equity securities shall immediately issue a news release that announces the intention to proceed with the distribution."

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July 28, 2017

BY E-MAIL

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Ontario Securities Commission
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Email: comments@osc.gov.on.ca

Me. Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
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Montreal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (the "Consultation Paper")*

Corby Spirit and Wine Limited ("we" or "Corby") is pleased to have the opportunity to participate in the review process by making this submission, and providing responses to the specific questions set out under heading 2.3(c) – *Permitting Semi-Annual Reporting* of the Consultation Paper. For ease of reference, we have reproduced your questions below, using the numbering set out in the Consultation Paper.

Corby is a leading Canadian marketer of spirits and importer of wines. Corby's national leadership is sustained by a diverse brand portfolio that allows the Company to drive profitable organic growth with strong, consistent cash flows. Corby markets a full range of domestically produced and imported spirits and wines, including J.P. Wiser's® Canadian whisky, Lamb's® rum, Polar Ice® vodka, McGuinness® liqueurs and Ungava® gin, as well as leading international brands such as Absolut® vodka, Chivas Regal®, The Glenlivet® and Ballantine's® Scotch whiskies, Jameson® Irish whiskey, Beefeater® gin, Malibu® rum, Kahlúa® liqueur, Mumm® champagne, and Jacob's Creek®, Wyndham Estate®, Stoneleigh®, Campo Viejo®, Graffigna® and Kenwood® wines.

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23. *What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?*

Response:

We believe that, while quarterly reporting provides benefits to investors such as access to more frequent disclosure of financial information concerning the expenditures and cash flow of an issuer and instills management with a certain diligence in financial reporting, the value of such benefits varies depending on the nature of the particular issuer's business and quarterly reporting carries with it several associated burdens and concerns that we propose the Canadian Securities Administrators ("**CSA**") consider in weighing its overall value.

Corby's business fluctuates on a seasonal basis, and as a result, as with other seasonal issuers, quarterly information and reporting is less meaningful than that provided on an annual or semi-annual basis. For example, our sales are typically strong in the first and second quarters, while our third quarter sales usually decline after the end of the retail holiday season, and our fourth quarter sales typically increase again for the summer season. While our MD&A includes specific notes regarding the seasonality of our business, to clarify our quarterly results to our investors and caution them that results in any given quarter are not necessarily indicative of performance across the full fiscal year, shifting to semi-annual reporting would afford issuers with seasonal businesses like us the opportunity to capture a broader spectrum of sales and other information that fluctuates on a seasonal basis, which has the potential to produce more even and meaningful results across reporting periods.

One of the principal drawbacks of quarterly reporting is the impact on administrative resources and expenses. Quarterly reporting requires issuers to expend significant time and resources, including internal resources and external expenses (such as legal and auditing costs). The resources dedicated to preparing quarterly disclosure limit the resources available to be expended on an issuer's business activities.

We are also of the view that the potential of quarterly reporting to contribute to investor data overload should be considered. As other commenters have noted in their responses to the Consultation Paper, the volume of information being disclosed on a quarterly basis is sizeable and sometimes duplicative, and significant information can be overwhelmed by the mass of other information to the point that many investors may not bother to review all of the information provided. While this is not purely a symptom of quarterly reporting, it would certainly help trim the volume of information if issuers had less information to disclose on a less frequent basis.

24. *Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?*

Response:

We support providing reporting issuers with the option of semi-annual financial reporting. Semi-annual financial reporting would enable reporting issuers to reduce the amount of time and resources dedicated to preparing financial reports and related disclosure and re-allocate this time and these resources to focus on pursuing business activities, while continuing to have the opportunity to communicate with investors. In addition, it would allow reporting issuers with seasonal businesses to provide more meaningful disclosure. In our view, given the burdens and concerns with quarterly reporting discussed above, and the fact that reporting issuers will continue to be bound by the timely reporting requirements of securities laws, as we discuss below, we are

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supportive of providing reporting issuers with the option to adopt semi-annual financial reporting as they consider appropriate.

Determining whether a quarterly or semi-annual approach to financial reporting is appropriate for a given reporting issuer is a decision we believe is best left to the management of that reporting issuer, as there are unique circumstances for each reporting issuer. Management will need to weigh the costs of quarterly reporting in terms of time and resources required against the resources at the disposal of the reporting issuer. Other factors management may weigh include considerations such as seasonality of the business, access of shareholders to ongoing information and whether there are other considerations that would make one approach more appealing over the other. These factors are bound to be unique to each issuer and, with the possible exception of the size of the reporting issuer, do not easily lend themselves to clear bright-line tests for suitability.

While the benefits of semi-annual financial reporting will likely be more significant for smaller reporting issuers with fewer resources than larger reporting issuers, we do not believe this is the only consideration, or that the option of adopting semi-annual financial reporting should be limited only to smaller reporting issuers, and are supportive of making it available to all issuers. The existing distinction between venture issuers and non-venture issuers can be somewhat imperfect – for example, larger venture issuers can intentionally delay in graduating to a non-venture issuer exchange – and setting a size test could result in an issuer fluctuating back and forth across the boundary between the two categories, leading to confusion in the test's application. Accordingly, to avoid misuse of the applicable rules or confusion in their application, we are of the view that the most practical approach is to leave the door open to all issuers and have management adopt the approach it believes is in the issuer's best interests and will make its disclosure more meaningful to investors.

25. *Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?*

Response:

We believe that semi-annual reporting will provide sufficiently frequent disclosure and, for issuers with seasonal businesses, may be more meaningful. A reporting issuer that elects to adopt a semi-annual approach to financial reporting will continue to be bound by the timely disclosure requirements of securities laws, such as the obligation to disclose material changes in the affairs of the issuer and file a material change report under securities laws, as well as the obligation to disclose material information as required by applicable stock exchange policies.

To the extent investors and analysts would prefer to receive more frequent financial disclosure than semi-annually, we note some reporting issuers that have adopted semi-annual reporting in jurisdictions that permit it publish quarterly supplementary financial information. Such an approach could be imported into the policies the CSA is considering as a compromise between the valuable goal of reducing inefficiencies and administrative burdens on reporting issuers while still providing reasonably frequent disclosure of key information and metrics for investors and analysts.

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26. *Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?*

Response:

We are supportive of providing non-venture issuers with the option to replace interim MD&A with quarterly highlights. Such an approach can assist in addressing the concern of investor data overload, as the quarterly highlights can focus on key information in the quarter (such as liquidity and capital resources and progress toward achieving corporate goals).

* * * * * * * *

Thank you for the opportunity to provide our comments on these issues. Should you have any questions with respect to the foregoing, please do not hesitate to contact the undersigned at (416) 479-2404.

Yours very truly,

Marc Valencia,
General Counsel, Corporate Secretary and VP, Public Affairs
Corby Spirit and Wine Limited

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July 28, 2017

Submitted via electronic email

British Columbia Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sirs:

Re: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

This letter is the response of the Canadian Accounting Standards Board to the Canadian Securities Administrators' (CSA) Consultation Paper 51-404, "Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers", issued in April 2017.

At its meeting of June 27, 2017, our User Advisory Council provided feedback orally to the CSA staff on the Consultation Paper. This letter does not repeat the Council members' comments from that meeting.

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Our views

We strongly support this CSA initiative to reduce the regulatory burden on reporting issuers. All participants in the financial reporting process, including standard setters and regulators, have a role to play in responding to concerns about the benefits derived from reporting requirements compared with the associated compliance costs.

A common concern we hear in our outreach activities is the existence of overlapping disclosures between documents such as management's discussion and analysis, the annual information form and financial statements. Some examples would be risk and management compensation disclosures. Overlapping disclosure requirements can present challenges for preparers, in particular smaller entities with fewer technical accounting and legal resources. Such requirements can also work against standard setters' and regulators' shared goal of quality disclosures that provide users with relevant, concise and clear information. To assist preparers and achieve the desired reporting outcome, we encourage the CSA to consider whether existing IFRS disclosure requirements in an area meet its regulatory objective, and, if they do not, to explain why when establishing its own requirements. Similar consideration should be given when setting regulatory requirements for Canadian reporting issuers that are permitted to file using U.S. GAAP.

The Consultation Paper suggests that the CSA is considering consolidating various documents into one filing document. We are in favour of exploring this option as it could be beneficial to the financial reporting community. A consolidated document could help ensure that information provided to users is presented in a cohesive manner. However, we note that this option could also have operational and assurance-related implications that would need to be taken into consideration if pursued. Potential implications could include added time pressure on preparers when filing a consolidated document and questions about the extent of information covered by an audit opinion.

Publicly accountable enterprises in Canada operate in a North American and, increasingly, a global environment. For this sector, we adopted IFRS Standards and given the frequency of cross-border initiatives, some publicly accountable enterprises that are dual-listed apply U.S. GAAP (as permitted by Canadian securities regulations). The International Accounting Standards Board and the U.S. Financial Accounting Standards Board each have projects on their technical agenda aimed at improving financial statement presentation and disclosures. The goal is to increase understandability and strive for better communication in financial reporting. We would encourage any changes proposed by the CSA to have similar objectives.

We strongly support the development of standards and regulations that improve the quality of information reported by Canadian publicly accountable enterprises and see the CSA's work as another key initiative in support of that goal. Working together, we can enable Canadian reporting issuers to continue providing relevant information to both domestic and global market participants.

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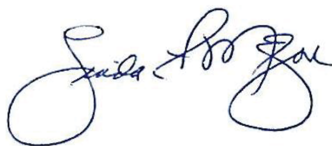
We would be pleased to elaborate on our comments in more detail if you require. If so, please contact me or, alternatively, Rebecca Villmann, Director, Accounting Standards (+1 416 204-3464 or email rvillmann@cpacanada.ca) or Davina Tam, Principal, Accounting Standards (+1 416 204-3514 or dtam@cpacanada.ca).

Yours truly,



Linda F. Mezon, FCPA, FCA
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About the Canadian Accounting Standards Board

We are an independent body with the legal authority to establish accounting standards for use by all Canadian publicly accountable enterprises, private enterprises, not-for-profit organizations and pension plans in the private sector. We are comprised of a full-time Chair and volunteer members from a variety of backgrounds, including financial statement users, preparers, auditors and academics; a full-time staff complement supports our work.

Our standards

We have adopted IFRS® Standards as issued by the IASB for publicly accountable enterprises. Canadian securities legislation permits the use of U.S. GAAP in place of IFRS Standards in certain circumstances. We support a shared goal among global standard setters of high-quality accounting standards that result in comparable financial reporting outcomes regardless of the GAAP framework applied.

We developed separate sets of accounting standards for private enterprises, not-for-profit organizations and pension plans. Pension plans are required to use the applicable set of standards. Private enterprises and not-for-profit organizations can elect to apply either the set of standards developed for them, or IFRS Standards as applied by publicly accountable enterprises.

Our role vis-à-vis IFRS

Our responsibility to establish Canadian GAAP necessitates an endorsement process for IFRS Standards. We evaluate and rely on the integrity of the IASB's due process as a whole, and monitor its application in practice. In addition, we perform our own due process activities for each new or amended IFRS Standard to ensure that the standard is appropriate for application in Canada. We reach out to Canadians on the IASB's proposals to understand and consider their views before deciding whether to endorse a final IFRS Standard. A final standard is available for use in Canada only after we have endorsed it as Canadian GAAP.

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INCLUDES COMMENT LETTERS (see page 23)

Goodmans LLP

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July 28, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o The Secretary
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-and-

Me Anne-Marie Beaudoin
Corporate Secretary
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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 - *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

We are writing in response to the Canadian Securities Administrators (the "**CSA**") Notice and Request for Comment in respect of CSA Consultation Paper 51-404 - *Considerations for*

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Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (the "**Consultation Paper**").

As Partners of Goodmans LLP who practice corporate securities law, we work with numerous reporting issuers and other capital markets participants.

We are pleased to provide our views on certain of the consultation questions referenced in the Consultation Paper. These views are based on our extensive capital markets experience and informal discussions with clients and other capital markets participants. These comments should not, however, be taken as the views of any of our clients or Goodmans LLP.

As a general comment, we strongly support the CSA's initiatives to reduce the costs and regulatory burden associated with both capital raising and continuous disclosure requirements. We have played a leading role in assisting Canadian and non-Canadian companies in accessing the Canadian capital markets for many years and we believe the CSA must take steps to ensure that Canada's public markets remain competitive with those in the United States and with private capital.

Set out below are our comments on certain questions set out in the Consultation Paper (with the numbers corresponding accordingly). We have only addressed those questions in the Consultation Paper upon which we had input.

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

We believe the modifications we discuss below regarding the financial statement disclosure requirements for prospectuses and business acquisition reports ("**BARs**") would meaningfully reduce the regulatory burden for many reporting issuers while preserving investor protection.

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers?

We believe the CSA should reduce the audited financial statement requirements for an IPO prospectus. At a minimum, the CSA should extend the eligibility criteria for the provision of two years of audited financial statements to issuers that intend to become non-venture issuers to be consistent with the requirements applicable to emerging growth companies under the U.S. *Jumpstart our Business Startups Act* of 2012. In our experience, the oldest year of historical financial disclosure has limited benefit for investors and can impose significant costs on an issuer.

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9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

We do not believe that auditor review or consent for interim financial statements included in a BAR that is incorporated by reference in a short form prospectus should be required. Eliminating these requirements for the short form prospectus would be consistent with the CSA's approach in Form 51-102F4 – Business Acquisition Report, which does not require auditor review or consent for such statements. In our experience, the time and cost burden on the issuer to obtain a review and consent from the auditor to the acquired business that in most instances has no other relationship with the issuer far outweighs any benefit to investors. We are aware of situations where the timetable and launch date for a public financing were materially delayed by the challenges the issuer and auditor (who had no other relationship) experienced in their efforts to comply with these requirements.

10. Should other prospectus disclosure requirements be removed or modified, and why?

We feel consideration should be given to modifying the requirement under Item 32.2 of Form 41-101F1 that a full three-year historical financial statement history be provided for every business that forms part of the "issuer" at the time of an IPO regardless of its significance. This requirement has created a significant amount of uncertainty for issuers seeking to go public that have completed acquisitions during the three-year period leading up to the IPO if they do not have historical financial statements that meet the requirements under Item 32.2. In many (if not most) cases, we do not believe that these historical financial statements provide meaningful disclosure for investors and the CSA should consider reducing these requirements.

In many cases, obtaining historical financial statements for acquisitions up to three years after the acquisition is not possible or can only be done at significant cost and effort on behalf of the issuer which we feel is disproportionate to any benefit derived from the historical financial disclosure. Further, we believe in many cases where multiple acquisitions have been completed, the inclusion of historical financial statements for each acquisition is confusing for investors. Although in some cases, exemptive relief from certain of these historical financial statements has been granted through a pre-filing process, the process for obtaining relief is cumbersome, costly and creates uncertainty and delay at the commencement of an IPO process. We are aware of a number of situations where IPOs did not proceed due to these requirements.

We would recommend that these requirements be modified to impose clear thresholds where financial statements of businesses acquired within the three years prior to an IPO are required. We recommend that the CSA eliminate the historical financial statement requirements for acquisitions that have been incorporated into the issuer's financial results over one audit cycle or for a period of nine months or more. The CSA should also consider setting a significance threshold that compares the significance of the acquisition based on the assets acquired compared to the issuer's current assets at the time of the IPO. This threshold could be set at a level similar to the current BAR requirements.

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We would also suggest that the CSA permit the historical financial statements included in an IPO prospectus to be prepared using U.S. GAAP. Many investors in Canadian public companies also invest in U.S. public companies, and thus are comfortable making investment decisions on the basis of financial statements prepared in U.S. GAAP. We believe that this change would increase the attractiveness of the Canadian capital markets to U.S.-based companies considering going public without compromising investor protection.

Finally, we strongly recommend that the CSA adopt rules similar to those recently adopted by the U.S. Securities and Exchange Commission that allow private companies to confidentially file IPO documents with the securities regulators.

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

We believe Canada's short form prospectus system - and in particular the bought deal mechanism - is an attractive and important feature of the Canadian capital markets and we are generally supportive of the current short form prospectus regime.

We do, however, recommend that the CSA revise the disclosure requirements for recently completed and probable acquisitions in Item 10 of NI 44-101F1. This comment is set out in further detail in our response to question 18 below. We would also support the elimination of Item 7A – Prior Sales from Form 44-101F1. We do not believe the disclosure under Item 7A is necessary for investors as this information is readily available from public sources.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

We believe the current qualification criteria are generally appropriate.

We do, however, recommend that the CSA remove the "notice of intention" requirement in Section 2.8 of NI 44-101. We do not believe that the "notice of intention" requirement provides meaningful information for investors as the criteria for qualifying for a short form prospectus are easily satisfied by most issuers listed on an exchange in Canada and advance notice that an issuer is qualified to file a short form prospectus is not necessary.

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an

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investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

Our experience is that the BAR rules are among the most onerous provisions of the continuous disclosure regime and generally provide limited relevant information for an investor to make an investment decision. We believe the costs of complying with the current BAR regime outweigh the investor protection benefits.

In our view, the benefits that investors receive by having access to historical and pro forma financial statements 75 days following completion of an acquisition are limited. We have been informed by individuals at several different investment dealers that BARs are not considered relevant information by many members of the investment and research community.

While the benefits of BAR disclosure are limited, the costs can be significant. Certain of these costs can be easily measured. For example, we are aware of one recent example where an issuer paid significantly more in professional fees to comply with the BAR requirements than it did in consideration for the target business. Other costs, such as the pressure on the issuer's resources, may be difficult to compute.

The current competitive environment for acquisitions is much different from when the BAR rules were first introduced. Today, public companies who wish to grow by acquisition compete for acquisition targets with numerous different pools of private capital, which were not as prevalent 10 to 15 years ago. Requiring public companies to comply with the stringent BAR requirements places reporting issuers at a significant disadvantage in competing for acquisitions, when compared to both strategic and financial buyers including private equity funds. We are aware of several recent situations where reporting issuers felt they were significantly prejudiced by these rules in an auction process.

This prejudice can be especially significant where an issuer wishes to announce, concurrently with entering into a purchase agreement, that it is financing the acquisition with proceeds raised in a bought deal and a prospectus (including financial statements required to comply with the BAR rules) must be filed within four business days of the announcement.

In summary, we believe the CSA needs to consider significant changes to the BAR regime and the related short form prospectus disclosure requirements.

20. If the BAR provides relevant and timely information to investors:

(a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

We believe that the "profit or loss" test is not required to ensure that significant acquisitions are captured by the BAR requirements, and have seen numerous examples where the application of this test leads to anomalous results.

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For example, where the target business is closely held, the prior owner(s) may have taken certain steps to suppress net income, such as the payment of abnormal management fees or salaries or abnormally high leverage. If the issuer does not intend to replicate these arrangements going forward the significance of the acquisition under the profit or loss test may be understated. Alternatively, if a prior owner operated a business with a minimal cost structure or no leverage (and the issuer intends to implement changes going forward) the significance of the acquisition may be overstated under the profit or loss test.

We have also seen many examples where certain non-cash or non-operating aspects of the profit or loss calculation lead to anomalous results by exaggerating the significance of an acquisition in relation to its economic or operational significance on an objective basis. This can be particularly true in the real estate industry where we have seen net income suppressed due to depreciation expense, or inflated due to IFRS fair market value adjustments (which are based on many inputs and discretionary assumptions, including discount rates, inflation rates, and capitalization rates). While the CSA has granted exemptive relief to address these types of issues in the past, relief is typically granted only where the acquisition is "*de minimus*".

(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

We have considered whether the significance tests should be eliminated and believe there are numerous arguments that could support such elimination. Nevertheless, in light of the important role financial disclosure plays in investor protection, we would instead recommend that the CSA consider revising the BAR rules such that non-venture issuers are subject to significance thresholds at 50% and eliminate the "profit or loss" test.

(c) What alternative tests would be most relevant for a particular industry and why?

As noted above, we recommend eliminating the "profit or loss" test. If the CSA believes that measuring significance based on income is important, we suggest that the CSA consider replacing the "profit or loss" test with financial performance indicators that are more appropriate for the applicable industry sector. For example, "net operating income" might be used in the real estate industry, and EBITDA or similar metrics might be used in certain other sectors.

We believe that this approach would provide a more realistic indication of the significance of an acquisition from an income perspective.

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Thank you for considering our comments. Please contact any of the undersigned if you would like to discuss the above.

Very truly yours,

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VIA E-MAIL

July 28, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o:

The Secretary
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20 Queen Street West
22nd Floor
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 (the "Consultation Paper") Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Magna International Inc. ("Magna") appreciates the opportunity to offer input on the subject of reducing the regulatory burden related to ongoing disclosure requirements and is submitting this letter in response to the request for comments contained in the Consultation Paper.

Background of Magna

Magna is a leading global automotive supplier with 321 manufacturing operations and 102 product development, engineering and sales centres in 29 countries. Our over 159,000 employees are focused on delivering superior value to our customers through innovative products and processes,

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and World Class Manufacturing. In addition to complete vehicle engineering and contract manufacturing expertise, Magna's product capabilities include producing body, chassis, exterior, seating, powertrain, active driver assistance, vision, closure and roof systems, as well as electronic and software capabilities across many of these areas. Our common shares trade on the Toronto Stock Exchange (MG) and the New York Stock Exchange (MGA).

Magna's Submission

We are offering input selectively on (a) three of the regulatory options identified in the Consultation Paper which are of relevance to Magna (sections 2.3, 2.4 and 2.5 of the Consultation Paper) and (b) certain of the consultation questions within each of those sections. For ease of reference, we have maintained the same section numbering as in the Consultation Paper.

2.3. Reducing ongoing disclosure requirements

As a general matter, we support efforts to reduce unnecessary or overly burdensome disclosure requirements. With respect to the matters that the CSA specifically requested comment, we address the following:

a. Removing or modifying the criteria to file a BAR

We have general questions regarding: (i) the interrelationship between the BAR significance tests and other materiality tests in applicable securities rules; and (ii) the utility of certain BAR requirements.

i. Significance / Materiality: Securities laws and rules contain different objective and subjective materiality tests for different purposes. The BAR significance test, which is a proxy for acquisition "materiality", is set at 20% of assets, investments or profit/loss. We note the following interesting outcomes in the context of an acquisition that meets the current BAR significance test:

- Although the transaction would be sufficiently material to require the onerous BAR disclosure, on completion of the acquisition, the acquired entity would not be considered a "material subsidiary" for insider reporting purposes under NI 55-104 unless it met a 30% of assets or revenues test.

- In spite of both the 20% BAR test and the 30% "material subsidiary" test, NI 51-102F2 requires AIF disclosure of intercorporate relationships for any subsidiary meeting a 10% of assets and revenues test. Thus, on completion of the acquisition, subsidiaries of the acquired entity may be considered sufficiently significant that their intercorporate relationships would need to be disclosed in the AIF.

- Irrespective of any bright-line significance or materiality test, the acquisition would be considered a "material change" for purposes of timely disclosure under the *Securities Act* (Ontario) and NI 51-102 if it "…would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer".

- Notwithstanding any of the tests under applicable securities laws, the acquisition would only require shareholder approval under Toronto Stock Exchange rules if the acquisition involved the issuance of shares exceeding 25% of the issued/outstanding shares of the issuer.

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We recognize the different purposes served by each of the foregoing materiality or significance tests, but encourage Staff to revisit the rationale for each and consider whether the outcomes from application of each test are fully defensible when applied to an acquisition meeting the BAR significance test.

ii. *BAR requirements:* Generally, we believe that investors assess acquisitions based on the short- to medium-term future impact on the acquiror's cash flows, earnings and other financial metrics. Accordingly, we encourage Staff to engage with investors to understand whether the prior period and pro forma information required by the BAR provides relevant information. We can think of a number of situations in which prior period financial statements are of only modest relevance, including where a business is acquired out of bankruptcy. In such a situation, the manner in which the business was run up to the bankruptcy may have little or no relevance once acquired and integrated into the acquiror.

b. *Reducing disclosure requirements in annual and interim filings*

Magna supports the general principle of refocusing annual and interim filings on key information which is most relevant to investors. Having said that, it seems unlikely that such a goal can be achieved solely through changes to securities regulation, when much of the complexity added to disclosures in recent years arises out of accounting rules and guidance by accounting regulators.

c. *Permitting Semi-Annual Reporting*

In principle, we support the idea of allowing reporting issuers the option of reporting quarterly, as this may serve to reduce some of the cost and administrative burden associated with interim MD&A. To the extent that semi-annual reporting is optional, each issuer will have the opportunity to decide, based on its own specific circumstances, whether such a reporting frequency makes sense. As a dual-listed issuer with primarily U.S. domestic issuer peers, we do not expect that Magna would transition to semi-annual reporting since this would place investors in Magna securities at an informational disadvantage as compared to investors in the securities of our U.S. peers.

While the Consultation Paper contemplates semi-annual reporting within the context of reducing the short-term focus of public companies, we do not believe that the proposed solution will address the problem. We respectfully submit that, at its core, short-termist tendencies pervade capital markets due to the gap between:

- market expectations as to company performance based on stock analysts' financial models, estimates and assumptions of company performance; and

- the actual financial results reported by a company.

The greater the gap (in either direction) between analysts' estimates and issuers' actual results, the greater the market impact on an issuer's stock. Despite the irrationality of an issuer's actual quarterly results being assessed against analyst estimates, the potentially significant market impact naturally drives companies to focus on minimizing any shortfall against those quarterly estimates. However, a reduction in the frequency of financial reporting would likely result in larger gaps between market expectations of issuers' performance and actual results, which may result in greater market volatility but no reduction in short-termism. Other potential unintended effects may include:

- Increased risk of selective disclosure as investors and analysts pressure companies' investor relations and finance teams for current information (which may include

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undisclosed material information) necessary to update the analysts' financial models.

- Greater reliance by investors and analysts on unreliable data and information, faulty assumptions and/or mistaken estimates.
- Deterioration in issuers' financial discipline as robust financial reporting and control processes for interim financial reporting are weakened by decreased reporting cycles.
- Increased audit risks and year-end audit burden as external auditors would have only one interim period of review work/procedures on which to rely.

As much as Magna would welcome any potential reduction in administrative burden due to a change to semi-annual reporting, we do not foresee such a change impacting short-termist tendencies in the market and are concerned that the potential adverse consequences of such a change significantly outweigh the benefits.

2.4 Eliminating overlap in regulatory requirements

Magna prepares its financial results in accordance with U.S. GAAP and does not express a position regarding IFRS-specific overlap with securities law. Generally, we support the elimination of regulatory overlap between accounting rules and securities law requirements where such overlap leads to repetitive disclosure that is of little or no additional value to investors. We agree that there is unnecessary overlap between the risk factor disclosure requirements in the MD&A and the AIF forms and, accordingly, we support the consolidation of the requirement into a single document.

The Consultation Paper indicates that Staff is considering consolidating the requirements of the AIF, MD&A and financial statements into one document. Subject to concerns cited below, we believe there is merit to the idea of a single, integrated disclosure document which addresses the requirements of the AIF, annual MD&A, annual financial statements <u>and</u> annual meeting proxy circulars. In recommending inclusion of the annual meeting proxy circular, we note that, when voting on regular items of annual meeting business, shareholders typically consider a wide range of factors not technically required to be addressed in the proxy. Such factors may include: financial performance; corporate strategy; demonstrable achievements in strategy execution; corporate sustainability / environmental and social factors; general human capital policies and practices; code of conduct, and other policies, practices and training promoting ethical behaviour and legal compliance; dividend history; share capital structure; credit ratings; and other items which are disclosed in other disclosure documents. We submit that a single disclosure document could have the following additional benefits:

- Facilitation of a more holistic consideration by investors and analysts of corporate strategy, financial and operating performance, director oversight, management compensation and other factors.
- Promotion of longer-term thinking by investors and analysts through the placement of discussion and disclosure of financial performance more directly in the context of non-financial considerations.
- Elimination of the following disclosure requirement overlaps:
    - risk factor disclosure in the MD&A and AIF;
    - material litigation/contingencies disclosure in the MD&A, AIF and financial statements;

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- director background disclosure in the AIF and proxy circular; and
- disclosure of interests of management and others in material transactions in both the AIF and proxy circular.

Considerations against an integrated disclosure document include:

- The potential for such a document to become too large, complex and unwieldy.
- The need to ensure auditor opinions remain limited only to the financial statement portion of such a document.
- Scope and method of document delivery, including applicable costs.

3. Enhancing electronic delivery of documents

Magna has chosen to use the "notice-and-access" method for delivery of proxy-related materials and we support further expansion of electronic delivery methods. We believe that issuers and investors benefit from enhanced electronic delivery, including through lower costs and reduced delivery time. This would especially be the case for issuers, like Magna, with a largely institutional shareholder base that we believe no longer relies on printed materials. To fully achieve the benefits of electronic delivery, we support the removal of the requirement to provide paper copies on request. Moreover, we recommend that electronic delivery be expanded beyond the proxy circular to include annual financial statements and MD&A.

Magna was a relatively late adopter of notice-and-access due to concerns that the system entrenches the role of Broadridge within the proxy process. Broadridge currently enjoys a monopolistic position with respect to beneficial shareholders, as a result of high barriers to entry and Broadridge's long-standing relationships within the financial community. In addition to the benefits of its monopolistic position, Broadridge operates within a framework in which accountability for its services is divorced from responsibility for payment for such services – issuers pay Broadridge's (non-negotiable) fees, but Broadridge answers only to its financial intermediary clients. We submit that this disconnect creates an unjustifiable accountability gap. Unsurprisingly, the concerns we had before adopting notice-and-access were realized in our first year utilizing the system – fees paid to Broadridge increased, while those paid to agents and service providers accountable to Magna all declined.

In order to fully achieve the cost savings and efficiencies intended by electronic delivery, issuers need solutions which could promote greater cost efficiency and accountability in the proxy process. We propose that Staff consider:

- Any amendments which may be required to enable issuers to fully satisfy their delivery obligations to beneficial shareholders through electronic delivery directly to financial intermediaries appearing on the CDS participant list. To the extent that such financial intermediaries engage Broadridge to further distribute the issuer's documents (electronically or otherwise) to their clients, the applicable costs should be borne by the intermediary or the ultimate client, not the issuer. We believe that this will help eliminate the accountability gap discussed above and should facilitate lower Broadridge fees as the financial intermediaries utilize their leverage to negotiate favourable rates from Broadridge.
- Elimination of any remaining obstacles under corporate or securities law with respect to direct, uncertificated securities registration systems which could provide all

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shareholders with the same convenience and benefits of electronic share ownership/registration. By "levelling the playing field" between registered and beneficial shareholders:

- shareholders will have meaningful options relating to how they hold their shares;
- competition among Broadridge, transfer agents and (potentially) other service providers should drive greater efficiency; and
- issuers may have greater opportunities to directly connect with a greater proportion of their shareholder base.

* * *

We respectfully submit the comments in this letter for your consideration and would welcome an opportunity to discuss them with you.

Regards,

Bassem A. Shakeel
Vice-President and Corporate Secretary

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FAIR

Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement des droits *des* investisseurs

July 28, 2018

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, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Me Anne-Marie Beaudoin
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800, rue du Square-Victoria, 22e étage
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RE: CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

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We are writing with regards to CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* ("Consultation Paper").[1] Our concerns relate to what

[1] CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (6 April 2017) ["*Consultation Paper*"].

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the term "regulatory burden" means for investors. In particular, reducing regulations may not be in investors' interests at all. This should be of concern to a regulatory body charged with protecting investors interests under securities law.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protection in securities regulation. Visit www.faircanada.ca for more information.

1. Overview of Consultation Paper

1.1. The stated purpose of the Consultation Paper is "to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital market."[2] According to the CSA, regulations must reflect the need of Canadian businesses to remain competitive.

1.2. The Consultation Paper sets out five potential changes which may reduce regulatory burdens for reporting issuers, namely (1) extending the application of streamlined rules to smaller reporting issuers; (2) reducing the regulatory burdens associated with the prospectus rules and offering process; (3) reducing ongoing disclosure requirements; (4) eliminating overlap in regulatory requirements; and (5) enhancing electronic delivery of documents.[3] These proposals focus on alleviating the regulatory burdens related to raising capital in the public markets, and the ongoing costs of continuous regulatory requirements, such as continuous disclosure.

2. What Does "Reducing the Regulatory Burden" Mean?

2.1. It is not clear from the Consultation Paper what precise goals will be achieved by the proposed initiatives. Specifically, what does reducing "regulatory burden" mean? Is the goal to increase efficiency for issuers (i.e. given that "efficiency" is a term appearing in the mandate of securities regulators)? Is it to consolidate financial information for investors? Is it to decrease disclosure obligations? More clarity regarding this ambiguous term is warranted.

2.2. Assuming that efficiency is the goal, it is still unclear what type of efficiency is sought. There are various conceptions of efficiency, including: informational efficiency; allocational efficiency; and, "Pareto optimality" or "Kaldor-Hicks" efficiency.[4] Informational efficiency refers to whether the market price of a security reflects all information relevant to its pricing and is thus increased with more disclosure requirements.[5] On the other hand, allocational efficiency, which refers to the

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[2] *Ibid* at 2.
[3] *Ibid* at 3.
[4] Anita Anand, *Towards Effective Balance Between Investors and Issuers in Securities Regulation*, in Canada Steps Up (2006) at 18 [*Anand*].
[5] *Ibid at 29.* Also see Eugene Fama, "Random Walks in Stock Market Prices" (1995) 51 Financial Analysts Journal 75. According to Eugene Fama, "in an efficient market, at any point in time the actual price of a security will be a good estimate of its intrinsic value". Under this conception, some of the measures discussed in the Consultation Paper, specifically reduce disclosure requirements and would reduce informational efficiency.

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"effectiveness with which a market channels capital to its highest, most productive uses"[6] may be increased by reduced disclosure requirements.[7] Pareto optimality introduces alternative considerations and considers whether a particular initiative will make citizens better off without making any one person worse off.[8] A variation of this concept, Kaldor-Hicks efficiency, considers whether citizens who benefit under a particular change can adequately compensate those who do not benefit from it.[9]

2.3. To assess whether regulatory initiatives result in a "better off" or "worse off" outcome, the costs and benefits of the initiatives should be weighed. It is unclear whether the proposed initiatives set out in the Consultation Paper would be Pareto optimal or Kaldor-Hicks efficient. Although it is not always easy or possible to predict the costs and benefits of a proposed initiative, the CSA should attempt to conduct a cost-benefit analysis to determine whether the proposed initiatives would result in an overall "better off" outcome for the capital markets as a whole (i.e. not just the issuer community).

2.4. These differing conceptions of efficiency show that "reducing regulatory burden" is ambiguous. Even if the purpose is to increase efficiency, further elaboration regarding "reducing regulatory burden" is needed.

2.5. The OSC recently echoed concerns for "regulatory burden" similar to that of the CSA. The OSC's latest Statement of Priorities outlined that "the global interconnectedness of markets and mobility of capital create a strong need for harmonization and coordination of regulation. However, the potential for increased protectionism and deregulation could inhibit global harmonization and create opportunities for regulatory arbitrage. In light of such developments, the OSC may face pressure from certain stakeholders to scale back areas of regulation making it increasingly important for the OSC to address concerns of regulatory burden."[10] This statement is not only vague, but fails to consider that reducing regulatory burden may well undermine investors' interests and the OSC's own mandate. In addition, the statement indicates that regulators may not appreciate that following possible deregulatory efforts south of the border could (i) undermine achievements made to improve our regulatory framework in light of the global financial crisis; (ii) be short lived and costly to deregulate and then re-regulate; and (iii) undermine confidence in our capital markets.[11]

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[6] *Anand, supra* note 4 at 31.

[7] In general, regulations reduce the ability of the market to allocate capital at low costs. Allocational efficiency is consistent with investor interests in the sense that investors will receive higher "market wide" returns when efficient capital allocation is operating properly. See *Anand, supra* note 4 at 31. According to Wallison and Smith, by reducing obstacles to capital flows, allocational efficiency promotes the country's economic growth. See Peter Wallison & Cameron Smith, "The Responsibility of the Securities and Exchange Commission for Efficiency, Competition and Capital Formation: Reforms for the First 1000 Days" (Paper presented to the Financial Services Roundtable, October 2005) [unpublished].

[8] *Anand, supra* note 4 at 32.

[9] Michael Trebilcock, *The Limits of Freedom of Contract* (Cambridge: Harvard University Press, 1993).

[10] OSC Notice 11-777 - Notice of Statement of Priorities for Financial Year to End March 31, 2018 (29 June 2017).

[11] See, for example Ben Protess and Julie Hirschfeld Davis, "Trump moves to Roll Back Obama-Era Financial Regulations", *New York Times* (February 3 2017), online: <https://www.nytimes.com/2017/02/03/business/dealbook/trump-congress-financial-regulations.html>. Many of the rules that the Trump administration is considering for change or deregulation are designed explicitly to protect investors and promote long term stability in the capital markets. If regulators like the OSC blindly follow the path of American deregulation, they will largely be removing rules designed explicitly to protect investors. Moreover, there is little bi-partisan consensus on these regulations, meaning that that re-regulation is likely once a change in leadership occurs.

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2.6. The CSA has launched a related initiative to examine the investment fund disclosure regime in its Rationalization of Investment Fund Disclosure ("Project RID") initiative. Project RID "will review the existing disclosure requirements to identify potentially redundant or obsolete disclosures that should be reconsidered by the CSA."[12] This review will take place in 2017, with mid-2018 targeted for publication of proposed rule amendments. As the CSA engages in a review of investment fund disclosure, concerns set out in this comment letter will also be relevant. The CSA should keep these comments in mind – and in particular the need to ensure that investors are not disadvantaged with reforms aimed at reducing the regulatory burden – as it sets out any proposed changes.

2.7. We wish to note that the CSA has already implemented steps to reduce the burden on reporting issuers through recent reform initiatives. Specifically, the CSA has implemented new prospectus exemptions, modified existing exemptions and tailored disclosure requirements to alleviate regulatory burden for venture issuers.[13] These changes have reduced the regulatory burden imposed on reporting issuers. Before moving forward with any further reforms, we believe that the regulators should demonstrate with empirical evidence that these and further steps are beneficial for the capital markets - this includes investors as key stakeholders in the capital markets.

3. Why Should Smaller Firms be Subject to Less Regulation?

3.1. Advocates of reduced regulation suggest that undue regulatory burden is placed on small companies that bear proportionally higher regulatory costs because of economies of scale. Despite the common argument that a reduction in reporting requirements will make it easier for small companies to raise capital, there is limited empirical data establishing the benefits of this so-called "proportionate regulation". In fact, a 2016 study of TSX Venture Exchange firms suggests that the arguments made in favour of proportionate regulation are not relevant given the voluntary adoption of corporate governance mechanisms among small firms.[14] The study found that despite the exemption of venture issuers from the requirement that audit committees be financially literate and independent,[15] 88 percent of the audit committees examined

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Canadian securities regulators should be leaders, not followers, when it comes to investor protection and ensuring capital market stability.

[12] OSC Bulletin Issue 40/26 (29 June 2017).

[13] CSA Staff Notice 45-314 – Updated List of Current Exempt Market Initiatives (28 January 2016) summarizes prospectus exemption initiatives and amendments from 2014 to 2016, including the existing security holder exemption (ESH Exemption), the rights offering prospectus exemption (Rights Offering Exemption), the investment dealer exemption (Investment Dealer Exemption), the crowdfunding exemption (Crowdfunding Exemption), the offering memorandum exemption (OM Exemption), and the friends, family and business associates exemption (FFBA Exemption); CSA Notice of Amendments to NI 51-102 Continuous Disclosure Obligations, NI 41-101 General Prospectus Requirements and NI 52-110 Audit Committees (9 April 2015) outlines the amendments made in 2015 to focus disclosure by venture issuers. It includes the implementation of the option of providing quarterly highlights, the use of a new tailored form of executive compensation disclosure and a reduction of historical financial data required in venture IPO prospectuses to two years.

[14] Anita I. Anand, Wayne Charles & Lynnette D. Purda, "Voluntary Corporate Governance, Proportionate Regulation and Small Firms: Evidence from Venture Issuers" (December 2016) Forthcoming December 2017 in Canadian Business Law Journal, online: <https://ssrn.com/abstract=2938690> [*Anand, Charles & Purda*].

[15] *Audit Committees*, OSC NI 52-110, 27 OSCB 3252 (March 26 2004).

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maintained a majority of independent members and 85 percent maintained a majority of members who are financially literate. This study has limitations: it is based on a limited number of firms in the sample and generally the disclosure of firms on the Venture Exchange is more sparse than firms on the TSX.[16] Furthermore, if firms chose to comply because they viewed compliance as beneficial, this says nothing about the extent to which investors are protected – there is no guarantee that firms will continue to comply voluntarily.

3.2. A sized-based distinction, as is in place in the United States, should not be implemented in Canada. The Canadian market is substantially different from that of the U.S., primarily in terms of the number of small to medium size companies that go public and remain publicly listed. Implementing a size-based distinction would have an overall negative impact on Canadian capital markets as it will likely encourage practices to intentionally reduce a firm's size, its assets or market capitalization, which can be detrimental to both the firm and its shareholders.

3.3. The SEC's Division of Economic and Risk Analysis conducted a study on the SEC's proposed expansion of the definition of a "smaller reporting company"[17] and found that scaled disclosures are likely to have a negative effect on institutional ownership.[18] For sophisticated institutional investors who utilize the data in making investment decisions, the scaled disclosure requirements for smaller companies may make them less attractive and in turn, reduce the institutional investor demand for smaller companies.

4. <u>Ongoing Disclosure Requirements Should not be Reduced</u>

4.1. Venture issuers currently require only two years of financial statements and related analysis for a venture issuer IPO prospectus. It would be inappropriate to extend the two-year eligibility criteria for issuers that intend to become non-venture issuers. Even for small firms with pre-IPO revenues under a certain threshold, the historical data provided by additional years of disclosure are necessary and fundamental to provide an accurate and fair representation of the company. Investors should not be restrained from having a better understanding of their investment options.

4.2. Disclosure is an essential accountability mechanism to ensure that issuers are held responsible and stakeholders are well-informed. As such, we oppose the reduced disclosure requirements mentioned in part 2.3 of the Consultation Paper. Reducing disclosure requirements would undermine the interests of investors and may allow the more egregious of companies to avoid

[16] *Anand, Charles & Purda, supra* note 14 at 22.

[17] As part of the SEC's Disclosure Effectiveness Initiative, on June 27, 2016, the SEC proposed redefining "smaller reporting company" in Item 10(f) of Regulation S-K and other Commission rules in order to expand the number of registrants that would fall under it. See Amendments to Smaller Reporting Company Definition, Release No. 33-10107 (27 June 2016), online: <https://www.sec.gov/rules/proposed/2016/33-10107.pdf>; The SEC's Disclosure Effectiveness Initiative was mandated by the Fixing America's Surface Transportation Act (the "FAST Act") which was passed in December 2015. Section 72002 of the FAST Act directed the SEC to "further scale or eliminate requirements . . . to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors."

[18] Securities Act Release No. 10107, 81 Fed. Reg. 43130 (July 1, 2016) at 43144, online: <https://www.gpo.gov/fdsys/pkg/FR-2016-07-01/pdf/2016-15674.pdf>.

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regulatory oversight. The CSA states three objectives of securities regulation: investor protection, promoting fair, efficient and transparent markets, and reducing systemic risk.[19] Disclosure keeps investors adequately informed about their investments, and prevents inaccurate financial reporting through transparency requirements. Disclosure is critical to the maintenance of public accountability.

4.3. The CSA should also not change its current quarterly reporting requirement to semi-annual. Semi-annual reporting has been previously considered and rightfully abandoned by the CSA.[20] Quarterly reporting provides greater transparency about the reporting issuers and any changes to its operations. Advocates of semi-annual reporting suggest that it eliminates "quarterly earnings hysteria" and allows companies to focus on long-term value instead of the short-term.[21] These arguments fail to note that investors range from short-term to long-term and have different information needs. While semi-annual highlights may be sufficient for some investors, it will be insufficient and disadvantageous for others. Quarterly reports better protect investor interests by addressing the information needs of a range of investors.

4.4. In short, the current regulatory and disclosure requirements play an important role in adequately informing the market. While we do not favour reducing regulation generally, consolidating financial information, such as MD&A, financial statements and AIF, is a useful recommendation and would benefit investors. Consolidation should occur to the extent that only overlap in the disclosure requirements is eliminated or reduced. In so doing, issuers would benefit from the reduction of redundant document production, while investors would still be provided with the same disclosure information. Changes such as the modification of the MD&A and the AIF, which both discuss the risks associated with the reporting issuer, would be reasonable and advantageous.

4.5. In addition, improving the effectiveness of existing disclosure by making more salient existing information – for example, by requiring issuers to identify their key 3 to 5 risks upfront, while disclosing all material risks as required, may benefit investors. Retail investors generally lack the ability to shift through technical and complicated documents.[22] Moreover, the poorest Canadians are the ones who typically possess the least financial knowledge.[23] Rather than reducing the amount of disclosure given to investors, regulators should be improving the quality and accessibility of these documents to ensure that all Canadians can meaningfully engage with the material. Failing to do so will leave the most vulnerable investors at risk.

<u>Electronic Delivery:</u>

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[19] Canadian Securities Administrators, "Our Mission", (2009) online: <https://www.securities-administrators.ca/our-mission.aspx>.
[20] The implementation of semi-annual reporting to quarterly reporting was proposed in NI 51-103, but the CSA ultimately chose not to implement the change in reporting requirement amidst numerous concerns raised by commenters.
[21] Paul Amirault, Thierry Dorval et al, "It's time to end quarterly reporting" (April 2017), Norton Rose Fullbright, online: <http://www.nortonrosefulbright.com/knowledge/publications/148630/its-time-to-end-quarterly-reporting>.
[22] Canada, The Task Force to Modernize Securities Legislation in Canada, *Canada Step Up*, Vol 1 (Toronto: October 2006) at 56.
[23] Innovation Research Group, Inc. "2012 CSA Investor Index", (16 October 2012), *Canadian Securities Administrators,* online: <www.securities-administrators.ca/uploadedFiles/General/pdfs/2012%20CSA%20Investor%20Index%20-%20Public%20Report%20FINAL_EN.pdf>.

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4.6. We do not think that it is appropriate to satisfy delivery requirements by making documents available electronically without prior notice or consent. At this time, FAIR Canada does not agree that access should equal delivery. If an electronic notice is sent to investors, a specific link to the relevant documents should be provided because simply making a document available on SEDAR is not sufficient. Investors will find it difficult to locate documents on SEDAR, and from behavioral economics, we know that fewer investors will review a document, if it is not delivered to them (either physically or electronically through a pdf or link).[24]

4.7. More broadly, in response to consultation question 33, FAIR Canada finds that some regulatory documents that are required to be delivered, such as Fund Facts and Plan Summaries for Group Scholarship Plans, are difficult to find on the fund manufacturer or group scholarship plan dealer's website. Mandating where these documents are required to be found on a provider's website would improve investor protection.

4.8. The Fund Facts document has also been permitted to be delivered by linking to a document containing numerous fund fact documents of the manufacturer – but it is extremely difficult for the individual retail investor to determine which fund facts document is relevant to their proposed purchase or existing holding. Therefore, the effectiveness of disclosure (electronic or otherwise) may be increased by introducing additional requirements rather than lessening them.

5. <u>More Empirical Study Needed</u>

5.1. In light of the CSA's acknowledgement that investor protection should not be compromised in implementing the proposed changes set out in the Consultation Paper,[25] we advocate further study on the impacts of any proposed deregulation on investors. As noted, limited empirical work currently exists. More research should be undertaken to determine whether any proposed initiatives would impact stakeholders including investors.

5.2. In the U.S., a similar initiative to reduce regulatory burden was commenced by the SEC's Disclosure Effectiveness Initiative.[26] The Office of the Investor Advocate ("OIA") has raised concerns that many of the proposed changes "appear to pit the informational needs of investors against the costs and burdens to the companies who provide the disclosure".[27] The OIA stressed

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[24] Canadian Foundation for Advancement of Investor Rights, "Re: CSA Notice and Request for Comments regarding Proposed Streamlined Prospectus Exemption for Rights Offering (the "Notice")" (February 25 2015), *FAIR Canada*, online: <faircanada.ca/wp-content/uploads/2011/01/150225-final-FAIR-Canada-Comments-re-Rights-offerings.pdf> at 5.

[25] *Consultation Paper, supra* note 1 at 2.

[26] Following a study of disclosure requirements under Regulation S-K which was mandated by the JOBS Act, the SEC undertook a Disclosure Effectiveness initiative to review and modernize public company reporting requirements, specifically in regards to Regulation S-K (which outlines reporting requirements for SEC filings for public companies) and Regulation S-X (which outlines form and content requirements for financial statements). This initiative is ongoing and considers whether "existing disclosure requirements should be modified or eliminated, whether new disclosure requirements should be created, and whether disclosures could be presented and provided more effectively". See SEC, *Report on Modernization and Simplification of Regulation S-K* (23 November 2016) at 1, online: SEC <https://www.sec.gov/files/sec-fast-act-report-2016.pdf >.

[27] Office of the Investor Advocate, *Report on Activities Fiscal Year 2016* at 11, online: <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2016.pdf>.

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the importance of maintaining investor protection if regulatory burden is to be reduced.[28] It noted that in regards to proposed deregulation in the U.S., Congress should "resist the temptation to mandate or pressure the SEC to adopt reforms where the available evidence is inconclusive."[29]

5.3. Similarly, in Canada, until further study is conducted regarding the impact of deregulation on investors, the CSA should not move forward with the proposed initiatives. Investors benefit from transparency and accountability, so it would be counterintuitive to assume that reduced disclosure will not harm them to some degree. In a speech on November 9, 2016, Investor Advocate Rick Fleming stated that as the SEC's Disclosure Effectiveness initiative "moves forward, the Commission should focus, first and foremost, on meeting the informational needs of investors."[30] We suggest that a similar focus is needed here.

6. Conclusion

6.1. The very purpose of securities regulation is to ensure investor protection and market efficiency. Loosening regulations in the manner proposed may undermine these objectives. As recognized in the Consultation Paper, the burden of compliance must be balanced against "the significance of the regulatory objectives sought to be realized and the value provided by such regulatory requirements to investors and other stakeholders."[31] Before the CSA moves forward with any initiatives to reduce regulatory burden, empirical evidence that investors will not be negatively impacted is necessary. At present, the Consultation Paper is equivocal about whether suggested reforms to reduce the regulatory burden will negatively impact investor protection.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Anita Anand at anita.anand@utoronto.ca or Marian Passmore at 416-214-3441/marian.passsmore@faircanada.ca.

Yours Truly,

Anita Anand on behalf of FAIR Canada

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[28] Office of the Investor Advocate, *Report on Objectives Fiscal Year 2018* (21 April 2017) at 7, online: <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2017.pdf>.
[29] *Ibid* at 2.
[30] Rick A. Fleming, SEC Investor Advocate, Speech at NASAA Corporation Finance Training: Moving Forward with the Commission's Disclosure Effectiveness Initiative (19 November 2016), online: <https://www.sec.gov/news/speech/moving-forward-with-the-disclosure-effectiveness-initiative.html#_edn3>.
[31] *Consultation Paper, supra* note 1 at 2.

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July 28, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Ladies and Gentleman,

Re: Comments on CSA Consultation Paper 51-404

The following comments are submitted in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*, dated April 6, 2017.

Toronto Hydro Corporation ("THC") is a holding company which wholly owns two subsidiaries: (i) Toronto Hydro-Electric System Limited ("THESL"), which distributes electricity and engages in conservation and demand management activities, and (ii) Toronto Hydro Energy Services Inc., which provides street lighting and expressway lighting services in the city of Toronto. The principal business of THC and its subsidiaries is the distribution of electricity by THESL, which owns and operates the electricity distribution system for Canada's largest city. A leader in conservation and demand

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management, it has 764,000 customers located in the city of Toronto and distributes approximately 18% of the electricity consumed in Ontario.

THC, whose common shares are solely owned by the city of Toronto, is a reporting issuer in each province of Canada and issues debentures pursuant to a short form base shelf prospectus (dated May 8, 2017) that have not been listed on any securities exchange unless otherwise determined. For purposes of certain Canadian securities regulations, THC is a "venture issuer" as defined in National Instrument 51-102 – Continuous Disclosure Obligations.

This letter represents the undersigned's personal views (and not those of THC) and are submitted without prejudice to any position that may be taken by THC or any other related person or entity.

(1) Venture Issuer Definition *(CSA Consultation Question 4, 5 & 6)*

The "venture issuer" definition should more closely reflect and better accommodate the different types of venture issuers operating in the Canadian markets, including Toronto Hydro, so that appropriate and useable exemptions can be tailored to their circumstances.

The current qualification criteria, based on stock exchange listings, produces an overly broad and uneven set of accommodations (for issuers at opposite ends of the spectrum) that do not properly address regulatory need and investor protection.

One result is that venture issuers like Toronto Hydro are granted relief from rules that they otherwise still need to comply with on account of their capital market activities. For example, since an Annual Information Form ("AIF") is required for an issuer to be eligible to file a short form prospectus for a shelf program, relief from AIF rules for venture issuers like Toronto Hydro do not provide adequate accommodation.

A revenue and market capitalization (size) test, as well as consideration of the nature and type of securities issued, would help to better identify types of issuers that could benefit from relevant exceptions, without negatively impacting investors.

Consideration should also be given to establishing a more bespoke regulatory regime for large venture issuers like Toronto Hydro (who only issue unlisted debt securities) where the regulatory burden would be more proportionate to the risks. Elements could include, for example, greater reliance on Toronto Hydro's existing continuous disclosure documents (provided duplicative requirements in such documents are eliminated), along with a more simplified form of AIF/MD&A and term sheets describing debt issuances in lieu of repetitive and detailed prospectus documentation. This is also discussed further in sections 2 and 4 below.

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(2) Prospectus Disclosure Changes and Alternative Prospectus Offering Model *(CSA Consultation Question 10 and 13)*

Requiring a full AIF to be produced for issuances of investment grade debt securities (via the current short form prospectus rules) is both excessive and overly burdensome to issuers like Toronto Hydro whose debt is typically purchased by sophisticated institutions on the basis of credit rating and financial disclosure information.

Reliance on an issuer's continuous disclosure, along with an abridged AIF, that is accompanied by offering term sheets specific to the securities being issued, could help form the basis of a more simplified public offering model for investment grade issuers instead of the current prospectus-driven regime.

Continuous market access could also be facilitated via reliance on an issuer's continuous disclosure documents, and the 25-month shelf life rules which often duplicate disclosure and unnecessarily drive up issuer costs with regular program renewals, could be eliminated.

(3) Marketing Regime *(CSA Consultation Question 17)*

The rules need to better reflect how an MTN public debt offering is marketed (which is simplified compared to other public offerings) in order to reduce the amount of marketing filings made at the time of an offering. Under the current regime, Toronto Hydro has been required to file as many as 6 different versions of marketing materials for each debt offering (and each one is translated, resulting in the total number of marketing filings being 12).

Many of these required filings are unnecessary and can be potentially confusing. Accordingly, the marketing rules would likely benefit from clarifications and other changes that would result in better disclosure that is not duplicative of the prospectus and pricing supplement.

For example, the current rules provide for "standard term sheets" (essentially shorter/simplified versions of currently filed marketing materials) which can be provided to investors, but do not need to be filed on SEDAR since they only describe the basic features of the issuer, the offering and the securities. Current practice is that these term sheets, however, are being treated as "marketing materials" which trigger numerous filings on SEDAR for an issuer.

To avoid such multiple filings, one idea is that the rules should better clarify that the customary short-form term sheets used in MTN programs can be considered "standard term sheets" and therefore do not need to be filed on SEDAR. Doing so would help reduce the burden on issuers without having any negative impact on investors.

(4) Annual and Interim Disclosure Requirements *(CSA Consultation Question 21)*

It is also worthwhile mentioning that because there are distinct types of venture issuers in the Canadian capital markets (ranging from very small to very large organizations) a "one-size-fits-all" regime does not work well. In my view, the CSA should consider introducing a reduced disclosure regime for debt-only issuers, like Toronto Hydro, on account that several of the compliance obligations under the

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current rules are not adequately reflective of the lower risks associated with such forms of investment (versus, for example, a publicly traded company with equity securities where an investor's investment could be substantially reduced or even eliminated). In addition, being required to repeat the same disclosure in multiple documents is both inefficient for issuers and confusing for investors.

One suggestion, where an annual disclosure document is required, would be to create a new short and simplified format that would both represent a substantial reduction from the current AIF form and eliminate disclosure repetitions[1], and that would also include reduced and more simplified executive compensation disclosure for debt-only issuers (keeping in mind that debt investors, with fixed returns, do not generally view executive compensation information in the same way that equity investors do). Although current executive compensation disclosure rules already include an abridged form for venture issuers, in my view the disclosure obligations are not reduced enough in comparison to what mainstream equity-traded issuers are required to provide. Given the lack of meaningful difference, many of the larger venture issuers do not even bother to take advantage of the abridged format and instead seem to elect to comply with the longer format. This is evidence that the current abridged format does not work and should be further reduced and amended.

Creating a separate disclosure framework with rules specifically aimed at debt-only issuers can not only be arranged in a way that is more responsive to the needs of debt investors, but if it is done correctly, it would also considerably help to reduce redundant compliance obligations without any negative implications for investors.

Thank you for the opportunity to provide these comments and please do not hesitate to let me know if you would like to discuss further.

Regards,

Conrad Sheppard
Director, Legal Services and Corporate Secretary

[1] For example, by combining select portions of AIF and MD&A disclosure into a single format for debt-only issuers.

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July 28, 2017

BY EMAIL

TO THE ATTENTION OF:

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
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Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers, published April 6, 2017 (the "Consultation Paper")

Thank you for providing the opportunity for interested parties to make written submissions on the Consultation Paper, and to comment on these important issues.

These comments are submitted on behalf of McEwen Mining Inc. ("**McEwen Mining**"), which is a US public company, trading on both the NYSE and TSX.

We are pleased to see that the CSA is focussed on the issue of regulatory burden. We believe that the following principles should guide the CSA's work in this area:

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- Shareholders and investors are the key market stakeholders to whom disclosure are made
- The CSA should consider "Does this rule/disclosure requirement actually improve a stakeholder's understanding of the company and its business?" before enacting a new disclosure or compliance rule
- Disclosure documents that are read by shareholders/investors must be clear, concise, in plain language, and easy to understand
- The CSA needs to weigh the additional cost of compliance with new disclosure rules against their usefulness for shareholders and investors
- If information is already on the public record, it should be incorporated by reference in subsequent documents, rather than duplicated

Areas for improvement

Our responses presented here are by reference to the regulatory options and consultation questions provided in the Consultation Paper.

2.1 Extending the application of streamlined rules to smaller reporting issuers:

Consultation Question 4:
A size-based distinction between categories of reporting issuers would be preferable to the current distinction based on exchange listing. We see many benefits of extending the streamlined rules to some smaller reporting issuers currently listed on the TSX and other senior securities exchanges. Smaller companies have fewer internal resources to comply with the heavy compliance and reporting burdens currently imposed on public companies. These smaller companies are frequently at the heart of innovation and bringing new ideas to market, which is what their shareholders invest in them to do. Their focus should be on using shareholder funds to advance their businesses rather than comply with cumbersome requirements that frequently do not assist in providing shareholders with a better understanding of the business.

We do understand that there needs to be a balance between streamlined requirements and adequate regulatory oversight for smaller companies. In our view, some of the junior and alternative platforms both domestically and abroad, do not necessarily have standards of disclosure of the robustness required to ensure sufficient confidence in the public markets, and therefore issuers listed on those platforms should not necessarily be permitted to list on the TSX under any new 'smaller TSX issuer' regime, to which they would be attracted by the newly relaxed standards. If the CSA intends to extend streamlined rules to non TSX/TSXV listed issuers, it should consider such extension on an exchange by exchange basis.

2.2 Reducing the regulatory burdens of the prospectus rules and offering process:

Consultation Question 7:
In our view, it is appropriate to extend the eligibility criteria for the provisions of two years of financial statements to issuers that intend to become issuers on the TSX, subject to our response to Consultation Question 8 below.

Consultation Question 8:
We recognise that it is important to be able to perform a three year trend analysis when evaluating an issuer. This does not mean, however, that all new issuers listing on the TSX should necessarily be required to provide three years of financial statements. While three years should be required for an issuer listing by way of an IPO, since there is little public information available about an IPO issuer, we believe that two years is sufficient for non-IPO prospectus listings, as there is a historical disclosure record available to the public via SEDAR.

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Consultation Question 9:
We believe that auditor review of interim financial statements and pro forma statements contained in a prospectus is unnecessary, where all of the entities whose statements/pro formas are required are already reporting issuers.

In general, disclosure obligations should be coordinated to ensure the prospectus process is not duplicative. For example, financial statements don't need to be included, but rather should be incorporated by reference.

Consultation Question 12:
Availability of the short form prospectus offering system should be extended to more reporting issuers. In fact, it should be available to all reporting issuers who are required to file on SEDAR. The distinction between a short form and a long form prospectus made sense prior to SEDAR when public disclosure was less accessible and comprehensive, but now has been rendered superfluous by the continuous disclosure afforded by the SEDAR system.

Consultation Question 13:
Not only, in our view, has the relevance of the long form/short form prospectus distinction been superseded by the continuous disclosure of the SEDAR era, but the conditions are such that it is high time to consider a type of alternative prospectus model for reporting issuers. Given that SEDAR can provide public access to the necessary information about and disclosures by reporting issuers, and that pertinent reporting information and disclosures can be made by way of reference to existing documentation available via SEDAR, we applaud the ASC's consideration of a more streamlined short-form prospectus focusing on information relating more directly to the offering, as described at page 8 of the Consultation Paper. While we recommend that British Columbia's Continuous Market Access proposal be revisited and considered for wider application, we are highly supportive of the concept of an alternative simplified prospectus that contains just the new and relevant information that is of immediate relevance to an investor in the offering.

Consultation Question 15:
The regulatory burden is a major obstacle to wider use of ATM offerings in Canada. This needs to be addressed so that Canadian reporting issuers are not at a competitive disadvantange to their counterparts in the US. Specifically, we recommend that the CSA eliminate the requirement to obtain prior exemptive relief as discussed in the
Consultation Paper. Otherwise, the competitiveness of Canada's capital markets vis-à-vis US alternatives will be diminished, and more issuers, especially those that are dual listed, will have good reason to pursue financing by way of a US-only ATM offering.

Consultation question 17:
Further, regarding efforts to liberalise the pre-market and marketing regime, we suggest that the existing rules do not necessarily achieve the purpose for which they were intended and are unduly complex. We recognize the need for a "cooling off" period between marketing efforts and the launch of an offering, but suggest that the current regime does not achieve this. As a result, we would like the CSA to consider the implementation of a two-week blackout period, during which the issuer would be prohibited from engaging in any marketing, before announcing any offering. This would provide a clear, simple process to ensure that investors are not "caught up in the enthusiasm" of a corporate presentation but have time to consider a possible investment in the context of the same offering documents as the rest of the market.

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2.3 Reducing ongoing disclosure requirements:

Consultation question 18:
In our view, the BAR disclosure does not provide relevant or timely information for an investor and should be eliminated. The resulting disclosures are rarely reviewed by issuers or investors. Further, the filing is made post-acquisition, so is often of limited use to investors except as a post mortem.

Consultation question 21:
We would like to add our voice to those of the stakeholders the Consultation Paper mentions who have suggested that the volume of information sent to shareholders every quarter obscures the focus on the information truly important to the investor. Not only are many of the required reports not helpful to shareholders, the quarterly disclosure requirements for interim MD&A documents are an unnecessary burden on the reporting issuer. Perhaps we arrived at the current state due to many years of iterative and incremental legislative initiatives, resulting in too much "legalese" and duplicative requirements.

Consultation question 24:
To reduce the regulatory burden described, we would suggest that while quarterly unaudited statements would continue to be required, that semi-annual MD&A (with quarterly updates) should be made available for all reporting issuers.

Consultation question 26:
Following on from our response immediately above, all issuers should be permitted to prepare quarterly highlights in satisfaction of MD&A requirements for periods other than year end and 6 months, rather than limiting this to venture issuers only. The quarterly highlights should consist of a simple set of financial statements with streamlined notes, incorporating notes from the annual financial statements by reference and discussing events that had changed over the quarter from the prior period.

2.4 Eliminating Overlap in Regulatory Requirements:

Consulting Question 29:
In light of the overlap in disclosure requirements reporting issuers must make every quarter, McEwen Mining would be highly supportive of an initiative to consolidate the requirements of the MD&A and Financial Statements into one document. This would allow for a very welcome streamlining of the reporting process, while still providing ample disclosure and protections for the potential investor**.**

2.5 Enhancing Electronic Delivery of Documents.

Consulting Question 32:
The "notice and access" model is a positive development for the Canadian securities regulatory regime, and should be heralded, promoted, and further expanded. It not only reduces costs for reporting issuers and reduces the environmental impact of communicating with shareholders, but also is well aligned with the information consumption and communication habits of a significant and growing proportion of modern shareholders and capital markets participants.

This model should be the default method of transmitting reporting and disclosure documents to shareholders, while preserving an 'opt-out' option for the ever diminishing proportion of shareholders who still expect to receive printed materials delivered by post.

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As an additional item for consideration, to assist shareholders in accessing information incorporated by reference, a hyperlinking requirement, similar to the method employed by the EDGAR disclosure regime in the United States should be considered.

In closing, we would like to reaffirm our commitment to this project and once again underline the critical importance of this project to ensure the effective operation of our capital markets and as an essential component for Canada's capital markets to remain competitive in our global economy. As Chief Owner of McEwen Mining, I would welcome the opportunity to participate further in any consultations or steering committees that arise as a result of this project as we believe that there is no more urgent priority for the CSA at this time.

Sincerely,

Rob McEwen
Chief Owner

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Securities Transfer Association of Canada

Lara Donaldson
President

Via e-mail

July 28, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sirs:

RE: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

This letter represents the comments of the Securities Transfer Association of Canada (STAC) in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (51-404). STAC is a non-profit association of Canadian transfer agents that, among others, has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;

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- To provide membership to firms engaged as transfer agents or registrars in the field of the issuance, transfer and registration of securities and associated functions;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To assist members with problems of a technical or operational nature;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities; and
- To provide members and others with information and comments of an educational and technical nature relating to the securities transfer and corporate trust industry.

STAC appreciates the opportunity to provide our insight on this important initiative. We will be focusing our comments on the areas where transfer agents are directly involved, specifically electronic delivery and notice-and-access. For ease of reference, we have included the text of the original consultation question, where applicable.

Section 2.5 Enhancing electronic delivery of documents

Consultation Question 31: *Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?*

There are certain processes in NP 11-201 which result in inefficiencies in the market, and security holder confusion.

The current processes contemplated under NP 11-201 allow issuers to deliver documents electronically only to those registered security holders that consent to receive electronic delivery of material specifically from that issuer. Therefore, issuers using the same transfer agent are not permitted to make use of security holder consents previously obtained by other issuers. This includes situations where a new company is created through a spin-off mechanism, which results in an initial share register for the spin-off company that is an exact duplicate. The consents cannot be transferred to the new company so new consents must be re-solicited from each security holder prior to electronic delivery being used. This results in dissatisfaction for security holders, as well as additional costs to issuers. The Legislative Assembly of Ontario, through Bill 218, *Burden Reduction Act, 2016*, has proposed an amendment to subsection 141(1) of the Ontario Business Corporations Act (OBCA) that would require the securities register to include "…an e-mail address if one is provided."[1] There is no indication of how or when this e-mail address can be used. We recommend that a regime of implied consent be implemented, so that if a transfer agent has received an email address from a security holder, and they have proper processes in place to manage rejected or returned electronic delivery items, they should be authorized to use it for delivery of material unless specifically instructed otherwise by a security holder.

There is also a disconnect in the process used by issuers under National Instrument 54-101-*Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) when they choose

[1] Legislative Assembly of Ontario, Bill 218, Burden Reduction Act, 2016, Schedule 12, paragraph 10

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to mail meeting material directly to their Non-Objecting Beneficial Owners (NOBOs). Under NI 54-101, the consent for electronic delivery is provided by the NOBO to the intermediary who holds their account. A single form is completed that applies to all securities held in that account, which streamlines the process for the intermediary. When NOBO information is provided to a transfer agent for mailing, the consent for electronic delivery is not included, as it cannot be passed through to a third party due to the consent provided by the beneficial shareholder being limited only to "…electronic delivery from the intermediary."[2] STAC believes that the consent should be available to any mailing provider. The inability of an issuer's transfer agent to use the e-mail address provided results in a breakdown in the communication process, frustration for security holders who have indicated that they want to receive their material electronically, and additional printing and mailing costs for the issuer. The end result is a disincentive for issuers to mail material directly to their NOBOs, and we therefore believe that amendments should be made to NI 54-101 so that a consent received will also be applicable to material delivered by issuers.

Consultation Question 32: *The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:*

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements, and MD&A?

There are various areas that cause operational disconnects or inefficiencies:

- The inability of issuers incorporated in certain jurisdictions, such as those incorporated under the Canada Business Corporations Act (CBCA) or Alberta Business Corporations Act (ABCA), to take advantage of the notice-and-access regime in Canada because a proxy circular is required to be delivered if a proxy is being solicited.

- The disconnect between the requirement for some issuers, such as those incorporated under the CBCA or ABCA, to mail an Annual Financial Statement (AFS) to all registered shareholders, except those who have indicated in writing that they do not wish to receive the information, and the processes that are available under notice-and-access. This "opt-out" process required in the CBCA and ABCA results in issuers being required to mail a printed AFS to the majority of their registered shareholders, thereby negating much of the cost-savings that should be available to them. This is in conflict with the processes currently set out in National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) requiring holders to annually request to receive a printed copy of the AFS.

The Minister of Innovation, Science, and Economic Development, through the introduction of Bill C-25 *An Act to amend the Canada Business Corporation Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act* in September of 2016 has started the process of

[2] National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer,* Form 54-101F1 – *Explanation to Clients and Client Response Form*

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modernizing the CBCA. There are still other Canadian jurisdictions, however, which also need to undertake similar reviews and proposals for modernization.

(b) *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?*

STAC has no opinion on whether or not it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making the documents publicly available electronically without prior notice or consent. We do have concerns, however, in connection with the impact this would have on the operational processes surrounding security holder validation and voting. The complete elimination of a notification process for security holders, whether registered or beneficial, would cause a breakdown in these processes. Currently, security holders receive either a paper proxy or voting instruction form, or an e-mail advising them of the availability of proxy material. In both of these instances, unique codes are included that allow the holder to access a website that validates their identity, allows for electronic voting, tracks the vote, and ensures that a position is not voted more than once. If there was no notification process, holders would not be able to access the electronic voting site. Voting could possibly be forced to return to a paper process where a physical proxy with a signature would be submitted, and the tabulator would be required to interpret the signature in order to accept the vote. In our view, this would not be a favourable outcome.

(c) *Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?*

Further to our response to (b) above, STAC has grave concerns that this change would have a negative impact on the shareholders' right to vote. Although paper copies of material may be made available, that would not correct the breakdown in the voting process.

(d) *Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?*

Although notice-and-access has been available in Canada since 2013, there are still many issuers who have not adopted the process. Although we have not conducted a survey of issuers, we have received anecdotal evidence of some concerns that issuers have, such as:

- Upon analysis of the costs connected with notice-and-access and the size of the security holder base, there are insufficient cost savings incentives.

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- The requirements under the issuer's specific act of incorporation do not allow for notice-and-access to be used.

- The extended time line requirements for the record and mailing dates cannot be managed. The increase of the record date from 30 to 40 days before the meeting date and the mailing to 30 days before the meeting date can result in the scheduling being squeezed to the point that there is no cushion for unforeseen contingencies.

Consultation Question 33: *Are there other ways electronic delivery of documents could be further enhanced through securities legislation?*

Acceptance of electronic forms of delivery of documents increases every year. If an e-mail address is provided by a security holder, we believe that consent for delivery of material should not be required, but an "opt-out" process should be used whereby a holder would need to advise a record keeper if they did not wish to receive material electronically, in effect providing standing instructions for paper material akin to the notice-and-access regime.

We also note that continuing technological innovations are likely to result in new forms of electronic communication in the near to medium term, for example through the implementation of new developments such as distributed ledger technology. We would therefore recommend that any legislative provisions be facilitative and 'technology neutral' to allow market stakeholders to continue to explore and utilise new technologies, subject of course to appropriate controls for integrity, data protection and investor protection.

We would like to again extend our appreciation for the opportunity to provide comments. We would be pleased to discuss the contents of our letter, or provide any further feedback as the CSA continues their efforts on this important initiative.

Lara Donaldson
President

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Dear Sir/Madam:

Re: CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Proposals")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposals. Although our response addresses many of the specific questions put forth by the CSA, we believe it is more useful to focus on areas that our members believe the CSA should target in order to maximize efficiencies and competiveness in the Canadian capital markets.

<u>Potential options to reduce regulatory burden – General consultation questions</u>

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?
(b) Which should be prioritized and why?

Recognizing that the Canadian markets have characteristics which distinguish it from the US, it is important to acknowledge that, given the close proximity and interconnection of the markets, it is

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important that Canadian regulation not create an anti-competitive environment which would discourage issuers and investors from accessing and investing in Canadian markets. The CSA should closely monitor regulatory developments in the US, (such as the JOBS Act) and work with the industry to understand the impacts, and ensure Canadian regulation does not create an unnecessary impediment to capital formation in Canada and send investment dollars southbound.

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

See question 1(b) above. Canadian regulators should examine circumstances where US regulators have identified areas for specific relief based on the size of the issuer, such as the reduced financial statement requirements for smaller issuers under the JOBS Act, and timely market access for Well Known Seasoned Issuers (WKSIs). Given that the framework for regulation has been tried and tested in the US, adapting these provisions for Canadian use in order to facilitate competition and expedited market access should be possible in the short to medium term.

In addition, adapting the electronic proxy delivery accommodations to the prospectus delivery context would also result in significant time and cost savings, without the need to draft the regulation without precedent. (see question 32 for more detail)

Finally, elimination of the requirement to obtain a receipt for a filed prospectus to begin marketing a transaction or to communicate initial, revised or final terms on a transaction could be implemented through minor amendments in the short term.

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

The current 10 day regulatory review and receipt process for preliminary prospectuses is a significant burden that introduces delays without providing investor protection. This requirement should be eliminated, or the review time significantly shortened. This can be achieved through the implementation of a WKSI shelf registration process, as discussed above.

<u>Extending the application of streamlined rules to smaller reporting issuers</u>

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

The existing categorization of issuers based on exchange listing is a uniquely Canadian market feature that successfully differentiates it from other markets. The TSX Venture Exchange and the CSE provide investors a clear means of distinguishing the types of issuers in which they are investing, while providing those issuers with an environment tailored to their specific needs, and a path to graduation. Creating further categorizations for small issuers would create confusion, and would dilute the benefits of having specific marketplaces serving junior issuers and their investors.

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5. If we were to adopt a size-based distinction:

(a) What metric or criteria should be used and why? What threshold would be appropriate and why?

If a size based criteria was adopted, members favoured a market capitalization criteria as appropriate for Canadian issuers, as revenue based tests are not an appropriate metric to reflect the size of resource issuers. A threshold of $100 million was suggested as an appropriate market capitalization. The size based criteria should line up with listing standards on the exchanges serving venture issuers.

(b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

This is the difficulty of implementing a size-based threshold (as opposed to a listing-based test). The significant fluctuation in smaller companies' market capitalizations could have the effect of moving between disclosure regimes, even with the creation of a grace period.

(c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?

(d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

As noted above, in order to retain transparency and avoid confusion, the current exchange based regime should be retained.

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

In regulating non-venture issuers, regulators should not necessarily look to venture standards in determining what might be appropriate. Regulators should examine what investors expect, and the international regulatory environment for issuers of similar size. Certain members expressed concern that lowering standards to venture standards for non-venture issuers may make Canadian issuers less competitive among investors, who may favour issuers with more robust disclosure standards. This could also create confusion in respect of inter-listed issuers where reporting standards may be inconsistent.

Reducing the regulatory burdens associated with the prospectus rules and offering process

(a) Reducing the audited financial statement requirements in an IPO prospectus

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:

(a) How would this amendment assist in efficient capital raising in the public market?
(b) How would having less historical financial information on non-venture issuers impact investors?

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(c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?
(d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

In order to compete with US firms operating under the provisions of the JOBS Act, a requirement for two, rather than three years may assist issuers. In appropriate circumstances, issuers may elect to include additional reporting periods to demonstrate particular trends. It may be appropriate to permit but not require non-audited statements with auditor comfort beyond the two year requirement to allow firms to show trends where this is relevant.

8. How important is the ability to perform a three year trend analysis?

This depends on the type of issuer. As noted above, it may be helpful to permit a non-audited third year statement where appropriate.

(b) Streamlining other prospectus requirements

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

This is an appropriate requirement. If it were removed, there is a concern that liability would shift to other parties that are not qualified to undertake the appropriate due diligence in this regard. It was suggested that the requirements and liability associated with interim statements in a prospectus be consistent with continuous disclosure statements.

10. Should other prospectus disclosure requirements be removed or modified, and why?

The requirements for French translation and physical printing for prospectus offerings represent two very significant burdens that do not enhance investor protection, and could be removed with minimal impact on investors, and result in significant cost savings to issuers. In its 2005 Securities Offering Reform, the SEC implemented the policy of "Access Equals Delivery" for prospectus offerings. In the adoption of that policy, the SEC commended that "we believe that Internet usage has increased sufficiently to allow us to adopt a final prospectus delivery model for issuers and their intermediaries that relies on timely access to filed information and documents." Given that almost 12 years have passed since the implementation of the Access Equals Delivery policy in the US, we believe that there is significant merit in Canada implementing a similar policy.

In addition, disclosure that is repeated among different documents should be removed from prospectus disclosure requirements.

In terms of other disclosure requirements, it is important to maintain a balance, as what may be cheaper for issuers may be less attractive for investors.

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(c) Streamlining public offerings for reporting issuers

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

Members indicated that the current short form prospectus requirements are not particularly onerous, and that the increasing disclosure in this document reflects a view among those preparing the document that additional disclosure may be helpful, or required by regulators reviewing the document.

It was suggested that the rules relating to marketing materials be amended to permit more information to be included.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

The criteria to file a short form prospectus is currently not onerous, and it is not necessary to extend it to more reporting issuers.

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?
(b) What types of investor protections should be included under such a model (for example, rights of rescission)?
(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Any new system should address the current 10 day regulatory review process and the required receipt for a preliminary prospectus. This should be eliminated or significantly shortened. The implementation of the WKSI shelf registration process (see the answers to questions 2 and 16) could be helpful in expediting access to capital markets for companies that are well-known to the capital markets.

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

The ATM rules currently are significantly more burdensome than those in the US, and as such, encourage issuers to undertake such offerings in the US. This area is complex and a separate consultation may be appropriate.

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15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

See response to Question 14

(d) Other potential areas

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by:
(i) Canadian issuers and
(ii) foreign issuers?

The MJDS system generally works quite well, except in circumstances where issuers have not filed a shelf prospectus, in which case, it is quite burdensome. In the US, an issuer can use a shelf prospectus immediately without signaling to the market. If issuers could file a shelf prospectus without a review, this would allow issues to finance immediately without waiting for a receipt.

In general, we recommend that the receipting process for preliminary prospectuses be eliminated, as it does not provide additional investor protection, and delays the offering process. This is consistent with practice in the US markets.

Alternatively, if an AIF can be considered a shelf prospectus, this would streamline the process significantly without compromising investor protection.

We also recommend that the US Well-Known Seasoned Issuers (WKSI) program be explored. This system permits issuers of a certain size, and meeting specific criteria to file an automatic shelf registration statement on Form S-3.

A Form S-3 filed by a WKSI is automatically effective and, consequently, not subject to the SEC review process. Post-effective amendments to the Form S-3, such as to add a type of security or a related issuer, are also automatically effective.

Unlike non-WKSI filers, the registration statement and any amendments are automatically effective regardless of whether there are any outstanding SEC comments. This feature provides extraordinary flexibility to WKSIs because it eliminates any potential delay resulting from SEC staff review and/or comments.

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the premarketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

Although the 2013 amendments resulted in some improvement to the former regulatory provisions, certain problems remain. For instance, under the current rules, it is cumbersome to amend the terms of a marketed offering (such as a change in the price range of the securities) due to the refiling & receipt

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process. As noted above, the current 10-day regulatory review process for preliminary prospectuses is a significant burden that introduces delays without providing investor protection. The requirement for a prospectus receipt prior to distributing a term sheet on deal launch, amendment of terms, or pricing should be eliminated. It should be noted that in the US, this step is not required, and a term sheet may be sent out with a press release, streamlining the process and making it much more efficient.

Reducing ongoing disclosure requirements

(a) Removing or modifying the criteria to file a BAR

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

While BAR-level disclosure (either in a prospectus for an acquisition financing or the BAR filing itself) is informative, it is not essential to the marketing of an equity offering. As most Canadian follow-on equity offerings are sold on a bought basis, investors will typically not receive the information until the filing of the preliminary prospectus, up to 4 days after the launch of a transaction. Key information required for the distribution of an equity offering is communicated through the term sheet and, in most cases, a management presentation – both of which are filed on SEDAR.

19. Are there certain BAR requirements that are more onerous or problematic than others?

The requirement that an acquisition financing include pro forma financial statements also lengthens the process and creates additional complexity. In the event that pro forma financial statements are unavailable, issuers are forced to finance in the private placement market, which has the consequence of reducing the size of the investors available to participate in a transaction.

We recommend that the timing of the BAR filing on an acquisition financed by a prospectus be consistent with an acquisition financed by a private placement. Where a transaction is financed by a private placement, issuers have 75 days from the closing of the transaction to file a BAR, contrasted with the requirement to have the BAR disclosure included in the prospectus. This compression of the time required to prepare the disclosure makes it unattractive to undertake a public offering to support the transaction.

20. If the BAR provides relevant and timely information to investors:

(a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?
(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?
(c) What alternative tests would be most relevant for a particular industry and why?
(d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

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The BAR threshold for non-venture issuers is currently too low, and can be triggered by a transaction that does not justify the significant time and expense of drafting a BAR. We recommend that the threshold for non-venture issuers be set at 40%, consistent with the former venture requirements.

In respect of disclosure, we are of the view that the requirement for pro-forma statements can be misleading and not particularly helpful for investors. We recommend that the requirement for pro-forma statements be removed, and the regulation should provide more flexibility in respect of the historical statements of the target company.

(b) Reducing disclosure requirements in annual and interim filings

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

(c) Permitting semi-annual reporting

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

While we acknowledge the time required for issuers to report on a quarterly basis, any change to a less frequent reporting cycle would be a departure from best practices in the capital markets. Such a change could make the Canadian capital markets less attractive to global investors that are used to quarterly reporting that is typical in North America.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

Issuers benefit from the structured and frequent communication with investors that comes with the quarterly reporting cycle. In particular, many of these investors are fiduciaries, responsible for managing capital on behalf of their clients. Moving to a less frequent reporting cycle would have the effect of reducing the amount of information that market participants have to make an investing decision.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

One of the benefits of quarterly reporting is that it provides investors with a high level of information on a frequent basis. The burdens relate to the cost and time required to prepare such documents.

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Quarterly MD&A requirements should be reduced by eliminating redundant information including specific items already included in the quarterly financial statements (financial instruments, commitments, etc.).

Eliminating overlap in regulatory requirements

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

The MD&A and the financial statements are meant to be reviewed in tandem. The relationship between these two documents makes it redundant to include items such as contractual obligations, outstanding share capital, accounting policies, etc.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

Financial and other instruments, related parties, critical accounting estimates and judgements, and future accounting pronouncements should not be included in the MD&A in additional to the items noted in question 27.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

Enhancing electronic delivery of documents

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

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(c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?

(d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

In our members' experience, many investors do not wish to receive paper delivery of proxy materials, financial statements and MD&A, prospectuses or other disclosure documents. Many of the investors do not read these documents, and even those that do have expressed their preference to be able to receive or retrieve these documents electronically so that they can access them at any time and place. In addition, some investors have concerns about the environmental impact of the volume of paper waste generated to provide this disclosure. Given the near universal adoption of electronic communication and internet access in Canada, requiring paper distribution of documents that could easily be e-mailed or accessed electronically is an unnecessary and costly procedural anachronism.

Ideally, the requirement for paper documentation should be removed, however, at a minimum, it should be limited to distribution on specific request by the investor.

Thank you for considering our comments. If you have any questions, please don't hesitate to contact me.

Yours sincerely,

Susan Copland

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155 Wellington Street West
Toronto ON M5V 3J7
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July 28, 2017

BY E-MAIL

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o

The Secretary
Ontario Securities Commission
Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

We are writing in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper"). We strongly support this initiative to reduce undue regulatory burden under Canadian securities legislation associated with the capital raising and continuous disclosure of reporting issuers. In addition to reducing disclosure that is ineffective or unnecessary for investor protection, we believe there are a number of significant process changes that could be modernized to reduce the regulatory burden associated with the capital formation process.

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Our comments below address some, but not all, of the potential regulatory initiatives identified in the Consultation Paper. For ease of reference, we have used the same numbering (for headings and questions) used in Part 2 of the Consultation Paper. Our comments are, by necessity, at a high level and incomplete due to the wide-ranging and general nature of these potential initiatives. While we have provided a number of specific examples, these examples are not intended to be exhaustive. We will be in a position to provide more specific and comprehensive feedback as details are provided for the rule proposals associated with these initiatives.

2.1 Extending the application of streamlined rules to smaller reporting issuers

In adopting any changes to the current "venture issuer" model, the CSA should also give consideration to the treatment of debt-only issuers (regardless of their size). Debt-only issuers may currently avail themselves of the abbreviated disclosure obligations, and extended reporting deadlines, that are available to venture issuers by virtue of not having an exchange listing. To the extent "venture issuer" eligibility is amended, we think it is still appropriate to afford reporting accommodations to debt-only issuers, particularly those who initially issued their outstanding debt securities by way of a private placement and/or (following their issuance) became a wholly-owned subsidiary of an ultimate parent (reporting or not) as a result of a going-private transaction[1]. In those circumstances, the type of reporting that a debt security holder should expect is the reporting that the issuer agreed to provide holders by virtue of the reporting covenant in the indenture applicable to the debt security. An issuer should not be compelled to redeem its outstanding debt securities at a premium (or guarantee those securities and provide associated credit supporter type disclosure) merely to avoid additional statutory reporting obligations that were not bargained for in that reporting covenant.

2.2. Reducing the regulatory burdens associated with the prospectus rules and offering process

(a) Reducing the audited financial statement requirements in an IPO prospectus

Under U.S. securities legislation, certain issuers are permitted to file a registration statement in connection with an IPO offering with only two years of audited financial statements. We think the CSA should consider allowing issuers this same option in their Canadian prospectus when conducting a concurrent initial public offering in Canada.

[1] Notably, in a going-private scenario, holders of debt securities likely had an option to exit their investment pursuant to a mandatory "change of control" offer.

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(b) Streamlining other prospectus requirements

Question #10 - Should other prospectus disclosure requirements be removed or modified, and why?

There are a variety of prescribed prospectus disclosures that could be eliminated or modified without adversely affecting investor protection. Some of the unnecessary disclosure stems from the over-inclusive, prescriptive nature of the prospectus forms, requiring disclosure in all circumstances even where the type of disclosure prescribed would not be material for many or most issuers. In this initiative to streamline prospectus disclosure to that which is meaningful to investment decisions, we generally suggest that the CSA take a more principles based approach with certain categories of disclosure in lieu of a 'one size-fits all' approach, thereby requiring disclosure only where the issuer and its underwriters have determined it to be material in the circumstances. In addition, we believe significant efficiencies could be realized (without impairing investor protection) by streamlining the prospectus clearance process and modifying or removing some of the associated filing obligations.

Short Form Prospectus Requirements. We are of the view that efforts to streamline the short form prospectus requirements and process should be given priority over amendments to the long-form requirements. For efficient capital markets, it is critical to minimize the time necessary to prepare and clear a short form prospectus. The disclosure record and seasoning of many reporting issuers that are eligible to use the short form offering process should provide regulators and the financial markets the comfort necessary to afford these issuers a more streamlined short form prospectus regime. For suggestions specific to the short form prospectus requirements, see our response to consultation question #11 below.

Confidential Filings. In the context of a Canadian IPO, we submit that an issuer should be entitled to confidentially pre-file one or more drafts of its preliminary prospectus for non-public review. Earlier this month, the U.S. Securities and Exchange Commission (the "SEC") extended this accommodation for draft registrations statements filed to register U.S. IPOs, as well as initial filings to register follow-on offerings within the following year, without regard to the size or residency of the issuer. A confidential review process should make the Canadian initial public offering process more attractive to all first time issuers as it allows them the flexibility to address comments of the securities regulators outside of public view.

Listing Representations. Prohibitions on listing representations should be modified to allow issuers to state that application will be made to list the offered securities, without having previously made such application or obtaining a prior consent, if the issuer already has a listed class of securities on the relevant exchange. As a timing matter, making a prior application can be impractical and obtaining a prior consent may be equally (or more) impractical and is an unnecessary added expense.

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(c) Streamlining public offerings for reporting issuers

(i) Short form prospectus offering system

Question #11 - Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

Potential Disclosure Modifications. There are a variety of disclosures prescribed by Form 44-101F1 that could be eliminated or modified without adversely affecting investor protection. Taken as a whole, we think these changes would result in a significant reduction in the time and expense of preparing a short form prospectus. As noted in the Consultation Paper, price range and trading volume statistics are generally available and should not be mandated prospectus disclosure. Consider whether the mandated prospectus disclosure of credit ratings (Item 7.9 of 44-101F1) should also be eliminated or modified[2]. Rather than mandating this disclosure, it could be left to the issuer and its underwriters to assess whether credit rating disclosure was appropriate or necessary in order to ensure the prospectus provides full disclosure of all material facts. In circumstances where a credit rating is disclosed, Item 7.9 of 44-101F1 could instead require the associated disclosure (in Item 7.9(1)(c) to (g)) *only* to the extent it is not otherwise addressed in the issuer's AIF and is material to an understanding of that credit rating. Consider also whether to scale back the required disclosure in respect of prior sales. Some of the information provided may not be meaningful to prospective purchasers (*e.g.,* shares issued on the exercise of previously granted options) or may be adequately addressed through existing disclosure in the issuer's MD&A or financial statements. Consider whether prior sales information is necessary at all for issuers offering a highly-liquid security.

More significant (from a burden perspective) is the earnings coverage ratio disclosure mandated by Item 6 of 44-101F1. Subject to feedback that you receive from investment dealers, we recommend removing (or at least modifying) the prescribed earnings coverage ratio disclosure. Our understanding is that a typical investor in debt securities would not rely on the prescribed calculations for an investment decision. They would instead calculate coverage using EBITDA or similar non-GAAP measures, and may instead (or in addition) rely on other financial metrics to assess the credit. Further, where there are a number of events requiring pro forma adjustment, the prescribed calculation (and associated disclosure) can be complicated and, ultimately, may not be appropriate. In some circumstances, the pro forma adjustment is not determinable at the time of filing and, as a result, must be the product of estimation or assumptions *(e.g.*, a make-

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[2] We understand that there is no equivalent disclosure obligation under U.S. securities legislation (for U.S. prospectuses or annual reports) and credit rating disclosure is not voluntarily included in U.S. prospectuses as this would require a corresponding consent of the relevant rating agency to be filed with the SEC that would expose the agency to potential liability as an 'expert'.

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whole redemption that is to be priced on a future treasury yield and applying an assumed currency exchange rate and redemption date). Further, because Item 6 prescribes adjustment only for the issuance or retirement of other financial liabilities to the extent the issuance / retirement was "since the date" of the relevant financial statements, the prescribed measure could be misleading where a significant financial liability was issued or retired within the relevant period (as opposed to after the period end).

We also recommend modifying the underwriting conflict requirements of NI 33-105, and associated disclosure specified in Appendix C, to more clearly align with its policy objective. The absence of a bright line test for relationships that would make an issuer a "connected issuer" has resulted in over-disclosure of the relationships between an issuer and investment dealers without regard for whether those relationships would in fact lead a reasonable prospective purchaser to question their independence. Further, the required disclosure extends beyond what is material for this determination and, in some cases, does not clearly align with its objective. For example, if the "connected issuer" relationship is because of indebtedness, Item 6(e) requires disclosure of the "extent to which the financial position of the issuer or selling securityholder or the value of the security [for the indebtedness] has changed since the indebtedness was incurred." We assume this is intended to identify only changes that are material and adverse and, as a result, bear on the question of the dealer's independence – *i.e.*, the changes may reasonably be expected to impair that dealer's ability to recover on the indebtedness. However, even with such a qualifier, the disclosure obligation could prove impractical in the absence of any current valuation work.

Reduce Associated Filing Burdens. In addition, the CSA should consider removing a number of burdensome filing obligations that are prescribed by Part 4 of NI 44-101. Key among these is the personal information form ("PIF") filing[3]. To the extent PIFs are required after an issuer's IPO, it should be adequate for those PIFs to be cleared in the ordinary course by the stock exchange on which the issuer's securities are listed. It is not necessary that they also be cleared by Canadian securities regulatory authorities. Obtaining and clearing the necessary PIFs and/or obtaining PIF confirmations concurrently with a short form prospectus filing can pose a substantial timing issue. The launch or pricing of that short form offering could be delayed due only to a minor administrative error or omission in a PIF, a common occurrence due to the length of the form and the short window in which it is to be completed. Further, the abbreviated window for a short form prospectus review may provide inadequate time for staff to adequately vet any substantive issues (whether apparent or real) arising in the context of a PIF review. To the extent the CSA feels it necessary that they continue to clear PIFs, issuers should be entitled to clear PIFs in advance and outside of the context of a short form prospectus filing. No purpose is served by requiring those PIFs to be filed (or confirmed for their currency) concurrently with the clearance of a short form prospectus[4]. Further, the requirement to confirm the currency of a PIF

[3] No equivalent filing is required under U.S. securities legislation.

[4] Notably, an issuer can mitigate the risk of potential delay and reduce the frequency of PIF filings / updates through the use of a shelf prospectus, which (as a practical matter) require that PIFs be confirmed or refreshed, as applicable, only once every 25 months.

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within 30 days of filing should be extended to at least 90 days so that it can be efficiently integrated with an issuer's quarterly disclosure controls and procedures. Consideration should also be given to removing other filing obligations that simply add to the prospectus related paperwork[5].

Consents of Qualified Persons. The CSA should consider limiting the requirement to file consents ("QP consents") of authors of technical reports ("Author QPs") in connection with the filing of short form prospectuses and prospectus supplements. The technical report for each material property of an issuer and the names of the QPs who prepared the technical report must be set out in an issuer's annual information form which makes the Author QPs "experts" when an AIF is incorporated into a prospectus. As a result, consents must be obtained from each Author QP in connection with each filing of a short form prospectus or prospectus supplement,[6] even where the prospectus disclosure supported by the portion of the technical report written by an Author QP is not material in the context of the issuer. Obtaining QP consents can be a major impediment to the timely execution of a bought deal or a shelf prospectus take-down, particularly in the context of a multi-mine issuer, where internally prepared technical reports with many contributors may result in a significant number of Author QPs. In these circumstances, unlike where an engineering or geoscientific company employed the Author QP, there is no alternative form of consent permitted if the Author QP is no longer employed by the issuer. Accordingly, an issuer must seek relief from the requirement to file a QP consent where the Author QP cannot be located or no longer cooperates with issuer. A further consequence of requiring QP consents is that it often forces an issuer to disclose the potential for an offering to its Author QPs well prior to public announcement of the transaction. We also question the benefit of a QP consent where the prospectus does not include an extract from the technical report. As a result, we believe that the CSA should consider modifying the QP consent requirement to address these issues. In lieu of requiring a QP consent in connection with the filing of a short form prospectuses of a producing issuer, the CSA should consider whether it is sufficient that one or more qualified persons (a "Disclosure QP") has approved the disclosure in that prospectus as required by NI 43-101[7]. To the extent that the CSA still feels it necessary that a QP consent be provided, we propose that the producing issuer should have the option of providing a consent of a Disclosure QP (which would need to be modified) rather than the consent of Author QPs. Alternatively, the CSA could amend the consent rules to clearly permit

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5 For example, we suggest removing the requirement for manually signed certificate pages (and corresponding Form 6s). Generally speaking, requiring any manually signed documents poses an unnecessary burden.

6 Other than a prospectus supplement filed in the period between filing the base shelf prospectus and the first subsequent annual information form.

7 Currently, section 2.1 of NI 43-101 requires that all disclosure of scientific and technical information made by an issuer concerning a mineral project on a property material to the issuer must be (a) based upon information prepared by or under the supervision of a qualified person, or (b) approved by a qualified person. Section 3.1 of NI 43-101 further requires that written disclosure contain the name and the relationship to the issuer of such qualified person. The approach discussed above would necessitate that, for disclosure of scientific and technical information in a prospectus, a qualified person must approve the disclosure.

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an issuer to elect to file QP consents together with its annual information form such that those consents would not be required also at the time of filing any short form prospectus or prospectus supplement.

Narrow Focus of Prospectus Review. The CSA should consider streamlining the short form prospectus review process such that it is focused on disclosure specific to the particular offering and not on the issuer's existing continuous disclosure record (absent manifest error). From a timing, efficiency and policy perspective, any review of an issuer's continuous disclosure should be performed over the course of the year. For the reasons noted in response to Question #13 below, we submit that there is no longer a strong policy rationale for triggering this review merely by virtue of a short form prospectus offering, particularly in the case of seasoned issuers that are well-known in the financial community.[8] On a related note, the CSA should consider circumstances in which a preliminary receipt could be automatic, or would not be required, in order to allow underwriters to immediately proceed with soliciting offers for a marketed public offering.

Question #12 - Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

We do not think it is appropriate to extend the availability of the short form prospectus offering system to reporting issuers that are not currently eligible due to the absence of a current AIF.

(ii) Potential alternative prospectus model

Question #13 - Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?

(b) What types of investor protections should be included under such a model (for example, rights of rescission)?

(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

As noted elsewhere in this letter, there are many options available for streamlining the public offering process in Canada that we strongly support. We also believe conditions are right to adopt an alternative prospectus model that recognizes advancements in the quality of Canadian continuous disclosure stemming from regulatory initiatives adopted since the early 2000s to improve the Canadian reporting framework. These initiatives (including requirements around

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[8] Notably, an eligible issuer may mitigate the risk of delay from continuous disclosure review at the time of an offering by conducting its prospectus offerings by way of a shelf prospectus.

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establishing, evaluating and certifying ICFR and DC&P), when coupled with statutory secondary market liability regimes across Canada, have led to more rigour in Canadian continuous disclosure practices. Improvements in the quality of Canadian continuous disclosure and in technology that allow investors more timely access to that disclosure support an alternative prospectus model premised on prospectus disclosure that is more concise and focused on the particular offering. However, in our view, a public offering in Canada should always be conducted by way of an offering document that (when read together with its incorporated documents) meets the minimum prospectus disclosure standards established by Canadian securities legislation for the protection of Canadian investors.

Automatic Shelf Alternative. The CSA should consider adopting an 'automatic' shelf procedures similar to the 'automatic' shelf registration procedure available under U.S. securities legislation. Under the U.S. procedure, "well-known seasoned issuers" are entitled to qualify (without prior SEC review or any other delay) unspecified amounts of different types of securities by way of an 'automatic' shelf, paying filing fees on a 'pay-as-you-go' basis at the time of each takedown. In contrast with a traditional Canadian shelf, an automatic shelf need not specify the total amount of securities that are qualified[9]. While eligible Canadian issuers can (and often do) take advantage of the current Canadian shelf procedure in order to de-risk the potential for a delay at the time of an offering, an 'automatic' shelf procedure should be more attractive as, among other things, it mitigates adverse pricing pressure from the market overhang associated with a traditional, unallocated shelf. The 'well-known' and 'seasoned' nature of eligible issuers and their reporting record should provide comfort that the Canadian 'automatic' shelf option will not meaningfully diminish the investor protection that would otherwise be afforded by a traditional shelf[10]. For this purpose, issuer eligibility could be premised on a minimum reporting history coupled with a minimum public float or prior history of public offerings (meeting a minimum aggregate size) and the absence of an ongoing or potential issue with the issuer's disclosure record[11]. Separately, we propose that the time for which any shelf (whether traditional or 'automatic') is effective be extended from the current maximum of 25 months.

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[9] While an unspecified amount of securities is a feature unique to an 'automatic' shelf prospectus, the CSA should consider whether to take this same approach generally with respect to any shelf prospectus. This approach could streamline the Canadian prospectus offering process for Canadian issuers who are reluctant to avail themselves of the efficiencies afforded by conducting offerings pursuant to a traditional shelf prospectus due to the associated market overhang.

[10] Consistent with the view taken by the SEC in their securities offering reform in December 2015, we think it is appropriate to afford a subset of reporting issuers that are 'well-known' and 'seasoned' (in contrast with smaller, less seasoned issuers) this offering related flexibility as there should be a sufficient level of confidence in their continuous reporting resulting from their track record and the wide following (and associated scrutiny) of their reporting by the financial community.

[11] For example, an issuer might be ineligible for an automatic shelf if it is in default of its continuous disclosure obligations or currently under review or, during a prescribed prior period, was the subject of a cease trade order due to a misrepresentation or another material breach of disclosure requirements under securities legislation.

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(iii) Facilitating at-the-market (ATM) offerings

We are supportive of codifying in securities legislation the exemptive relief typically granted for Canadian ATM offerings. In the context of cross-border ATM offerings, consideration should also be given to additional relief that might be afforded to Canadian ATM offerings in order to better align with the requirements and conditions applicable to a concurrent U.S. ATM offering.

(d) Other potential areas

Question #16 - Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

In order to foster confidence in, and improve the efficiency of, Canadian capital markets, it is important to not view Canada in isolation. Capital raising that would have otherwise occurred in Canada may be driven to the larger markets in the U.S. and elsewhere to the extent Canadian rules governing public offering disclosure and process are significantly less flexible or more burdensome than the equivalent rules in the U.S. and other foreign jurisdictions. To avoid this result, and better streamline the process for cross-border prospectus offerings, we submit that the CSA should aim to minimize the friction between the Canadian, U.S. and other relevant regimes to the extent it will not compromise the protection of Canadian investors or otherwise be inconsistent with the objectives of Canadian securities legislation. Likewise, in altering Canadian disclosure requirements, the CSA should remain mindful of certain fundamental disclosures that are core to the prospectus and continuous disclosure requirements under U.S. securities legislation. Significant departures from those fundamental disclosures could adversely affect trading in Canadian issuers' securities and, more generally, the competitiveness and credibility of Canadian capital markets.

Adopt a Harmonized, Modern Regulatory Framework for Offshore Offerings. We urge the CSA to adopt a modern and harmonized approach to the regulation of the initial offering and resale of securities outside of Canada[12]. A comprehensive, national framework for offshore offerings that is modelled on Proposed OSC Rule 72-503 *Distributions Outside of Canada* would make Canada's capital markets more efficient and competitive and bring Canada's approach in line with more modern approaches applied in other jurisdictions. As a general principle, trades of securities outside of a Canadian province or territory should not be subject to that jurisdiction's prospectus requirement unless there is a reasonable likelihood that the offered securities will flow back into that jurisdiction without first 'coming to rest' outside of the jurisdiction. Ultimately, the prospectus requirement of a Canadian jurisdiction should be for the protection of

[12] A comprehensive framework should also confirm that marketing activities outside of Canada would not be considered in furtherance of trade and, therefore, would not be subject to Canadian prospectus requirements or the associated marketing regime. Uncertainty as to the application of the marketing rules to offshore marketing can arise in cross-border offerings by issuers located in Alberta, British Columbia and Québec, where applicable securities legislation may treat the offering as being a distribution "from" that province despite the securities being offered and sold exclusively outside the province.

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investors in that Canadian jurisdiction only, not foreign investors. Even if a Canadian prospectus requirement could be applied extra-territorially, we do not believe that it is the appropriate regulatory tool for enforcement against offshore activities of local boiler rooms and bad actors. Canadian securities regulators can still properly and adequately address these concerns and the purposes of Canadian securities laws through registration requirements, prohibitions on insider trading, fraud and misrepresentation and the regulators' public interest authority. In our view, there are significant costs and regulatory burdens associated with applying a Canadian prospectus requirement to *bona fide* offshore trades, with no corresponding benefit to Canadian investors. While we believe proposed OSC Rule 72-503 could be improved, in our view it is the best starting point for meeting the above objective.

Better Align Canadian Prospectus Requirements to Facilitate MJDS Offerings. As you know, public U.S. offerings by Canadian issuers are most commonly effected by way of the Canada-U.S. multi-jurisdictional disclosure system ("MJDS"). MJDS is by far the most efficient way for eligible Canadian issuers to access the public U.S. capital markets. However, since the adoption of MJDS, there have been intervening developments (in regulation, technology and the capital markets in general) that have led to some misalignment in the respective offering processes and practices in the United States and Canada. In addition, because the rules establishing MJDS are not exhaustive, there are (and have always been) certain ambiguities that would benefit from clarification. We urge the CSA to consider an initiative specific to streamlining Canadian prospectus disclosure requirements and processes that may conflict with corresponding U.S. requirements or otherwise be burdensome in the context of 'southbound' MJDS offerings. In connection with any such initiative, we would be pleased to provide more specific and comprehensive feedback.

Expand and Clarify Cross-Border Exemption. The exceptions for U.S. cross-border offerings in sections 13.11 and 13.12 of NI 41-101 (the "cross-border exception") are difficult to apply in practice. Among other things, clause 13.12(2)(a) of NI 41-101 should be amended to provide a threshold that is clear and practical. The threshold of an offering being sold "primarily" in the United States[13] is too vague to be useful and, depending on its meaning, may be too high a threshold given the purpose to be served by this condition. Because of this condition, issuers and underwriters have been reluctant to use the cross-border exception in circumstances where, as a principled matter (and in hindsight), it would have been appropriate. To the extent the CSA intends to maintain a "primarily" threshold for this condition, we suggest replacing the term with a definitive numerical threshold of 50.1%. More generally, the CSA should consider whether an alternate threshold could be applied that is not premised on the "reasonable expectations" of the underwriters. It is often impractical for underwriters to estimate approximately how much of a cross-border offering will be "sold" in or outside of Canada at the time at which a determination must be made as to the availability of the cross-border exemption. At this stage, the underwriters could verify that they have a *bona fide* intention to sell the offering primarily outside of Canada; however, without prior marketing, it is often impractical for an underwriter to confirm it is a

[13] Separately, given the objective of this condition, we submit that this test should refer to securities sold "outside of Canada" rather than "in the United States".

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reasonable expectation. One possible alternative to the "reasonable expectation" condition of the cross-border exemption is a condition satisfied by reference to the intention (as opposed to the reasonable expectation) of the underwriters, with a subsequent requirement to file the template version of the marketing materials if it is ultimately determined that the offering was not sold primarily outside of Canada. Finally, the definition of "U.S. cross-border initial public offering" should be modified to include a U.S. initial public offering by an existing Canadian reporting issuer.

Expressly Exempt Bona Fide Offshore Marketing Activities. On a more general note, we think it would be helpful to clarify that written communications made outside of Canada, and not directed at Canadian residents, are not deemed a violation of Canadian requirements simply because they are accessible by Canadian residents (over the internet, as a press release, or otherwise). In our view, no purpose is served in requiring that these communications be filed and incorporated in a Canadian prospectus as Canadian investors are not harmed by the absence of their filing and incorporation - these communications are not directed at Canadians and the Canadian prospectus, in any event, must include full, true and plain disclosure of all material facts relating to the securities offered. This issue could be addressed through 41-101CP. However, it would be clearer to instead carve-out all such bona fide, 'offshore' marketing communications from the filing and incorporation requirements for marketing materials.

Other Potential Cross-Border Improvements. Consideration should be given to whether there are avenues to further streamline the reporting of Canadian reporting issuers that choose to satisfy their Canadian reporting obligations using their U.S. reporting. While Canadian securities legislation largely accommodates cross-border issuer's use of U.S. compliant reporting to satisfy Canadian reporting obligations, there is room for further improvement. For example, the CSA should codify the relief that is routinely given to exempt SEC issuers from filing the exhibits to their annual report on Form 10-K (to the extent an equivalent filing of those exhibits would not be required were the issuer to have instead complied with Canadian continuous disclosure obligations) or incorporating any of their 10-K exhibits in their Canadian short form prospectuses (as none of the exhibits would be required disclosure for a Canadian prospectus). Requiring relief applications in these circumstances is time consuming and wasteful. Further, exempting the inclusion of these exhibits in a prospectus also saves an issuer from obtaining relief from translation requirements that might otherwise apply.

In addition, Section 6.4 of NI 44-102 should be clarified to require the filing of a prospectus supplement in a local jurisdiction *only* if the offering pursuant to that supplement is made in the local jurisdiction. While not express in NI 44-102, this is clearly the case in 'southbound-only' MJDS offerings where there is no Canadian distribution. However, it can be less clear in circumstances where, although the offering is made only in the U.S., it could be considered a 'distribution out' of any of Alberta, British Columbia and Québec. In addition to our general disagreement with the 'distribution out' concept, we do not see any specific benefit (from an investor protection standpoint) in requiring that a Canadian prospectus supplement be filed to qualify an offshore offering as there are no Canadian purchasers to whom that Canadian

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prospectus would be delivered. In those circumstances, the issuer should be entitled to prepare and file only the U.S. version of the prospectus supplement that is filed with the SEC[14]. In addition to saving the time in preparing a Canadian version of the prospectus supplement that is not used by or delivered to anyone (as there are no Canadian purchasers), this will clearly avoid any question (without further work on the part of the issuer's counsel) that local filing fees and, where applicable, translation requirements are not applicable in the context of any such prospectus supplement. Further clarification on this point would also be helpful in Part 4 of 71-101CP.

Question #17 - As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

Modify the "All-information Disclosure Requirement". The requirement of the 2013 amendments (the "2013 Amendments") that all information in a standard term sheet or marketing materials be disclosed in, or derived from information disclosed in, the applicable prospectus (the "all-information disclosure requirement"), other than contact information for the investment dealer or any comparables (in the case of marketing materials), is too narrow. The CSA should give further consideration to additional information that might properly be carved-out from this disclosure requirement without impairing the investor protection it is designed to achieve. For example, certain information that is (or should be) permitted in a standard term sheet but is not necessary disclosure in a prospectus for investor protection purposes.[15] Also consider applying a more general materiality threshold to the all-information disclosure requirement such that immaterial information need not be derived from a filed version of the prospectus or ultimately included in the subsequently filed version of the prospectus[16]. There is no benefit to the additional time and expense associated with having the issuer and underwriter and their respective advisors review marketing materials to ensure even immaterial information is in (or derived from) the prospectus.[17]

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14 To the extent the CSA believes it would be helpful that any such prospectus supplement nonetheless be on file (on SEDAR) to avoid any confusion on the public record, the requirement in Section 6.4 could clarify that the filed supplement may be the U.S. version and that it may filed under an "Other" category such that it does not attract Canadian filing fees.

15 For debt securities, consider permitting disclosure of their spread to the comparable treasury yield and credit ratings. Notably, where included in marketing materials, the spread is excepted from the all-information disclosure requirement as "comparables" are excepted.

16 It may also be appropriate to carve-out other market information that is not material information specific to the issuer and is derived and available from other publicly available sources.

17 Notably, under applicable U.S. rules, a "free writing prospectus" may contain information that is additional to the registration statement in respect of the securities offering; it simply must not conflict with the information in that registration statement or the issuer's continuous disclosure record.

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Expand Permitted Content of Standard Term Sheet. The permitted content for a standard term sheet listed in subsection 13.5(3) of NI 41-101 is too limited for its purpose. In almost every securities offering (other than straightforward common equity offerings) issuers are forced to file term sheets as "marketing materials" despite their being standard (from a policy perspective). This is due to the overly narrow content limitations in subsection 13.5(3). As a result of these limitations, in most cases, issuers cannot avail themselves of the accommodations that regulators intended for standard term sheets and are forced to file (and translate, where applicable) each and every basic term sheet despite there being no utility in each such filing being made. In addition to causing unnecessary (albeit minor) administrative burden, these overly narrow limitations can pose a significant problem for soft-sounding in the context of a potential debt offering by a shelf issuer as they may cause a very standard term sheet (without material non-public information) to be "marketing materials" that must be filed not later than the first day they are provided to investor, potentially defeating the purpose of the soft-sounding. The permitted content for "standard term sheets" should be expanded to address this. Among other things, the list of permitted content is missing additional market or other offering specific information such as, in the case of equity securities, details of any standstill or black-out in connection with the offering. In the case of debt securities, a basic term sheet would also typically include their yield, their spread to the comparable treasury yield, their credit ratings and their CUSIP/ISIN. Reference might also be made to any concurrent financing. Accordingly, in connection with its initiative to improve the marketing regime, we urge the CSA to confer with dealers to obtain a comprehensive list of the information typically included in term sheets and associated marketing communication. Further, it is unclear why there is a three line limit (in subsection 13.5(4) of NI 41-101) for any description of the securities, the use of proceeds or any guarantee or alternative credit support provided. With the exception of straight-forward offerings of common shares, it is often impractical to limit the description of the securities and the use of proceeds to no more than three lines of text. We suggest that the rule be revised such that the three line limit in subsection 13.5(4) apply only to any description of the business.

Accommodate Wall-Crossed Offerings Under Shelf Prospectuses. Requirements within the 2013 Amendments can pose practical issues for conducting 'wall-crossed' offerings[18] in Canada. In particular, the requirement that "marketing materials" must be filed not later than the first day they are provided to a potential investor. This requirement would defeat the purpose of the wall-crossing if it required a public filing, prior to a determination to proceed with an offering, of written communications that were confidentially provided to wall-crossed investors. NI 44-102 should be amended to clearly accommodate wall-crossed offerings by allowing investment dealers to provide written communications to wall-crossed investors after a receipt for a final base shelf prospectus in a confidential manner such that those communications could remain confidential until after announcement of the offering, if any, despite ultimately being marketing materials for purposes of the announced offering.

[18] 'Wall-crossing' is a technique regularly employed by U.S. investment dealers for confidentially gauging interest before proceeding with a potential U.S. public offering by way of a shelf takedown.

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Additional Clarifications. 41-101CP would benefit from a general statement that the marketing prohibitions are not intended to preclude an issuer from disclosing material changes or material facts with respect to an offering where the intent of that disclosure is to satisfy the issuer's reporting obligations under applicable securities legislation or the rules of the exchange on which the issuer's securities are listed.[19] These types of disclosure (whether by press release or another manner designed to broadly disseminate the relevant information) should not, in and of themselves, be considered a communication in contravention of the prospectus requirement (and therefore need not comply with the restrictions on marketing and pre-marketing) as they are not intended to be in furtherance of a trade and are not "intended for potential investors regarding a distribution of securities" (so do not constitute "marketing materials" or "standard term sheets"). As a result, these disclosures need not be made by way of a "preliminary prospectus notice" or "final prospectus notice"; nor could they be according to 6.5(3) of 41-101CP, which advises that a prospectus notice may not include a summary of the commercial features of an offered security.

The marketing material amendment provisions[20] should be clarified such that a blackline comparing the indicative and final marketing materials (and the corresponding required prospectus disclosure) is not required merely to reflect the inclusion of pricing or other bulleted / blank information in the final prospectus or prospectus supplement. The intention of the marketing material amendment provisions is to highlight changes to material facts in previously provided marketing materials upon which an investor may have relied. It is not necessary for investor protection to indicate the inclusion of pricing information, or the completion of other previously bulleted / blank information, as this should be expected and obvious and does not in fact modify a prior statement of a material fact. However, due to the absence of clarity on this point in the marketing material amendment provisions, many issuers prepare a blackline of their marketing materials showing the addition of pricing information and including corresponding disclosure in respect of this 'amendment' in the final prospectus or prospectus supplement.

[19] While subsection 6.9(3) of 41-101CP deals with this in part, its focus is too narrow as it refers only to material changes (as opposed to material facts) and "pre-marketing" restrictions (as opposed to the applicable restrictions on pre-marketing and marketing, which apply before, during and after the waiting period). Further, subsection 6.9(3) is too narrow in its advice that "the commercial features of the issue" not be disclosed in a news release or material change report. Commercial features should be permitted disclosure in a press release to the extent those features constitute a material fact (or their omission may result in a misrepresentation). An issuer may disclose these features in a news release to comply with its securities law and stock exchange obligations to generally disclose material facts and address selective disclosure concerns. Their publication in a filed prospectus would not, by itself, be likely to satisfy this general disclosure requirement.

[20] In subsections 7.6(7) of NI 44-101 and 9A.3(7)(b) of NI 44-102 and equivalent provisions in NI 41-101

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2.4 Eliminating overlap in regulatory requirements

We support removing duplicative information among the required reports. Each of the MD&A disclosure items identified can be adequately addressed through the equivalent note disclosure in an issuer's financial statements. Cross-references to the appropriate financial statement note(s) could be used to the extent relevant to provide context to discussion in an issuer's MD&A. There is considerable overlap in a number of the disclosures prescribed for an AIF and MD&A. There is also duplication between the AIF and proxy circular disclosure requirements with respect to directors and governance matters.

Generally speaking, we see the benefit of consolidating an issuer's annual MD&A, AIF and financials into a single annual report and consolidating interim reporting (MD&A and financials) into a single report for each quarter. In addition to reducing the reporting burden of producing multiple reports (with significant overlap in the required information), a single report has the benefit of providing all the necessary disclosure in one place. However, we do not think the consolidation of an issuer's AIF with its annual MD&A and financials into a single annual report should be mandatory. We think this consolidation should be at the issuer's option. Reporting issuers often choose to file their AIF on a later date than their financial statements and MD&A, as this affords them additional time to prepare and vet the associated disclosures and provide the annual CEO and CFO certifications. Requiring a single annual report would force these issuers to accelerate that work or delay their current timetable for reporting their annual results and filing their annual financial statements and MD&A.

2.5 Enhancing electronic delivery of documents

Question #33 - Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

Implement an Access Equals Delivery Model. In addition to updating NP 11-201 and implementing changes to securities legislation to allow for more practical ways to achieve electronic delivery, consideration should be given as to circumstances in which access to a filed prospectus (and its incorporated documents) on SEDAR should be sufficient to be deemed to constitute delivery of the prospectus for purposes of prospectus delivery obligations under applicable securities legislation without actual delivery of the prospectus (in printed or electronic form). In our view, access alone should be sufficient in the context of a short form prospectus. Requiring actual delivery of a short form prospectus (despite substantially all of the critical issuer information being contained in documents that are incorporated by reference and not actually delivered) seems an arbitrary requirement and an unnecessary burden given the high level of Internet access in Canada. Current rules suggest the CSA is comfortable that investors participating in short form prospectus offerings have the ability to access any prospectus incorporated documents filed on SEDAR. The CSA has further demonstrated its comfort with a deemed prospectus delivery concept through the relief routinely accorded to reporting issuers with ATM programs. In our view, relying on antiquated prospectus delivery requirements that are premised on delivery by mail as opposed to electronic access (and deem receipt "in the

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ordinary course of the mail") is inefficient and inappropriate for a modern capital markets regime.

In lieu of requiring actual delivery of a final short form prospectus, we propose that a purchaser or its broker instead receive notice (which may be delivered electronically) as to the availability of the final prospectus. This notice could be provided as part of the trade matching confirmation or by some other means reasonably designed to put the purchaser or the purchaser's broker on notice that the prospectus is or will be accessible on SEDAR. While we do not think it is necessary in the circumstances (notwithstanding 3.3(6) of NP 11-201), the notice could also provide a URL to a page on the issuer's or a third party's website where the final prospectus and the incorporated documents may be accessed (in PDF or other appropriate electronic formats) for a prescribed minimum period of time. The prospectus would be deemed to be delivered upon the later of the deemed receipt of this notice (by the purchaser or the purchaser's broker) and the filing of the prospectus on SEDAR. Investors that do not have regular Internet access[21] could opt to instead get physical delivery of the final prospectus by informing their broker. For efficiency, this option to 'opt-in' to physical delivery of a final prospectus could be made part of brokers' on-boarding processes. Where an investors has opted for physical delivery, it would be satisfied by the purchaser's broker, not the underwriters; however, the formal prospectus delivery obligation will have already been deemed satisfied by virtue of that broker's electronic access to the final prospectus.[22] Further, with respect to preliminary prospectuses, we propose that any delivery obligation (including a dealer's obligation to "forward" or "provide" a copy in connection with any solicitation or providing marketing materials) should be satisfied by access to the preliminary prospectus on SEDAR alone without regard to whether the investor has opted for physical delivery of the final prospectus.

Requiring actual delivery of a preliminary prospectus ignores the realities of modern offering processes; the only timely way for an investor to receive the information included in (or incorporated into) a preliminary prospectus for a short form offering is through electronic access. In contrast with the "notice-and-assess" model applicable to proxy materials (which is premised on the need to push information to investors so they are aware it is available and, accordingly, may be better engaged in the proxy process), prospectus delivery can be effective based on access alone because the prospective purchaser to whom the prospectus should be delivered is already on notice as to the availability of the relevant prospectus, usually by virtue of the notice to this effect currently required in any standard term sheet or marketing materials by which the prospective purchaser was solicited. No further notice should be required to engage the prospective purchaser in the offering process and make them aware of the availability and importance of reading the prospectus. To the extent the CSA determines that additional notice is necessary for deemed delivery of a preliminary prospectus, we submit this could be addressed by providing a URL in the term sheet / marketing materials for the offering or any other written

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[21] Investors that use discount brokerages via Internet access should not have an equivalent 'opt-in' option as those investors can be presumed to have Internet access.

[22] In Ontario, the receipt by the purchaser's broker of the final prospectus constitutes receipt by the purchaser as of the date on which that broker receives the prospectus.

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communication (which may be delivered electronically) reasonably designed to put the prospective purchaser or its broker on notice as to the availability of the prospectus.

In the context above, the CSA should also consider reducing the time available for purchasers to exercise their statutory withdrawal right given the potential in the future for quicker settlement of initial trades on prospectus offerings and the ability of modern investors in prospectus offerings to process and make quicker investment decisions based on information being accessible electronically.

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If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned at 416.863.5517.

Sincerely,

(signed) David Wilson

David Wilson

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July 28, 2017

Addressed to:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Delivered to:

The Secretary
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Toronto, Ontario
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Montréal (Québec) H4Z 1G3
Email: *consultation-en-cours@lautorite.qc.ca*

RE: CSA Consultation Paper 51-404

We appreciate the opportunity to share our views and provide input on the areas included in the Canadian Securities Administrators (CSA) *Consultation Paper 51-404 on Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting issuers.* We commend the CSA for re-examining the issue of regulatory reporting, particularly in areas where compliance with the requirements may impose a burden on reporting issuers that is out of proportion to the regulatory objectives for which they were originally intended.

We encourage the CSA to continue its outreach to investors, preparers, and other stakeholders groups to obtain feedback in connection with this initiative. We believe this is an important step in continuing to improve the disclosure of decision-useful information.

Our specific observations and recommendations are based on our experiences in working with Canadian regulatory reporting requirements as independent auditors. The body of this letter provides our views on

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key issues raised in the CSA Consultation Paper, while the Appendix outlines specific areas where we have provided more detailed comments with respect to certain questions posed in the CSA Consultation Paper.

Our key areas of comment relating to the following proposals:

I. Streamlined rules for categories of reporting issuers

The current regulatory reporting regime delineates TSX-Venture Exchange issuers and non-venture issuers, permitting the former to comply with continuous disclosure requirements that are generally less onerous than those applied by other reporting issuers. We support the view that a reporting issuer's listing status is not necessarily a proxy for issuer size, and that alternative size-based metrics, such as assets, revenue, market capitalisation, or some combination thereof, should be considered for purposes of determining reporting requirements.

The United States Securities and Exchange Commission (SEC) currently allows for reduced reporting requirements for a category of "smaller reporting companies", which are companies with less than US$75 million in common equity public float or, in the case of companies without a publicly traded float, less than US$50 million in revenue. The SEC also recognises different categories of reporting issuers based on the *Accelerated Filer System*, which was initially intended as a way to divide the population of SEC reporting requirements between those that would be required to file Form 10-K and 10-Q on an accelerated basis and those that would be permitted to use the later filing deadlines. Subsequent SEC rulemaking activities have leveraged these designations, such as the streamlined adoption of (and exemption from, in the case of non-accelerated filers) the auditor attestation under SOX 404. By adopting a regime in Canada similar to the *Accelerated Filer System* applied by the SEC, the CSA could facilitate a more "phased in approach" to the application of new or revised reporting requirements, disclosures and filing deadlines. For example, this approach might be useful in facilitating a streamlined approach to the adoption of certain aspects of the new CAS *Auditor Reporting Standards*.

We also support initiatives that would extend regulatory relief for companies planning to file their Initial Public Offering (IPO) in Canada, and encourage the CSA to explore the qualifying criteria (including entry and exit provisions) and other forms of relief provided to emerging growth companies (EGCs) under the US *Jumpstart Our Business Startups Act* (2012) (JOBS Act).

We agree that any such size-based distinction using objectively determinable metrics would have to be set at thresholds more reflective of our Canadian capital markets. For instance, we noted that approximately 60% [1] of Canadian public companies (excluding SEC registrants) are listed on the Venture or Canadian

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[1] The following percentage was based on a summary of data generated from the S&P Capital IQ web portal as at May 11, 2017. Of the approximate 3,350 Canadian listed entities (excluding Canadian SEC registrants), an estimated 2,000 (60%) are listed on the TSX-Venture Exchange (TSX-V) or Canadian National Stock Exchange (CNSE), with the remaining 1,350 (40%) listed on the Toronto Stock Exchange.

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National Stock Exchange, yet this accounts for only less than 5% [2] of the market capitalisation in Canada. We also noted that the median market capitalisation[3] of Canadian listed companies on the TSX and TSX-V is approximately $139.4 million and $5.7 million, respectively. In making an objective determination of the appropriate thresholds, we believe more detailed analysis and outreach would need to be carried out, to arrive at size thresholds that make sense for Canadian stakeholders. However, we encourage and support the CSA in taking such steps to improve the stratification of reporting issuers in Canada. In doing so, requirements can be streamlined to ensure the proper balance between costs of compliance and investor protection.

We recognize the impact that volatility in the market can have on shifting a company's filing status between categories, if we were to move to a size-based distinction. For example, by using a single valuation such as market capitalisation as the quantitative criterion to define a "smaller reporting issuer", an established company that experiences financial distress or for which market value has declined significantly, could become eligible for relief as a smaller reporting issuer, notwithstanding the maturity, size and complexity of the Company. Accordingly, we suggest that any proposals that establish categories of companies (or even the size distinction for determining a smaller reporting issuer) should be based on perhaps annual revenue or total assets in addition to market capitalisation.

II. Audited financial statement requirements in an IPO prospectus

Under the current rules, an issuer must include in an IPO prospectus audited financial statements for its three most recently completed financial years. Venture issuers need include only two years, and an exemption from the audit requirement is available for issuers of a certain size. We would support proposals that would expand the eligibility to include two years of audited financial statements in an IPO prospectus, and that this relief should be provided to all companies that meet certain eligibility criteria, that includes a revenue metric. Audited financial statements for a full 3 years not always readily available, with the earliest year in the three year history being the least comparable period, either due to a Company's organic growth or growth through acquisition. The earliest year is also frequently audited by "other auditors" which adds complexity to the process of "going public". We believe that limiting the reporting issuer (and any of its "primary businesses" – see further comments below) financial statements and selected financial data to a two year period, similar to the model applied by Emerging Growth Companies (EGCs) reporting under the JOBs Act, would encourage capital formation in Canada while still providing investors with useful and reliable financial information upon which to form an investment decision.

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[2] Calculation of "less than 5%" is based on an estimated total market capitalization at May 11, 2017 (from data generated from the S&P Capital IQ) for Canadian listed entities (excluding SEC registrants) of $1,059 billion, of which $43 billion is listed on the TSX-V or CNSE.

[3] TSX/TSX-V 2017 Guide to Listing; these figures include SEC registrants and are based on market capitalization as at December 31, 2016.

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IPO filings and "primary business" financial statements

We believe the CSA should re-examine its approach to the inclusion of audited financial statements of a primary business or businesses of the reporting issuer in an IPO filing. While the term "*primary business*" is not defined in Canadian securities law, we understand Section 5.3 of the Companion Policy to NI 41-101 provides guidance as to when a reasonable investor reading a prospectus would regard an acquired business to be the "*primary business*" of the reporting issuer. We also note that in many instances, audited financial statements of insignificant businesses have been requested for inclusion in an IPO filing, regardless of the level of materiality to the consolidated entity. We recognise the importance of ensuring sufficient historical financial data or a "track record" be provided to investors and that this information should be subject to audit and/or review, particularly in the case of companies where its only source of operating history is from the entities that it has acquired in the last 2-3 years. However, we believe that ignoring the significant tests for primary businesses is one of the most significant hurdles facing companies attempting to go public in Canada. We encourage the CSA to review its approach to primary business financial statements, and allow for reporting issuers to apply some level of significance that aligns with the significance tests under the acquisition financial statements requirements.

III. Business Acquisition Reports – Revisiting the Requirements

Business acquisition reports (BARs) have been consistently identified as an area of financial reporting where the burden of compliance exceeds the benefit, largely due to the lengthy period (75 days after closing date) that reporting issuers have to file the BAR. We note that the 75-day period is consistent with the length of time SEC filers are given to file acquired business financial statements and the related pro forma financial information on Form 8-K. Stakeholders, however, have argued that the information included in the BAR is not timely or 'decision-useful' and therefore should be eliminated. We have noted in practice that many reporting issuers file the BAR well in advance of the 75-day period, and that the additional time is typically only needed when financial information for the acquiree was not previously available and/or subject to audit or review (which is often the situation with smaller reporting issuers).

In evaluating this issue, we would recommend that the CSA consider the significant acquisition requirements (and the related BAR filing) separately; (1) BAR filing requirements on a continuous disclosure basis; and (2) Information about significant (probable) acquisitions in a prospectus. For example, in applying the significant acquisition requirements to recent or proposed acquisitions in connection with a prospectus filing (where proceeds raised will be used to consummate or finance the acquisition), we believe this is important information to provide potential investors under the prospectus offering, and should not be eliminated, or significantly reduced. With respect to the BAR filings on a continuous disclosure basis, we are not generally supportive of reducing the 75-day reporting period, or eliminating the BAR requirements entirely, regardless of size of reporting issuer. Our view is that the regulatory burden could be noticeably reduced by revisiting the nature and thresholds established in the size tests. For instance, the current threshold of 20% could be increased to a new minimum threshold (or more streamlined thresholds that are dependent on size of reporting issuer, as discussed under Part I above), with some additional relief provided to smaller reporting issuers that could be comparable to the

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current TSX-Venture thresholds (of 100%). We also support revising the "nature" of the significance tests; for instance, the income test could be replaced with (or supplemented by) a revenue test; the investment test could compare "purchase price" against the market capitalization of the reporting issuer. For more detailed comments on significant tests, refer to the Appendix to this comment letter.

We believe pro forma financial information provides useful information for investors in evaluating the impact of recent or probable acquisition(s) in a prospectus, particularly when combined with other capital transactions such as a share issuance or debt refinancing transaction. IFRS 3, *Business Combinations* and ASC Topic 805, Business Combination both require disclosure of pro forma revenues and profit or loss for the period for significant acquisitions (with significance being evaluated at 20% or higher) which suggests that standard-setters consider pro forma financial information relevant and useful. Despite its limitations, we do not support the elimination of the pro forma financial statements from BAR and prospectus filings, on the basis that we believe it continues to provide users with financial information that they can use to evaluate the financial effects of a business combination on the acquirer.

IV. Auditor review of interim financial statements in offering documents

We do not support the proposal to remove the prospectus requirement for reviews of interim financial statements, for the following reasons:

1) Canadian auditing standards require a review of unaudited interim financial statements included/incorporated by reference in an offering document, in order for auditors to issue regulatory consent. Therefore, any decision to eliminate the review requirement in securities regulation will have important consequences under CASs, and an auditor's ability to comply with professional standards when issuing a consent pursuant to CPA Section 7150, *Auditor's Consent to the Use of a Report of the Auditor included in an Offering Document.* Any decisions by the CSA in this regard would have to involve the Auditing and Assurance Standards Board (AASB).

2) We continue to believe there are incremental benefits of engaging the auditor to perform a review of interim financial statements in prospectus filings, and that any proposal to eliminate this requirement would not only position Canada 'out of step' with our closest capital market (the US), but would not be in the interest of investors.

3) We believe the quality of interim financial statements would decline, absent the involvement of a reporting issuer's auditor, particularly for the smaller reporting issuers that might have less sophisticated systems and controls and limited resources. Management and audit committees are likely to benefit from regular quarterly discussions with the reporting issuers' auditor, which we believe translates into better quarterly financial reporting documents.

4) Consideration should be given to the negative impact that a "*no auditor review*" might have in applying CPA Section 7200, *Auditor Assistance to Underwriters and Others*, in the context of an offering document. Specifically, the CSA should note that an auditor is frequently requested to

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provide negative assurance on unaudited interim financial statements, and to "comfort" financial information derived from a Company's accounting records. Auditors are able to provide this, on the basis of their understanding of a Company's internal control, which is derived principally from the audit engagement, but also from subsequent review engagements. Finally, we also note that pursuant to PCAOB AU 634.46, an auditor can only provide negative assurance as to subsequent changes in specified financial statement items as of a date (a "change period") less than 135 days from the end of the most recent period for which the auditor has performed an audit or review. For instance, a calendar-year end company filing semi-annually on August 15th of each year would be restricted to "reporting procedures performed and findings obtained" for any US underwritten offerings (where US underwriters request PCAOB comfort letter) during the period from May 15th to approximately August 15th. Therefore, removing the requirement to have interim financial statements reviewed by a Company's auditor could have important commercial consequences by impacting a Company's ability to raise capital.

5) Many reporting issuers that are also SEC reporting issuers will continue to obtain reviews of their interim financial statements, in order to maintain access to US capital markets. We believe this will not only create an un-level playing field, but will also lead to confusion in the marketplace, as it will not be apparent from one prospectus filing to the next whether the auditor was engaged to complete a review of the interim financial statements or not. We recommend that the CSA retain its current requirement for a review of interim financial statements included or incorporated by reference in an offering document.

V. Semi-annual reporting

We would not be supportive of a change to semi-annual reporting in Canada, as we continue to believe there is value in regular and timely communication from management to investors about the company's financial performance and financial condition. Quarterly reporting provides investors with more data points to evaluate trend analysis over time, and provides early warning disclosures that are useful to investors. While we acknowledge that replacing quarterly reporting with semi-annual reporting would follow the requirements in many other markets such as the UK, the EU and Australia, we also note that many companies in their jurisdictions have elected to continue with their quarterly reporting, for many of the reasons we have articulated above[4]. We also note that the "demographics" in these other markets, such as the median size of reporting issuer may not be comparable to our capital markets.

We are concerned that reducing a reporting issuers' communications to six month intervals will result in an information gap of "public" and "private" information amongst investors, and that the "private"

[4] In a recent study titled, "*Impact of Reporting Frequency on UK Public Companies*" issued in March 2017 by the CFA Institute Research Foundation, it was reported that less than 10% of UK companies ceased quarterly reporting when the UK reintroduced the semi-annual reporting requirement in 2014 after having mandated quarterly reporting in 2007. The study also commented that initiation of quarterly reporting had no real impact on investment decisions in the 2007 to 2014 period.

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information will only be disseminated amongst more sophisticated groups of investor. Eliminating Q1 and Q3 reporting may undermine the financial reporting "discipline" and "controls" that have developed as a result of preparing a quarterly report every 3 months, especially amongst smaller reporting issuers. We believe this could ultimately contribute to a decline in the quality of financial reporting, which is not in the interest of stakeholders.

Finally, we would be concerned how semi-annual reporting might impact the application of IFRS/GAAP, particularly in instances where a particular standard requires management to evaluate for changes in facts and circumstances, triggering events or changes in estimates at each "reporting period". By extending this reporting period to 6 months, we anticipate that a number of items will either not be accounted for and reported in a timely manner, or might not be unrecognized altogether, due to a further change in facts and circumstances within the same reporting period, or early indicators that the trend may reverse. For instance, an impairment trigger (and possible or actual impairment) arising in March of a company's calendar year would not be accounted for and reported on until late July or early August of that same year. Our view is that this lengthy reporting period would not benefit investors, who are used to relying on more timely and relevant financial information.

We acknowledge that the burden associated with quarterly reporting could be reduced by modifying the quarterly MD&A Form requirements, and encouraging reporting issuers to focus on the relevance and usefulness of the information being disclosed in the quarterly report. While we believe the requirement to present interim financial statements on a quarterly basis under IAS 34 should be maintained, there are opportunities for a reporting issuer's MD&A to be simplified and streamlined to focus more on key highlights or changes during the quarter, critical KPIs, and new transactions or developments only.

VI. Eliminating overlap in regulatory requirements and filing under one document

We encourage and support the CSA's initiative to identify overlap in its regulatory requirements. There are a number of opportunities identified by the CSA staff in the Consultation Paper, for a reporting issuer's MD&A and AIF to be streamlined to eliminate the duplication of disclosures that are currently required pursuant to IFRS or US GAAP. We have identified a few additional areas of duplication which are highlighted in the Appendix to this letter.

We also fully support proposals by the CSA requiring reporting issuers to file under one document – similar to the SEC's requirements under Form 10-K and 10-Q. We believe the use of a single filing document would foster more streamlined reporting, with less duplication and repetition throughout. Our view is that the longstanding filing regime whereby Canadian reporting issuers file their financial statements, MD&A and certifications – concurrently, but under separate cover/forms – should be revisited, and that the impetus for disclosure improvements might very well be achieved by establishing a "new single form". Refer to the Appendix for additional points on this issue.

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VII. Streamlining offerings for reporting issuers

We are supportive of proposals by the CSA to reduce or eliminate short form disclosure requirements that are duplicative, outdated, or misaligned with current market practices. We encourage the CSA to leverage existing disclosures wherever practical, so that reporting issuers only have to report certain "core information" once, unless there are material changes to that information. For example, the requirement to provide a summary description of the business and risk factors should be limited to where there are updates or changes from the most recent annual or quarterly filing.

We would also support revisiting the adoption of an alternative prospectus model that would provide for more concise and focused disclosure relating to the specific offering, than under the current short form prospectus regime. Access to financial and non-financial information today is significantly different from the early 2000's when the IDS and CMA requirements were initially developed. Therefore, a regime in which a prospectus document focuses on transactional information only, and "incorporates by reference" a reporting issuer's relevant profile and periodic disclosures would create a more streamlined offering document directed towards meeting important informational needs of an investor with respect to the proposed transaction. Furthermore, we agree with the CSA's comment that the Commissions in each of the various provinces and territories are more unified in their rules and approach to securities legislation and interpretation today, as compared to when the IDS and CMA requirements were initially developed. Therefore, common ground towards a more simplified prospectus regime is likely more achievable than in prior years.

VIII. Other Matters

Acceptable accounting principles for Canadian issuers

Under existing Canadian securities regulations (specifically, 52-107, Part 3) Canadian issuers that are not SEC issuers are required to prepare financial statements in accordance with IFRS. SEC issuers, however, are permitted to prepare financial statements in accordance with either IFRS or US GAAP. In other words, the ability to prepare US GAAP financial statements is limited to those Canadian reporting issuers that are also SEC registrants.

We have noted instances where Canadian issuers have elected to register (or are actively planning to register) with the SEC, in order to qualify as an SEC issuer. The primary purpose of the SEC registration is to be able to apply (or continue to apply) US GAAP. The US registration is not based on a company's plans to participate in US capital markets. We anticipate this number to increase in the coming year, particularly as the temporary exemption granted to rate regulated entities expires. We do not see how restricting the application of US GAAP to SEC issuers is in the interest of Canadian investors.

We would support a change to National Instrument 52-107, *Acceptable Accounting Principles and Auditing Standards*, that permits all Canadian issuers the choice between IFRS or US GAAP. US GAAP is a widely accepted and well-understood accounting framework applied by many reporting issuers in

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Canada. Recent standard-setting activities by the FASB and the IASB have been significant, with the two accounting frameworks moving closer – not further apart. We also note that the incremental cost of becoming an SEC issuer, including possible compliance with auditor attestation under SOX 404, would increase the burden of ongoing reporting for those companies. We therefore do not believe the restriction on applying US GAAP is in the best interests of investors, and should be revisited from when the rules were initially considered at the time of transition to IFRS in Canada in 2011.

IX. Significance of the multi-jurisdictional disclosure system (MJDS) in Canada

In evaluating the CSA proposals in the Consultation Paper and drafting our response, we are mindful of how some of these proposals could impact the long-standing "Multi-Jurisdictional Disclosure System" between Canada and the US. This regime allows eligible Canadian foreign private issuers to file prospectuses and continuous disclosure documents using documents that are prepared largely in accordance with Canadian regulatory requirements. Foreign private issuers in other territories file annually on Form 20-F and must file prospectuses using non-MJDS forms. As the CSA considers possible changes to its regulatory filing requirements, we believe it is important to reflect on how such changes may be perceived by the SEC. Our view is that the more aligned our filing requirements become with other jurisdictions that file as foreign private issuers, SEC could question the reason for maintaining MJDS, specifically the ability to file on Form 40-F (instead of Form 20-F) and Form F-10. We believe this should be factored into the CSA's consideration of future proposals.

* * * * * *

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the CSA staff of the Commissions may have. Please contact Michael Walke at 416-815-5011 or Carolyn Anthony at 416-815-5266 regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
Chartered Professional Accountants

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APPENDIX

Specific Observations on the Significance Tests
*As discussed in our comment letter (Section III), we believe the CSA should re-examine the **nature and thresholds of the significance tests** that determine when audited financial statements for recent or probable significant acquisitions or under the BAR filing requirements.*
We believe there are a number of situations in which the existing significance tests indicate that acquisition financial statements are required when it would not appear to be a significant acquisition. This is usually a result of the application of the **income test** to situations in which there are unusual items in the current year of the reporting issuer or the acquiree that have the effect of distorting the impact the acquiree will have on the reporting issuer. In some instances, the reporting issuer will seek relief from providing financial statements on the basis that, notwithstanding the mechanical application of the test, the acquiree was not significant. CSA Staff has granted the requested relief, however the process of requesting relief can often delay the completion of the transaction, and there is an element of uncertainty in any request. Likewise, there can be situations in which an acquiree will have a significant impact in future periods on the reporting issuer, but because of unusual items included in pre-tax income of either the acquiree or reporting issuer, would not be significant under the existing test and, as a result, financial statements are not required. In addition, pre-tax income may often be impacted by how the acquiree is capitalised. For instance, an acquiree may have historically been highly leveraged, which resulted in significant financing costs that reduce pre-tax income. This may yield a conclusion that the acquiree is not significant, when, in fact, it could have a significant impact on future operations of the reporting issuer. The following comments focus on each of the significance tests and areas where we believe changes should be considered: ***Income Test*** We recommend that the CSA consider replacing the income test with a revenue test, on the basis that it is a better indicator of relative significance of the acquiree to the reporting issuer than pre-tax income because it would eliminate the impact of unusual income and expense items for both the acquiree and the reporting issuer, as well as eliminate the impact of the acquiree's historical capitalisation. If the CSA decides to retain the income test, we recommend considering a tw0-step approach to determine significance. For example, if the income test exceeds the significance threshold of 20%, one of the other existing significance tests (investment or asset test) should also be met at some specified lower level for the evaluated entity to be deemed significant. We would also support proposals to raise the level of significance threshold from 20% to a higher % for smaller reporting issuers that file on the non-venture exchange.

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Investment Test We recommend the CSA consider modifying the investment test to compare the consideration transferred to the reporting issuer's market capitalisation[5], as opposed to the current test which compares a fair value metric to a carrying value metric (total assets of the reporting issuer). As an increasing number of companies have assets that are not reflected in the historical cost accounting model, we believe that the use of market values, as opposed to historical cost, may be a better indicator of the relative significance of an acquisition.
Reducing disclosure requirements in annual and interim filings
Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? (Consultation Question 2.3.21)
Fourth quarter in Interim MD&A / Summary of Quarterly Results NI 51-102F1 requires companies to discuss and analyse fourth quarter events or items that affected its financial condition, financial performance or cash flows, year-end and other adjustments, seasonal aspects of a company's business and dispositions of business segments. We frequently note significant duplication between the fourth quarter discussion of results and the annual discussion of results for the year, particularly as it relates to significant transactions. CSA should revisit its current requirements under Part 1.5, *Summary of Quarterly Results* and Part 1.10, *Fourth Quarter*, and consider reducing/consolidating the requirements. For instance, we believe reporting issuers should only discuss unusual adjustments or events arising in the fourth quarter of the current year, that are material to the comparative quarterly financial information presented in the table under Part 1.5. Furthermore, we believe smaller reporting issuers should be exempt from both Part 1.5 and Part 1.10 of the current 51-102F1. ***Discussion of prior period results from MD&A*** We are supportive of proposals that would eliminate the discussion of prior period result from MD&A in lieu of an appropriate cross-reference to where such discussion can be found within a reporting issuer's prior year's MD&A.
Eliminating overlap in regulatory requirements
Would modifying any of the above areas[6] in the MD&A form requirements result in a loss of significant information to an investor? (Consultation Question 27)
We are supportive of proposals by the CSA to undertake a review of its MD&A form requirements to identify redundancies and outdated requirements, including those that arise from new accounting standards, in order to limit instances of overlapping and duplicative disclosures between 51-102F1 and a reporting issuer's

[5] If a reporting issuer does not have public equity outstanding and its fair value is not readily available, the carrying value of the reporting issuer's total assets should be used as the denominator. However, we believe such instances will be more of an exception, in the context of applying the BAR requirements.
[6] The "above areas" referred to in the CSA Consultation Paper are financial instruments, critical estimates, change in accounting policies, and contractual obligations.

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IFRS financial statements. We do not believe that removing this information from the MD&A would result in a loss of information to an investor. For example:

- ***Financial instruments*** – Many of the disclosure requirements of Part 1.14 of 51-102F1 duplicate information that is already required by IFRS and US GAAP. Given the redundancy, we recommend that the CSA consider whether Part 1.14 of 51-102 F1 is necessary.

- ***Critical accounting estimates*** – The requirement to provide a discussion of critical accounting estimates pursuant to Section 1.12 of 51-102F1 can be helpful to an investor and other users of the financial statements in understanding how events and the passage of time will impact the financial statements in the future. While the disclosure contemplated in the MD&A has the potential to be very valuable, a number of companies simply repeat the accounting policy disclosures required by IFRS or US GAAP and do not provide information on the assumptions used and how those assumptions will impact future periods. We believe it would be beneficial to incorporate a principles-based requirement for disclosure about critical accounting estimates that is more focused on the disclosure of information needed to *supplement* disclosure already provided in the financial statements. We believe disclosures regarding critical accounting estimates and policies should provide investors with an understanding of the estimation process and areas in which changes in the assumptions would have a material impact on the financial statements.

- ***Change in accounting policies*** – The requirement to provide a discussion of changes in accounting policies pursuant to Section 1.13 of 51-102F1 can also be helpful to an investor and other users of the financial statements in understanding the impact of such changes on the financial statements. Again, as with critical accounting estimates, we believe that certain of the disclosures required under this section are duplicative of the existing disclosures requirements under IFRS and US GAAP. We would support a more principles-based approach to this disclosure that focuses on *supplementing* the financial statement disclosure. For example, any operational impacts or changes, as a result of the change in accounting policy that has occurred or is expected to occur.

- ***Contractual obligations*** – We believe that many of the disclosures required by the table of contractual obligations duplicate information that is already required by IFRS or US GAAP. Given the redundancy and the existing requirements to disclosure information about liquidity and capital resources in financial statements and MD&A, we recommend that the CSA consider whether the disclosure of contractual obligations as set out in the Instructions to Section 1.6 of 51-102F1 is useful.

Are there other areas where the MD&A form requirements overlap with existing IFRS requirements? (Consultation Question 2.4.28). Are there other areas of overlap in continuous disclosure rules? (Consultation Question 2.4.30)

We believe the following areas of the MD&A form requirements should be examined for purposes of redundancy with IFRS financial statements.

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- ***Off-balance sheet disclosures*** – The requirement in MD&A to disclose certain off-balance sheet arrangements was primarily intended to help users of financial statements understand certain exposures by such arrangements. However, the accounting and disclosure requirements – particularly as it relates to "*structured entities*" – have evolved such that, many of the required financial statement disclosures related to off balance sheet arrangements, now specified under IFRS and US GAAP[7], address the objectives of the MD&A discussion of off-balance sheet arrangements. This results in a redundancy that we believe should be eliminated.

- ***Related party disclosures*** – We believe there is considerable overlap between the disclosures provided pursuant to 1.9, *Transactions between related parties*, and the requirements of IAS 24. Many reporting issuers simply duplicate the disclosures that are included in the notes to the financial statements. And while we recognise that the CSA would like reporting issuers to "complement and supplement" the financial statement disclosures, consideration should be given to limiting the form requirements to what is incrementally required. For example, 51-102F1 specifically requires a reporting issuer to identify the related person or entity, as well as to discuss the business purpose of the transaction. By limiting the form requirements, we believe it will encourage better compliance and less duplication.

- ***Liquidity risks*** – We believe there is some duplication between 1.6 of Form 51-102F1 and the disclosures required under IFRS 7, and the liquidity risks associated with financial instruments.

- ***Legal proceedings in AIF and Financial Statements*** – Other areas of overlap include discussions of legal proceedings in the AIF which oftentimes is similar (even identical) to that which is disclosed in the IFRS or US GAAP financial statements. We believe that it would be worthwhile for the CSA to evaluate whether disclosures provided under the requirements of Item 12, *Legal Proceedings and Regulatory Action* in the AIF, Form 51-102F2 are duplicative of the requirements under IFRS or US GAAP. The CSA should consider how changing the disclosure requirements of the AIF form might result in improved information for investors.

Should we consolidate the MD&A, AIF and financial statements into one document? (Consultation Question 2.4.29)

We are supportive of proposals that would consolidate the annual and quarterly continuous disclosure documents into a single filing document. We believe there are several benefits to filing a consolidated annual and quarterly filing document, using a model that is similar to the approach followed by the SEC, under Form 10-K and 10-Q.

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[7] Specifically, the disclosure requirements of IFRS 10, *Consolidated Financial Statements*, and IFRS 12, *Disclosure of Interest in Other Entities*; and US GAAP, FASB ASC Topic 810 – *Consolidation*.

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- **Simplification of reporting obligations:** We believe the current model whereby a reporting issuer files multiple documents concurrently on SEDAR in meeting its annual and interim reporting obligations is outdated and overly complex, when compared to filing a single annual or quarterly report. We especially see no basis for requiring "separate" submissions of the financial statements, MD&A and related certifications, when all such documents must be dated and filed "concurrently" under Canadian securities requirements.

- **More effective and streamlined document:** We believe one document would result in less duplication between the financial statements, MD&A (and AIF – in the case of annual reporting) and ultimately streamline the annual and quarterly reporting. Reporting issuers might be more willing to cross-reference to other sections within a single document, vs. cross-referencing between separately filed documents. We also believe there is an opportunity for the CSA to effect positive "disclosure simplification" change by requiring 'new form' that will encourage reporting issuers (and their advisors) to take a "fresh look" at "duplication" and "disclosure overload" that appears within a single document.

- **Scalability and transparency:** Annual and quarterly Form requirements could be readily "scaled" to meet the disclosure requirements of a particular category of reporting issuer. For example, a "small reporting issuer" would follow the Form requirements (and reporting deadlines) designated for that particular "size" of reporting issuer, and the Form would be clearly distinguishable by investors. To illustrate, Form 10-K clearly identifies on the cover to the annual report:

  Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐	*Accelerated filer* ☐	*Non-accelerated filer* ☐	*Smaller reporting company* ☒

- **Integration with CAS 720 and 5020**: We believe the use of one document would provide more clarity to when an auditor is associated with "other information" contained in a document that includes the auditor's report. This issue will become important under the new Auditor Reporting requirements under CAS 720 as well as the Standard on Association under Section 5020. As auditors, in order to comply with these professional standards, it is important for us to identify the "other information" contained in "the filing" that includes our auditor's report. By presenting the MD&A, AIF and financial statements (and the auditor's report thereon) in one document, this will clearly define the parameters of what constitutes "other information" for purposes of complying with this new standard.

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July 28, 2017

To: British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

C/o: The Secretary
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Fax: (514) 864-6381
Email: consultation-en-cours@lautorite.qc.ca

Re: CSA Consultation Paper 51-104

Dear Sirs,

Further to your request for comments, we provide the following responses using the same numbering system in the document:

Questions:

1) Of the potential options identified in Part 2:
   a. Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection
   b. Which should be prioritized and why?

1 *(a) Reducing the regulatory burdens associated with the prospectus rules and offering process, reducing ongoing disclosure requirements, eliminating overlap in regulatory*

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requirements and enhancing electronic delivery of documents should all meaningfully reduce the regulatory burden on reporting issuers without negatively impacting investor protection.

1. *(b) Prioritization should be given first to reducing the regulatory burdens associated with prospectus rules and offering process, as this should make it easier and more cost effective for entities to access capital, especially in this market. Secondly to reducing overlap of regulatory requirements as this would result in immediate reduction of inefficiencies.*

2) Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

Reducing ongoing disclosure requirements and enhancing electronic delivery of documents could be addressed in the medium term (with the above priorities in 1(b) being short term), as these may require consultation and buy in from external parties.

3) Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

None that we have identified.

4) Would a size-based distribution between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

The problem is size can change often during the periods and creates uncertainty. A size based distinction would not be preferable in general. Reporting issuers currently have some control over designation as venture or non-venture, depending on where they choose to be listed and where they find it most advantageous to raise capital. This allows reporting issuers to have more control over what regulations they are exposed to relative to where and how they want to access capital. A size based distinction may unfairly burden larger entities who have no interest or need to be subject to 'big board' restrictions, as they do not need to access capital.

In addition, a size based distinction would result in constant re-measurement and consequently more administration to maintain and monitor metrics and criteria. This would result in more uncertainty and less stability for reporting issuers and increase costs in the long term, as reporting issuers would not be able to necessarily control or plan for changes in their size.

5) If we were to adopt a sized-based distinction:
   a. What metric or criteria should be used and why? What threshold would be appropriate and why?
   b. What measures could be used to prevent reporting issues from being required to report under different regimes from year to year?
   c. What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?

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d. How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

Not sure any would be definitive and long lasting.

6) If the current distinction for venture issues is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

We think small non-revenue TSX issuers could be given accommodation except for time requirements to file.

7) Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:
   a. How would this amendment assist in efficient capital raising in the public market?
   b. How could having less historical financial information on non-venture issuers impact investors?
   c. Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or Why not?
   d. If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

In general, we agree it is appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers.

(a) Extending the eligibility to non-venture issuers would increase efficiency as it would reduce the amount of historical information to be audited and publicly available, therefore decreasing regulatory costs.

(b) Extending the eligibility to non-venture issuers would require investors to more critically analyze the industry and history of the issuer. Investors would need to understand there are limitations on the historical information and have more understanding on the relevance of this to the industry and current trends.

(c) Thresholds and other considerations would be reasonable – to the extent the historical information could be used to be predictive of future trends, this information would be helpful to the investor. However, with start-up/developing entities, additional historical information may not be relevant or useful in predicting future trends and in those cases, historical information beyond two years is unnecessarily burdensome. Revenues may be a useful indicator as it may imply a degree of maturity that allows for reasonable trend analysis and therefore that additional historical financial information is valuable for the investor.

8) How important is the ability to perform a three year trend analysis?

Limited to not important.

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9) Should auditors review interim financial statements continue to be required in a prospectus? Why or why not?

We think it provides limited comfort and does increase costs and time

10) Should other prospectus disclosure requirements be removed or modified, and why?

Prospectus disclosures include a significant amount of repetition; for example, financial statements are included, along with management discussion and analysis disclosure, but additional requirements for key financial highlights and information is required as well. There are several areas where there are opportunities for streamlining or using judgement to eliminate duplicative information.

11) Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

It is much better, but the above question in Part 10 could apply here as well

12) Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

All issuers with proper disclosure records should be able to participate

13) Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:
    a. What should the key features and disclosure requirements of any proposed alternative prospectus model be?
    b. What types of investor protections should be included under such a model (for example, rights of rescission)?
    c. Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Continuous Market Access should be a key feature. Yes, alternative offering models should be made available.

14) What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we modify or eliminate without compromising investor protection or the integrity of the capital markets?

CMA

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15) Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

    No opinion

16) Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

    No opinion

17) As noted in Appendix B, in 2013 a number of amendments were made to liberalize pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

    Be very liberal in pre marketing practises and ensure the final materials are delivered to all purchasers with subscription forms.

18) Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

    The BAR does not provide relevant or timely decisions for an investor, as it is prepared after the decision to acquire the business by the reporting issuer is completed. In addition, the impact of the acquisition would be reflected in the next quarter financial statements of the reporting issuer.

19) Are there certain BAR requirements that are more onerous or problematic than others?

    The audit requirements within the BAR report can be very onerous and provide no real value to the reporting issuer if it was not done previously as part of the due diligence to the acquisition. Obtaining an audit after the acquisition of the business can be costly and burdensome, as it is for a period that the reporting issuer did not control the operations. Additionally, the historical operations may not be representative of how the reporting issuer intends to operate the business.

20) If the BAR provides relevant and timely information to investors:
    a. Are each of the current significance tests required to ensure the significant acquisitions are captured by the BAR requirements?

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b. To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?
c. What alternative tests would be most relevant for a particular industry and why?
d. Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

We do not feel the BAR report provides relevant and timely information to investors.

21) Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprived investors of any relevant information required to make an investment decision? Why or why not?

There is a lot of overlap between an MD&A and financial statements, as well as repetitious information in annual and interim financial statements. Primarily this includes information that has not changed period to period (for example financial instrument risk, capital management) and historical carry-forward information that is not directly relevant to the current period.

22) Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

Additional guidance on determining materiality for disclosures to investors, and clarifying what information is relevant to current period vs. historical information would be helpful in ensuring disclosures are complete, relevant and timely.

23) What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

Quarterly reporting is relatively ingrained in entities and the regulatory and reporting issuer framework within Canada as well as the US. In addition, stakeholders have built their expectations and processes around a quarterly reporting framework. It allows investors to monitor key criteria like cash, equity issues and pending obligations.

24) Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

Smaller entities may benefit the most from the reduced reporting, however, there is a necessary burden to being public to protect investors' interests and quarterly financial reporting imposes a reasonable degree of accountability on entities – often the smaller entities need a greater degree of accountability, due to their limited resources.

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25) Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

No.

26) Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

Yes.

27) Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

We think that modifying or removing most of the areas of disclosure overlap between financial statements and the MD&A, such as financial instruments, estimates, changes in accounting policies and contractual obligations would not result in a significant loss of information to the investor. The vast majority of this is a direct copy from the financial statement disclosure and adds no value. Where the discussion may add value (such as a change in accounting policies and impact on trends analysis), a good reporting issuer will incorporate that into their explanation. Additionally, the MD&A specifically refers to the financial statements and an investor should incorporate and integrate both documents into their analysis and decision making.

28) Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

We think financial instruments, estimates, changes in accounting policies, and contractual obligations are the key areas of overlap.

29) Should we consolidate the MD&A, AIF (if applicable and financial statements into one document? Why or why not?

No, we do not feel it would be useful to incorporate the MD&A, AIF and financial statements into one document. Stakeholders are already struggling to read to the end of standalone financial statements and MD&A, and increasing the size of the document would likely decrease a user's ability to take in the information. In addition, different stakeholders have varying purposes in reading each of the documents and as such, combining them may make it more difficult for stakeholders to find and understand the sections that they find relevant.

30) Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

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Executive compensation is an area that seems to be unnecessarily repeated, especially for smaller reporting issuers that may not have significant executive compensation, but must repeat various tables, headers and descriptions.

31) Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

No opinion.

32) The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:
    a. Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&D?
    b. Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these document if an investor requires paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?
    c. Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?
    d. Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

Need proxy to be mailed or emailed.

33) Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

No opinion

Sincerely,

Gordon Keep	Jessica Van den Akker
CEO	CFO
Fiore Management & Advisory Corp.	Fiore Management & Advisory Corp.

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July 28, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
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Fax: 416-593-2318
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
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E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sir/Madam:

Re: CSA Consultation Paper 51-404
Considerations for Reducing Regulatory Burden for
Non-Investment Fund Reporting Issuers

We have reviewed the CSA Consultation Paper 51-404 (“Consultation Paper) released April 6, 2017 and we thank the Canadian Securities Administrators ("CSA") for the opportunity to provide you with our comments.

CCGG's members are Canadian institutional investors that together manage approximately $3 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and

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individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

Overview

CCGG supports efforts by the CSA to consider ways to reduce undue regulatory burden on issuers while ensuring that investor protection is not compromised. The challenge, of course, is to determine which regulations meet the definition of "undue"[1] and from whose vantage point that determination is made. CCGG's focus is on ensuring that institutional investors have the information they need to make good investment decisions and to monitor those investments.

In principle, reducing regulation can benefit both issuers and investors. For example, reducing the burden on issuers by consolidating and clarifying certain disclosure and promoting accessibiity may enhance investor protection by improving the quality of disclosure. Any corresponding reduction in expense to the issuer that gets passed through to the shareholder is also beneficial to shareholders. Information, however, provides institutional investors with the primary means of fulfilling their fiduciary obligations to beneficiaries and clients and holding management and boards accountable. CCGG is of the view that regulators should err on the side of caution when considering reducing regulation and that the information available to investors should be reduced only when it can be clearly shown that it is "undue" and that no harm is likely to result to investors. Obtaining and considering empirical evidence on the impact of reducing regulation should be part of the discussion.

In accordance with CCGG's mandate, our comments will address only those items in the Consultation Paper that we consider to be significant for institutional shareholders from a governance perspective. Our responses refer to the numbering contained in the Consultation Paper.

2.1 Extending the application of streamlined rules to smaller reporting issuers

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

A size-based distinction would not be preferable to the current exchange listing distinction because it would introduce complexity and uncertainty into what is currently a simple and straightforward method for investors to know which regulatory regime applies to which issuers. Further uncertainty will be introduced if an issuer's size fluctuates. The number of questions posed in the Paper in connection with this issue show the sorts of concerns that would have to be addressed:

- What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

[1] Oxford dictionary defines "undue" as "unwarranted or inappropriate because excessive or disproportionate".

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- What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?
- How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

The current distinction should not be replaced by one without the same virtues of clarity and simplicity.

6. *If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?*

Less onerous venture issuer regulatory requirements should not be extended to non-venture issuers. In our August 2014 submission to the CSA in connection with proposals to establish less onerous disclosure and governance requirements for venture issuers, we were opposed to certain of the proposals even for venture issuers on the basis that with access to public markets comes accountability responsibilities. As we have stated in the past, in CCGG's view, smaller companies are not in less need of robust governance practices and the risk to investors of the lack thereof does not diminish with the smaller size of the company. We would argue on the same basis that less onerous requirements should not be extended to non-venture issuers. CCGG opposes extending to a broader group of companies the less stringent corporate governance and disclosure requirements applicable to venture issuers, such as less executive compensation disclosure, lesser standards of audit committee independence, or a higher threshold for significant acquisition reporting.

We note in this regard that requiring lesser disclosure from venture issuers and smaller non-venture issuers risks increasing the cost of capital for those issuers because less disclosure tends to provide less comfort for investors, making the investments harder to assess and therefore riskier with a corresponding demand for higher returns. If less onerous disclosure is extended to smaller non-venture issuers it may work against such issuers because investors may be less likely to invest in these riskier endeavours. As one of our members stated, "information gives confidence".

Again, we believe that having different regulatory regimes apply to issuers listed on the same exchange would create confusion and misunderstanding.

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers?

CCGG is opposed to reducing the number of years of audited financial statements in non-venture IPO prospectuses from three years to two. Making an investment decision based on publicly available information is challenging enough under the existing reporting regime. Having three years of data is considered important to discern whether a given year is representative of "normal" results, to gain confidence regarding the company's stability and to analyze revenue

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trends. Ideally, it would be possible to provide financial statements for a whole business cycle. Reducing the disclosure to two years reduces investors' ability to draw comparisons and carry out comprehensive analyses.

(b) Streamlining other prospectus requirements

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

CCGG believes, yes, the review requirements should continue. The review provides additional comfort to investors, analysts and regulators as to the accuracy of the statements.

2.3 Reducing ongoing disclosure requirements

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

Our members believe that BARs provide relevant and timely information for making investment decisions. In particular, one of our members has advised that the financial statements are useful because they contain certain asset specific information in the notes to the financial statement that can be lost on merger/amalgamation. In the case of acquisitions of public companies, including financial statements should not be considered burdensome since these statements are historical and already filed.

CCGG is of the view that pro-forma financial statements are critical because they provide information that investors cannot create themselves and so need guidance from companies.

(b) Reducing disclosure requirements in annual and interim filings

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

We believe that in order for investors and analysts to have timely financial information available to them, the current quarterly reporting obligation should be maintained. While the argument that quarterly reporting encourages short term thinking on the part of boards and management and discourages a long-term perspective is intuitively appealing, CCGG's members generally view the information provided by quarterly financial statements to be important and relevant. Timely and on-going information is essential to assessing and monitoring the quality of an investment.

A March 2017 study by the CFA Institute Research Foundation, *Impact of Reporting Frequency on UK Public Companies*, looked at the impact of the UK experience where mandatory quarterly reporting was initiated in 2007 and discontinued in 2014 and found "no reason to believe that removing quarterly reporting requirements would stop companies from engaging in short-termism (i.e., sacrificing long-term investment opportunities in order to bolster short-term earnings results.)".[2]

[2] Interestingly, even after they were no longer required to do so, most companies kept reporting quarterly.

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There also is value in maintaining consistency with the U.S., where quarterly reporting is required. Issuers which are dual listed will have to continue to comply and issuers whose peers are subject to quarterly reporting requriements are likely to continue to supply quarterly financials to remain competitive for investor attention. A move to semi-annual reporting could have an impact on the market value of Canadian issuers in comparison to U.S. counterparts where more frequent reporting is available.

CCGG is of the view, however, that providing voluntary quarterly *guidance* can in fact impact long term thinking in a negative manner since it risks incentivizing management and boards to make decisions that focus on meeting that guidance rather than focussing on long term strategy. We suggest that instead of removing the quarterly reporting obligation, the CSA may want to take steps to discourage the provision of voluntary quarterly guidance.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

We do not agree with only semi-annual reporting for any reporting issuer for the reasons noted above. All companies should provide disclosure on a consistent basis, to avoid some issuers having information in the public domain while others do not.

2.4 Eliminating overlap in regulatory requirements

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

We believe that there is an opportunity to reduce regulatory burden, reduce cost and improve disclosure to investors by reviewing current MD&A form requirements and potentially consolidating them with financial statements and the AIF. The multiplicity of disclosure in this regard is in many ways duplicative, potentially contradictory or ambiguous, and can lead someone unfamiliar with the disclosure regime to overlook relevant disclosure.

2.5 Enhancing electronic delivery of document

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

CCGG’s institutional investor members prefer electronic delivery of materials. However, we recognize that some retail Investors may prefer paper delivery and believe that they should still have that option. We believe that it would be appropriate at this point to adopt a policy whereby those wanting paper delivery must “opt in”.

(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor

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> *specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?*

Yes, we believe that paper copies should be provided only if an investor specifically requests paper delivery. This should apply to all public documents like proxy materials, annual reports, financial statements and MD&A.

Conclusion

In summary, we believe that meaningful steps can be taken to reduce regulatory burden through consolidation of duplicative information which we believe can have the positive effect of improving relevant disclosure for investors. However, we do not believe that quarterly reporting of financial statements should be replaced by semi-annual reporting. We also do not believe that the less onerous disclosure requirements currently applying to venture issuers should be extended to any non-venture issuers.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at 416.847.0524 or serlichman@ccgg .ca or our Director of Policy Development, Catherine McCall at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,

Julie Cays, CFA
Chair of the Board
Canadian Coalition for Good Governance

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CCGG Members – July 2017

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund (ATRF)
Archdiocese of Toronto
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Ltd.
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Caisse de dépot et placement du Québec
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Asset Management Inc.
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management Ltd.
Desjardins Global Asset Management
Electrical Safety Authority (ESA)
Fiera Capital Corporation
Franklin Templeton Investments Corp.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Hillsdale Investment Management Inc.
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada
Northwest & Ethical Investments L.P. (NEI Investments)
OceanRock Investments Inc.
Ontario Municipal Employee Retirement System (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan (OTPP)
OPSEU Pension Trust
PCJ Investment Counsel Ltd.
Pension Plan of the United Church of Canada
Pier 21 Asset Management Inc.
Public Sector Pension Investment Board (PSP Investments)
RBC Global Asset Management Inc.
Régimes de retraite de la Société de transport de Montréal (STM)
Russell Investments Canada Limited
Scotia Global Asset Management
Sionna Investment Managers Inc.
State Street Global Advisors, Ltd. (SSgA)

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Sun Life Investment Management Inc. (SLIM)
TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
University of Toronto Asset Management Corporation
Vestcor Investment Management Corporation
Workers' Compensation Board - Alberta
York University

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Institute of Corporate Directors
Institut des administrateurs de sociétés

July 28, 2017

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

To the attention of:

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Ontario Securities Commission
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Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
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CSA Notice and Request for Comment: CSA Consultation Paper 51-404
Considerations for Reducing Regulatory Burden for
Non-Investment Fund Reporting Issuers

This letter is submitted on behalf of the Institute of Corporate Directors ("ICD") in response to the invitation to comment on the CSA's Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

We thank the CSA for the opportunity to provide comments on this consultation. The ICD supports efforts to strengthen our capital markets, which provide growing firms access to an important source of capital and present investors with options within a regulated environment. We agree with the CSA that regulatory requirements within our markets and associated compliance costs should be proportionate to the objectives sought.

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Regulatory burden

Reporting issuers in Canada contend with significant compliance and disclosure obligations. For some – particularly smaller and earlier-stage companies – these can be burdensome. But regulatory overload, including in the form of duplication, is also costly and can distract directors away from some of their fiduciary duties, in particular oversight of strategy. In a recent survey of ICD members, 25% of respondents identified "shifting government regulations and policies" as a top external risk facing directors.

The CSA's Consultation Paper is quite broad and addresses many diverse issues across all market cap sizes, including prospectus requirements, marketing rules, financial disclosure rules and others. While there are likely ways of streamlining rules in all of these areas, we suggest some of these could be separated to permit greater analysis than can be applied through this consultation process.

This said, some of the options proposed in the Paper are, we believe, readily achievable and would not negatively impact investor protection. These include reducing financial statement history in IPO documents to two years (Section 2.2 a) and increasing the BAR threshold (Section 2.2 b).

The ICD would also support enhancements to the electronic delivery of documents as detailed in Section 2.5. Doing so would mitigate or eliminate the significant costs associated with printing and delivering documents, which can present a significant burden - particularly to smaller issuers. Electronic delivery also better reflects how recipients of these documents use them.

Duplication is a particular area of concern and frustration for directors and the Consultation Paper presents some options that the ICD would support, including allowing the MD&A and annual information form (AIF) to be combined (Section 2.4). We would encourage the CSA to work closely with other regulators and standard setting bodies in this respect.

As a general observation, we also note that there is frequent pressure from outside forces such as proxy advisors to continue layering on regulation that may not reflect the realities of the Canadian market. The ICD believes it is important to continue testing whether future regulatory proposals from external pressure groups address challenges specific to the unique Canadian market.

Regulation is only one factor in "going public"

It is important to note that compliance obligations are only one factor in a firm's decision to "go public". Others may include a founder's desire for continued firm control, private equity interest or macroeconomic conditions. For example, 2016 was one of the most uncertain economic and political years in recent memory and also the worst-ever year for IPOs in Canada, with only eight new issues across our exchanges. 2016 was also the culmination of

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many quarters of depressed commodity prices, which did not provide a particularly supportive IPO environment in a market that is heavily reliant on extractive industries.

The first quarter of 2017, a stronger period for global economic growth, has seen six new public issues on our exchanges – the second-best initial quarter result in the past decade according to a recent PwC survey. It is interesting to note that in the months between the low IPO ebb of 2016 and a higher tide in the first quarter of 2017, regulatory burden did not shift. In fact, two additional projects were introduced by the CSA in that time - one examining climate change disclosure and one encouraging better social media disclosure.

Overall, we enjoy a balance in Canada's markets between issuers, investors and regulators, which - though not perfect - is highlighted by relatively high degrees of transparency and

lower risk, which are Canadian competitive advantages. Regulation is only one (and not always a determining) consideration for companies thinking about "going public" and we would encourage the CSA and other market participants to reflect on what effect changing regulation with a unique purpose in mind would have on the broader market ecosystem.

We note too that this consultation is occurring while other jurisdictions search for ways to spur IPO activity. In the U.S., for example, an expansion of a program under the 2012 JOBS Act will, as of June 2017, allow all companies – regardless of size – to keep their financials confidential for a longer period of time. This development could mean less transparency in that market. While acknowledging that we must remain competitive, Canada should be cautious of reducing regulation in our unique market in an effort to keep up with others at any given moment in time.

Focus on coordination and effective disclosure

Going forward, the ICD welcomes the opportunity to work with regulators and other market participants to identify which current and future rules serve the best interests of investors in our unique Canadian market while striking the right balance of proportionality.

To this end we would encourage the CSA to pursue a review of our regulatory regime that focuses on improving the effectiveness of disclosure and not solely on reducing burden. This would entail working with issuers, investors, other regulators and standard-setting bodies, as well as with legislators on ways to ensure that what is disclosed is useful to the user.

This could mean, for example, working with investors to determine which disclosures they rely on and which are less useful or duplicative. The discussion in the Consultation Paper, for example, of quarterly versus semi-annual reporting (Section 2.3 c) cannot be held simply with a view to reducing burden. Pertinent questions such as whether investors value quarterly reporting at a time when daily, relevant, forward-looking (often non-GAAP) information is also readily available should first be further explored.

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Going forward, there will be increasing pressure to be more transparent with stakeholders on emerging risks, whether they be financial or not. It will be critical that such disclosures be effective and useful to the market. The ICD is, therefore, committed to continuing engagement with the CSA to contribute the directors' perspective as the regulatory environment evolves. To that end, we would be pleased to engage more deeply with our members through our various channels, including surveys and focus group roundtables to help the CSA better understand the perceived effectiveness of current and proposed regulation.

Once again, we thank the CSA for the opportunity to provide our comments.

Yours Truly,

Rahul K. Bhardwaj, LL.B, ICD.D
President and CEO
Institute of Corporate Directors

About the ICD

The ICD is a not-for-profit, member based association with more than 12,000 members and eleven chapters across Canada. We are the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and Crown Corporation sectors. Our mission is to foster excellence in directors to strengthen the governance and performance of Canadian corporations and organizations. This mission is achieved through education, certification and advocacy of best practices in governance.

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
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Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

RE: CSA Consultation Paper 51-404 "Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers"

Dear Commissions:

Canadian Natural Resources Limited ("Canadian Natural") is pleased to respond to the Canadian Securities Administrators ("CSA") invitation to comment on CSA Consultation Paper 51-404 "Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers".

Canadian Natural is a senior independent oil and gas exploration and production company headquartered in Calgary, Alberta, Canada, with operations in Western Canada, the North Sea, and offshore West Africa. Our shares are publicly traded on the Toronto Stock Exchange and the New York Stock Exchange.

As a general comment, Canadian Natural is supportive of the CSA's efforts to reduce the regulatory burden on Canadian reporting issuers. Costs of complying with regulatory requirements are becoming more significant for reporting issuers, and we believe that there are many opportunities for efficiencies without compromising the reliability and effectiveness of the regulatory reporting environment and without impacting investor protection. However, we also caution the CSA that due to the high degree of integration in the North American economy and given the significant number of cross-listed

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Canadian public entities, the implementation of any significant reforms to Canadian securities regulations that impact cross-listed entities should only be made after a balanced consideration of existing regulations and on-going regulatory initiatives in the United States. Further, to the extent that similar reforms are being implemented in each jurisdiction, we believe it is critical that changes in Canada be made in tandem with changes in the United States in order to prevent unintended consequences, even for a relatively short period of time.

On this basis, Canadian Natural believes that the following items discussed in the CSA consultation paper would significantly reduce regulatory burden for reporting issuers:

- **Removing or modifying the criteria to file a Business Acquisition Report ("BAR")** – Preparation of the BAR for a non-venture issuers is complex, overly time consuming, prohibitively costly and provides limited incremental information to an investor. Further, the BAR itself is quickly stale-dated. We believe that BAR requirements should be eliminated in all but the most material situations. In addition, we recommend that the significance tests should be amended to remove the tests based on assets and net earnings to determine whether a BAR is required. These tests are overly complex and can often produce nonsensical results as they are based on historical financial statement information of the vendor (which may or may not be in a form that can subsequently be filed to meet the financial statement requirements for a BAR filing) and which are often not relevant on a go forward fresh-start basis to the purchaser.

  Should it be determined that a BAR filing is required, we believe that the financial statement requirements for the purchased business should be simplified, and auditor involvement be reduced or eliminated. Currently, a significant amount of the information required to be disclosed in the BAR does not originate with the purchaser completing the BAR, but must be obtained from the seller. This causes the purchaser to place significant reliance (and potentially assume liability) on the seller as to the accuracy and timeliness of the information provided. Further, Canadian Natural also does not believe that the pro forma financial statements included in the BAR provide useful information to investors given their high degree of subjectivity.

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- **Reducing disclosure requirements in annual and interim filings** – Canadian Natural believes that the options to reduce disclosures in annual and interim filings discussed in the consultation paper will reduce time and costs of preparing regulatory filings without compromising reporting integrity. Removing the discussion of prior period results and the summary of the eight most recently completed quarters will not impact the quality of reporting since these results were discussed in detail in the relevant period, and this information is readily available in the public domain to users of the annual and interim filings.

- **Permitting semi-annual reporting** – Canadian Natural believes that reducing the number of reporting periods would significantly reduce the regulatory cost and burden to reporting issuers without compromising the integrity of publicly available information for investors. As noted in the consultation paper, other jurisdictions have semi-annual reporting requirements. Canadian Natural believes that semi-annual reporting should be available to all reporting issuers, subject to developments and requirements in the United States for cross-issuers.

- **Eliminating overlap in regulatory requirements** - As noted in the consultation paper, reporting requirements require the reproduction of similar disclosures in the various required public disclosure documents. Specifically, there are many examples of duplication between disclosures required under IFRS and disclosures required to be made in Management's Discussion and Analysis, often with subtle differences that we believe do not provide additional useful information. We encourage a detailed review of these items with the goal of eliminating duplication.

- **Enhancing electronic delivery of documents** –Electronic delivery of documents significantly reduces the costs of printing and mailing paper documents, which may not be read by investors. Anecdotally, we note that stakeholder requests for printed information has decreased dramatically over recent years, as our stakeholders are accessing this information electronically, either by means of our website, or through other channels, such as SEDAR in Canada. Canadian Natural is supportive of initiatives to allow electronic delivery of documents in more circumstances. However, we do not believe that this should include the mandating of information delivery for regulatory purposes on platforms such as XBRL without conducting a robust consultation process.

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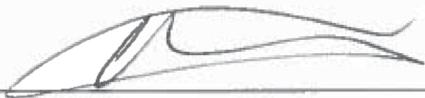
If you would like to discuss our comments further, please do not hesitate to contact the undersigned.

Sincerely,



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July 31, 2017

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs authority (Saskatchewan)
Manitoba Securities commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety,
Nova Scotia Securities commission
Securities commission of Newfoundland and Labrador
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Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

TMX Group Limited ("**TMX Group**" or "**we**") welcomes the opportunity to comment on behalf of its subsidiaries, Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSXV**") (each, an "**Exchange**" and collectively, the "**Exchanges**"), on the Consultation Paper published by the Canadian Securities Administrators ("**CSA**") entitled "CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*" (the

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“**Consultation Paper**”). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Consultation Paper.

TMX Group’s interests are aligned with the CSA’s, as it is vital to our clients and to all investors that the capital markets in Canada remain fair, efficient and competitive. Our businesses rely on our customers’ continued confidence and participation in Canada’s capital markets. We believe that achieving the right balance between investor protection and regulatory burden is essential to creating an environment where companies and the Canadian economy can grow and successfully and sustainably compete on an international level. We are pleased that the Consultation Paper is informed by this focus on achieving regulatory balance. We note that many of the potential options to reduce regulatory burden discussed in the Consultation Paper align with work undertaken by TMX Group, particularly work undertaken in the past year and a half. TMX Group looks forward to working with the CSA on initiatives in this area and sharing our expertise with the CSA.

The Exchanges are very supportive of CSA initiatives to reduce the regulatory burden on reporting issuers without impeding the ability of the CSA to fulfill their respective regulatory responsibility to protect investors. We therefore applaud the CSA for considering options to reduce the regulatory burden associated with both capital raising in the public markets and the ongoing costs of remaining a reporting issuer, while not compromising investor protection or the efficiency of the capital markets. We note that addressing undue regulatory burden on reporting issuers is important for ensuring the vibrancy of Canada’s capital markets. In conjunction with the initiatives discussed in the Consultation Paper, we encourage the CSA to consider options to address undue regulatory burden on investment dealers, particularly the independent dealer sector. The investment dealer community is a key intermediary between issuers and capital. Therefore, alleviating regulatory burden on investment dealers is complementary to the Consultation Paper’s focus on addressing the regulatory burden facing reporting issuers. Finally, we strongly support CSA initiatives aimed at attracting capital to the Canadian capital markets. Such efforts are crucial to assisting reporting issuers, the investment dealer community and, ultimately, the Canadian capital markets as a whole.

Attached as Appendix A to this letter are our comments on some of the options set out in the Consultation Paper.

Thank you for the opportunity to comment on the Consultation Paper. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

Ungad Chadda
President
Capital Formation, Equity Capital Markets

Brady Fletcher
Managing Director
TSX Venture Exchange

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APPENDIX A
COMMENTS ON THE CONSULTATION PAPER

Part 1: Options to Reduce Regulatory Burden in Addition to the Options Discussed in the Consultation Paper

1.1 Embracing Financial Technology and Regulatory Technology

Various securities regulators around the world, including a number in Canada, have recently launched programs to support innovative projects in the financial technology ("**fintech**") and regulatory technology ("**regtech**") spaces. In February 2017, the CSA launched its own regulatory sandbox to support businesses in these sectors. As a technology driven solutions provider, TMX Group strongly supports these programs.

We encourage the CSA and its constituent members to build on these programs by investing in and facilitating technology solutions to reduce the regulatory burden on reporting issuers, particularly with respect to compliance with continuous disclosure obligations. Such solutions have the potential to reduce the time and expense incurred by reporting issuers to comply with continuous disclosure requirements, without reducing the substantive disclosure received by investors. Moreover, by unlocking reporting issuer disclosure data from the current format, primarily consisting of PDF documents filed on SEDAR, regulators would be better able to use data to leverage new forms of analytics and artificial intelligence to fulfil their regulatory mandate.

In this regard, we have initiated our own review of filing and disclosure obligations imposed on listed issuers to determine how technology can be used to streamline current requirements. On June 1, 2017, TSX proposed certain changes to its personal information form ("**PIF**") designed to improve the listed issuer experience.[1] Ultimately, the Exchanges anticipate that they will be automating and making the PIF digitally available online.

The Exchanges believe that similar improvements can be made to continuous disclosure requirements in securities legislation and the systems used to comply with those requirements. The current system of continuous disclosure, which is rooted in the core disclosure documents prescribed under National Instrument 51-102 – *Continuous Disclosure Obligations* and various ancillary documents, includes many duplicative data entry requirements and is not well suited to take advantage of recent advances demonstrated in the fintech and regtech sectors. Rather, the prescribed disclosure documents are generally completed in a word processing program, converted to PDF, and siloed off from one another so reporting issuers must enter the same data multiple times, as required in each document. Although reporting issuers are increasingly using technology vendors to record corporate data in cloud-based solutions, in most cases the data must still be manually input into a word processing program in order to create a disclosure document. We believe that technology could be applied to reduce much of the work currently involved in this process by linking this data to approved templates, where appropriate, and automating the disclosure process.

Even incremental changes to reduce the regulatory burden on reporting issuers would have a significant multiplier effect when compared to the investment required to implement such changes. For example, the disclosure requirements regarding executive compensation are found in a number of different places in securities legislation. Significant effort is often involved in tracking these various requirements and complying with them, although the data actually being

[1] TSXV will also use the same PIF once the amendments are finalized.

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disclosed is relatively straightforward. Given that most reporting issuers already record compensation matters in an electronic database, it is not difficult to imagine a technology solution that would automatically retrieve the relevant data from such database to eliminate the manual processing tasks required to comply with the current disclosure requirements. In the case of stock options, standardization and automation of disclosure would also potentially make it easier for listed issuers to comply with stock exchange filing requirements, as exchanges also require information regarding outstanding stock options.

As securities regulators, the CSA plays a crucial role in defining the ground rules for innovation and setting the technological standards upon which third party developers can create solutions. In the short term, the CSA should convene a forum with other interested parties to identify the initial steps to move toward a more efficient continuous disclosure system. In the longer term, by drafting securities legislation with a view to standardization and automation, securities regulators can create a platform for technology providers to create new and better systems for compliance. Over time, securities regulators could then endorse new methods of using technology to comply with continuous disclosure requirements, thereby reducing the risk for reporting issuers in adopting time-saving solutions. The Exchanges believe that doing this in connection with the initiatives discussed in the Consultation Paper would enable Canada to become a global regtech leader.

1.2 Attracting Additional Capital to the Canadian Capital Markets

The Exchanges applaud the CSA's ongoing efforts to attract more capital to the Canadian capital markets, including its efforts to modernize the exempt market by introducing new prospectus exemptions and modifying or harmonizing existing ones. We believe that these exemptions provide important means for issuers to access capital through the exempt market, particularly for start-ups and small and medium-sized enterprises. We continue to support regulatory efforts that facilitate access to capital through the exempt market while maintaining appropriate investor protection. We strongly encourage the CSA to continue its efforts to harmonize the prospectus exemptions across all Canadian jurisdictions so that such exemptions will benefit all market participants, regardless of the jurisdiction of their lead regulator.

The Exchanges strongly support the CSA's initiatives to work with fintech businesses to support innovation and promote capital formation, particularly through its regulatory sandbox initiative and the fintech initiatives launched by certain constituent CSA members. We note that TMX Group has undertaken important work in this area over the past year. In October 2016, TMX Group announced the members of the Advancing Innovation Roundtable (the "**Innovation Roundtable**"), a 12-member independent working group that includes prominent senior leaders from Canada's financial services sector, including finance, investment and capital formation. The Innovation Roundtable's mission is to deliver actionable recommendations on how to increase access to growth capital for Canadian innovation economy companies as they grow beyond the seed and start-up stages. In February 2017, the Innovation Roundtable published a comprehensive report containing recommendations, sourced from both public and private markets, on how to close the growth capital gap in Canada. This report is publicly available on our website. We look forward to working closely with the CSA to share the knowledge gained from the Innovation Roundtable.

The Innovation Roundtable noted that small-cap and micro-cap companies are hindered by a dearth of independent research, limiting investor interest, exacerbating liquidity challenges and delaying institutional support. Both start-up and growth stage financings as well as analyst coverage are mostly the domain of the smaller investment banks that cater to this scale of

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company. In recent years, however, the independent dealer community in Canada has been challenged, resulting in a significant change in the capital markets ecosystem. While we support a healthy independent dealer sector, additional self-serve and easy to use tools and information should be made available to help retail investors better identify and understand investment opportunities for these kinds of issuers, thereby generating greater participation in Canada's public venture market. We believe that the CSA's support of fintech and digital initiatives that help connect issuers with sources of capital is crucial to promoting such capital formation.

1.3 Fostering the Independent Dealer Community

We support a healthy investment dealer sector and we strongly encourage the CSA to consider options to address undue regulatory burden on investment dealers, particularly the independent dealer sector. The investment dealer community is a key intermediary between issuers and capital. Therefore, alleviating unnecessary regulatory burden on investment dealers is complementary to the Consultation Paper's focus on addressing regulatory burden facing reporting issuers. We note that, like reporting issuers, investment dealers also face compliance costs associated with rules that are no longer relevant or provide no clear benefit to the market or investors.

Therefore, we encourage the CSA to engage in an examination of the regulatory burden facing independent investment dealers in conjunction with its examination of the regulatory burden facing reporting issuers. For example, we encourage the CSA to consider its 2015 guidance regarding the steps that must be taken to support the reliance on the accredited investor protection exemption. From discussions with marketplace participants, we understand that this guidance has led issuers and/or investment dealers to request and retain extensive documentation and information about investors, which has created additional complexity and expense in the capital formation process. While we acknowledge the investor protection concerns associated with selling exempt securities to investors that do not qualify as accredited investors, we encourage the CSA to consider whether the measures encouraged in the 2015 guidance are disproportionate to the investor protection concerns this guidance was meant to address. We believe that similar efforts to address undue regulatory burden on both issuers and the independent dealer community will make the public capital markets more attractive to issuers and will facilitate capital formation.

Part 2: Options to Reduce Regulatory Burden Discussed in the Consultation Paper

2.1 Extending the Application of Streamlined Rules to Smaller Reporting Issuers

The Exchanges support maintaining the current distinction between venture and non-venture reporting issuers based on exchange listing. The Exchanges believe that the current approach is simpler to understand and more predictable for both investors and issuers. As discussed in more detail below, the Exchanges believe that it is more effective for the capital markets for the CSA to streamline regulatory requirements in a manner that benefits all reporting issuers and their investors, rather than simply extending venture issuer requirements to issuers listed on senior exchanges.

The current method of delineating venture and non-venture issuers based on exchange listing allows investors to easily identify and understand both the securities law obligations and exchange requirements applicable to the issuer, as well as to make assumptions about the maturity and sophistication of the issuer, without further inquiry. If the CSA adopts a sized-based distinction rather than an exchange listing distinction, it will be more difficult for investors to

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determine the securities law requirements applicable a particular issuer since there would be varying securities law requirements for issuers listed on the same exchange. This would effectively result in four categories of listed issuers based on whether the issuer is a venture/non-venture issuer from a securities law perspective and a venture/non-venture issuer from an exchange listing perspective, rather than the current system of two categories. The Exchanges believe that this result may be confusing to investors, which may negatively impact investors' understanding of and confidence in the public capital markets.

The Exchanges believe that a sized-based distinction between venture and non-venture issuers would be less predictable than the current regime, which may be more burdensome for issuers than beneficial. Currently, issuers can choose whether to be a venture or non-venture issuer based on their exchange listing. As a venture exchange, TSXV is a capital formation platform with rules tailored to junior issuers that facilitate capital raising by these issuers. As issuers mature, they are able to build credibility in the capital markets and plan for the adoption of non-venture issuer level disclosure and structural arrangements (i.e., disclosure regarding board diversity, share based compensation arrangements that comply with the recommendations of proxy advisory firms, etc.) before graduating to a senior exchange. A sized-based distinction would give issuers less control over the securities law requirements applicable to them, which would make planning of this nature more difficult. In addition, a size-based distinction may result in an issuer having different securities law requirements from year to year, which may be burdensome for the issuer, as well as confusing for the marketplace. The current approach of delineating between venture and non-venture reporting issuers based on exchange listing does not give rise to these complications.

2.2 Reducing the Regulatory Burdens Associated with the Prospectus Rules and Offering Process

(a) Reducing the Audited Financial Statement Requirements in an IPO Prospectus

The Exchanges support extending the eligibility criteria for the provision of two years of audited financial statements to all issuers. The Exchanges do not believe that this change will adversely impact the ability of investors to obtain useful disclosure about issuers. Furthermore, the Exchanges believe that this change will meaningfully reduce the expense, time and effort associated with becoming a Canadian public company.

The Exchanges do not believe that reducing the audited financial statement requirements in an IPO prospectus to two years will have an adverse impact on investors. Over a three year period, many issuers, especially early stage issuers, experience fundamental changes in the nature of their business or operations. For example, these businesses often experience significant changes in management, debt facilities and business strategy, as well as significant growth. Businesses are valued based on financial projections using the most representative fiscal year, typically, the most recently completed fiscal year. Accordingly, the third year of historical audited financial statements may not be representative of the current business and may be the least meaningful in the valuation of a business. The Exchanges note that in 2015 the CSA approved amendments that reduced the historical financial statement disclosure required in IPO prospectuses of venture issuers to two years. The Exchanges believe that this regulatory change lends support to premise that the third year of financial statements is of limited relevance to investors. The Exchanges believe this is true irrespective of the size of the issuer. Therefore, the Exchanges are of the view that there is limited benefit to investors from the third year of audited financial statements when compared with the time and expense incurred by issuers when preparing such statements.

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The Exchanges believe that requiring two years of financial statements in an IPO prospectus will make the Canadian capital markets more attractive to issuers. We note that in the United States, certain companies, including emerging growth companies,[2] are required to include only two years of audited financial statements in their IPO registration statements. For such companies, a requirement to provide three years of audited financial statements to satisfy Canadian securities law requirements may be a barrier leading the issuer to bypass Canada and to instead go public and list only in the U.S. If a company successfully goes public in the U.S., it may have little incentive to list on a Canadian exchange thereafter. More importantly, listing solely on a U.S. exchange may limit the investment choices for retail Canadian investors. Such investors may have additional costs or limitations associated with buying in the U.S. markets, or may be restricted from buying securities not listed on a Canadian exchange.

Therefore, the Exchanges believe that the benefits to both issuers and the Canadian capital markets as a whole from requiring only two years of audited financial statements in an IPO prospectus outweigh any policy objective associated with requiring three years of audited financial statements.

(b) Streamlining Other Prospectus Requirements

The Exchanges support maintaining the requirement for auditors to review interim financial statements provided in a prospectus. The Exchanges believe that it is appropriate that auditors continue to provide a minimum level of comfort on any financial information included the prospectus that has not been audited. A review of the interim financial statements poses less of a burden on issuers compared to having financial statements audited. Requiring auditors to review interim financial statements is beneficial to investors since the most recent interim period is arguably the most important period to investors as it is the most current.

In addition, the Exchanges believe that most issuers would still choose to have their interim financial statements reviewed by an auditor even if this review is no longer required under securities legislation. The Exchanges note that the auditor’s review of the interim statements provides a level of comfort to the issuer’s audit committee and board of directors.

Finally, the Exchanges encourage the CSA to consider modifying the prospectus requirements for certain qualifying transactions by TSXV-listed Capital Pool Companies (“**CPCs**”). In particular, TSXV does not believe CPCs that are reporting issuers in Ontario should be required to file enhanced disclosure in the form of a non-offering prospectus in connection with a qualifying transaction involving non-mining and non-oil and gas assets outside Canada and the United States. The Exchanges believe that the expense involved in preparing such disclosure outweighs investor protection concerns.

(c) Streamlining Public Offerings for Reporting Issuers

Short Form Prospectus Offering System

The Exchanges believe that the current short form prospectus system achieves the appropriate balance between facilitating efficient capital raising by reporting issuers and investor protection. However, the Exchanges welcome any measures to simplify, streamline and eliminate duplicative

[2] We note that “emerging growth company” is defined in under U.S. securities law as an issuer with total annual gross revenues of less than US$1 billion during its most recently completed fiscal year.

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information in an issuer's continuous disclosure record and short form prospectus, as long as such measures preserve investor protection.

Facilitating At-The-Market (ATM) Offerings

The Exchanges strongly support adopting measures to further streamline the process for ATM offerings by reporting issuers. In particular, we believe that the Canadian rules relating to ATM offerings should be aligned with the U.S. rules due to the interplay between the Canadian and U.S. markets. For example, the Exchanges understand that CSA exemptive relief permitting ATM offerings has historically been provided based on a cap on the number of shares sold on TSX on any trading day equal to 25 percent of the trading volume on TSX on that date. We note that the U.S. ATM rules do not have a similar daily cap for ATM offerings. Therefore, we encourage the CSA to consider whether this cap continues to be appropriate for Canadian ATM offerings. However, the Exchanges support making the availability of ATM offerings conditional on minimum liquidity thresholds, which is consistent with the U.S. rules.

The Exchanges believe that the exemptive relief typically granted by the CSA for ATM offerings should be codified in securities legislation to further facilitate such offerings. This would eliminate the expense incurred by issuers to prepare exemptive relief applications, particularly when the Exchanges understand that the CSA typically grants such exemptive relief as a matter of course. Therefore, the Exchanges support codifying the following relief for ATM offerings: (i) relief from the requirement to physically deliver a prospectus to purchasers in a distribution of securities; (ii) relief from the requirement to state the right of the purchasers of the securities to withdraw from the purchase during the two business days after the delivery of the prospectus; and (iii) relief from the requirement to state the right of action against the dealer for non-delivery of the prospectus. Finally, we also support requiring issuers to disclose on a quarterly basis (rather than monthly) the number and average price of securities sold pursuant to the ATM offering.

2.3 Reducing Ongoing Disclosure Requirements

(a) Removing or Modifying the Criteria to File a BAR

The Exchanges support CSA efforts to conduct a broader review of the BAR requirements. In particular, we believe that the CSA should consider whether the current significance tests are appropriate and whether a BAR is necessary at all. The Exchanges canvassed representatives of both issuers and investors for feedback on the BAR requirements. Many stakeholders indicated that that the BAR serves no useful purpose, particularly due to the lapse of time before the information in the BAR is made available to the public. While certain stakeholders indicated that the financial statements of the acquired business and the pro forma financial statements included in a BAR may be useful to investors when making investment decisions, especially where no historical information exists, since the BAR is filed 75 days after the completion of an acquisition the information included in the BAR is stale or irrelevant. Therefore, the Exchanges believe that the CSA should consider whether a BAR is necessary. In particular, a BAR is likely unnecessary if the issuer prepares a prospectus connection with the acquisition, as in such situations a BAR provides no new information that is not already provided in the prospectus.

(b) Reducing Disclosure Requirements in Annual and Interim Filings

The Exchanges strongly support CSA efforts to reduce burdensome disclosure requirements in annual and interim filings, particularly by removing duplicative form requirements from the financial statements, MD&A and AIF. As discussed in more detail below under the heading

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"Eliminating Overlap in Regulatory Requirements", the Exchanges support consolidating the form requirements for these documents into one form. The Exchanges believe that this change, along with flexible form requirements aimed at encouraging issuers to disclose only relevant and material information and discouraging the use of boilerplate language, will create benefits for issuers and investors. In this regard, the Exchanges note that a question and answer disclosure regime may be a helpful means for the CSA to streamline continuous disclosure requirements. For example, Form 45-106F14 – *Rights Offering Notice for Reporting Issuers* requires issuers to answer specific questions. A similar set of questions for other continuous disclosure documents may be more effective than the current requirements to provide broad descriptions of various matters.

The Exchanges support revamping and shortening the MD&A requirements for all issuers. Generally speaking, issuers frequently include boilerplate language in their disclosure documents in order to comply with form requirements. Because of this heavy use of boilerplate and repetitive language, the MD&A may be a difficult document for investors to read and navigate, since the investor must pick through "filler" language in order to get to useful disclosure. Therefore, the Exchanges support streamlining the MD&A requirements, including by requiring the disclosure of only relevant and material information. Such streamlined disclosure should be more efficient for issuers to prepare and should provide more meaningful disclosure to investors.

The Exchanges caution that some of the options outlined by the CSA for refocusing annual and interim filings on key information may result in the elimination of information that is important to investors. For example, the discussion of prior period results in the MD&A is valuable information for an investor. This discussion puts the current quarter into context. As interim financial statements are prepared for the current quarter and the year to date, excluding the discussion of the prior period results would result in an incomplete analysis of the financial statements. Similarly, the Exchanges note that including a tabular summary of quarterly results for the eight most recently completed quarters in the MD&A provides a useful sequential analysis of financial results. It is more efficient for investors to have this information in one document than to review prior MD&A disclosure to retrieve this information.

The Exchanges also encourage the CSA to consider streamlining the continuous disclosure requirements related to executive compensation, particularly Form 51-102F6 – *Statement of Executive Compensation*. As discussed above under the heading "Embracing Financial Technology and Regulatory Technology", complying with these disclosure requirements requires issuers to engage in significant manual data entry and word processing. Additionally, the resulting disclosure is very complex and may not be useful to unsophisticated investors. Therefore, the Exchanges support CSA efforts aimed at reducing the time and expense incurred by issuers to prepare executive compensation disclosure while ensuring such disclosure is useful to investors.

(c) Permitting Semi-Annual Reporting

The Exchanges believe that it is good business practice for reporting issuers to report on a quarterly basis. Such reporting provides timely information regarding financial results, which enables investors to evaluate business trends and make informed investment decisions. Requiring quarterly reporting requires issuers to periodically, consistently and transparently communicate with their investors about their business. By contrast, semi-annual reporting may be too long a time period to track trends, key developments, liquidity issues and other financial developments in the business. Therefore, while the Exchanges are not opposed to permitting semi-annual reporting, the Exchange believe that such reporting must be at the option of the issuer so that issuers that wish to continue reporting quarterly may do so. If the CSA permits semi-

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annual reporting, the CSA should include a mechanism that limits the ability of issuers to change between the two different financial reporting regimes without a valid reason.

The Exchanges note that there are a variety of market forces that make semi-annual reporting an unattractive option for many reporting issuers. First, the Exchanges understand that institutional investors are unlikely to accept semi-annual reporting. Such investors typically consider quarterly reporting to be a good corporate governance practice and expect timely information regarding their investments. Second, quarterly reporting is required under U.S. securities law. Due to the interplay between the Canadian and U.S. capital markets, including the number of Canadian reporting issuers that are also listed on a U.S. exchange, there is a strong market expectation that all North American reporting issuers will provide quarterly financial reporting to investors. Finally, larger, more sophisticated issuers may conduct quarterly reporting internally (i.e., to the board of directors) regardless of securities law requirements. Many issuers may determine that it is fair and reasonable that such information be shared with the issuer's investors as well. Therefore, the Exchanges believe that larger issuers or issuers wishing to have an institutional investor base will continue to provide quarterly reporting due to these market forces, regardless of securities law requirements regarding semi-annual reporting.

However, the Exchanges note that for a subset of junior issuers, the burden associated with quarterly reporting may outweigh both these market forces and the benefit investors derive from quarterly reports. For example, early stage development issuers with no significant revenues simply may not have information to report on a quarterly basis. Reporting on a quarterly basis may not make sense for these issuers. Therefore, if the CSA decides to permit semi-annual financial reporting, the Exchanges believe that it would be best suited to certain junior issuers. Additionally, due to the interplay between the Canadian and U.S. capital markets discussed above, should the U.S. Securities Exchange Commission exempt smaller reporting issuers from quarterly reporting, then the Exchanges would be supportive of the CSA extending similar relief to smaller reporting issuers. However, the Exchanges believe that semi-annual reporting must be at the option of the reporting issuer.

The Exchanges are supportive of permitting non-venture issuers to have the option to replace interim MD&A with a quarterly highlights document. However, we request that the CSA provide further details and guidance on, for example, (i) eligibility criteria; (ii) triggers for ineligibility; (iii) what controls would be required to be in place to ensure that an issuer does not arbitrarily switch between reporting obligations; and (iv) what information would be required to be included in the quarterly highlights.

2.4 Eliminating Overlap in Regulatory Requirements

The Exchanges are very supportive of CSA efforts to remove duplicative requirements from all continuous disclosure documents. The Exchanges believe that such efforts will reduce the time and expense incurred to prepare these documents and will make key information easier for investors to locate and understand.

The Exchanges strongly support eliminating MD&A form requirements that duplicate IFRS requirements. Currently, MD&A disclosure regarding financial instruments and key accounting policies appear to be replicated directly from the financial statement notes. The focus of the MD&A is to highlight key financial performance measures and why they have changed from the last quarter, trends that management may be anticipating in the next quarter and any material issues with respect to the issuer's current and future liquidity and capital resources. The MD&A should not be a detailed rehashing of the individual financial statement line items nor a duplication of

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information in the financial statement notes. The focus of the MD&A disclosure should be to highlight key issues that enable the investor to evaluate the business through the eyes of management and to make informed investment decisions.

Furthermore, the Exchanges support consolidating the MD&A, AIF (if applicable) and annual financial statements into one document. The Exchanges note that in preparing the AIF, many issuers incorporate by reference large sections of the annual financial statements and MD&A. Therefore, a consolidated document will be beneficial to investors because they will no longer have to locate and access numerous documents when looking for current material information regarding the issuer. A consolidated document would also be beneficial to issuers. It would reduce the risk of inconsistent disclosure across three separate documents and eliminate the duplicative internal efforts and resources associated with preparing and reviewing three different documents with three different, but overlapping, sets of form requirements.[3]

The form requirements for this new document should strongly encourage issuers to focus their disclosure on key and material highlights, material changes from prior periods, key trends and important developments about liquidity and capital resources as opposed to simply including boilerplate language to comply with form requirements. The form requirements should be flexible enough that they discourage issuers from using language that is boilerplate, repetitive of information provide in prior reporting periods, duplicative or "filler" so that more meaningful disclosure is presented. Form requirements of this nature are beneficial to investors, as these requirements should encourage issuers to make continuous disclosure documents easier for investors to navigate and understand. Form requirements of this nature will also benefit issuers, as such requirements should enable issuers to more efficiently comply with their disclosure obligations and focus their efforts on disclosure that is useful to investors.

Finally, the Exchanges believe that the CSA should consider expanding the definition of "designated foreign jurisdiction" in National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* to include additional foreign jurisdictions. The Exchanges believe that extending the continuous disclosure exemptions provided pursuant to this rule to more foreign issuers will eliminate duplicative reporting in Canada and the foreign jurisdiction and will make the Canadian capital markets more attractive to foreign issuers. This may provide Canadian retail investors with increased access to global investment opportunities.

2.5 Enhancing Electronic Delivery of Documents

The Exchanges support permitting a reporting issuer to satisfy the delivery requirements under securities legislation by making continuous disclosure documents (including proxy materials, financial statements and MD&A) publicly available electronically without prior notice or consent. The CSA should require that investors are made aware on an annual basis that such materials are available, and should require that the documents are easily accessible and available for paper delivery at the investor's request. The Exchanges do not believe that this model would have an adverse impact on investors.

[3] We note, however, that the form requirements for this consolidated document should require that the auditors' opinion continues to cover only the audited financial statements portion of the document.

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CANADIAN TIRE

August 1, 2017

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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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper")

Canadian Tire Corporation, Limited ("**CTC**") appreciates the opportunity to provide comments in response to the Consultation Paper published by the Canadian Securities Administrators ("**CSA**").

CTC is a family of businesses that includes a retail segment, a financial services division and CT Real Estate Investment Trust. CTC's retail business is led by Canadian Tire, which was founded in 1922 and provides Canadians with products for life in Canada across its Living, Playing, Fixing, Automotive and Seasonal categories. PartSource and Gas+ are key parts of the Canadian Tire network. The retail segment also includes Mark's, a leading source for casual and industrial wear, and FGL Sports (Sport Chek, Hockey Experts, Sports Experts, National Sports, Intersport, Pro Hockey Life and Atmosphere), which offers the best active wear brands. Our approximately

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1,700 retail and gasoline outlets are supported and strengthened by CTC's Financial Services division and the tens of thousands of people employed across the country by the company and its local dealers, franchisees and petroleum retailers. CTC's Common Shares and Class A Non-Voting Shares are listed and traded on the Toronto Stock Exchange under the symbols "CTC" and "CTC.a", respectively.

As a public reporting issuer, CTC is committed to comprehensive and transparent reporting on matters of importance to our shareholders. As such, we appreciate the opportunity to provide our comments on those areas of securities legislation where a reduction of undue regulatory burden could be of benefit, all with a view to protecting the interests of investors and the efficiency of the capital markets. In this response, we will comment selectively on certain of the identified potential regulatory options that are most applicable to our business.

Comments on Regulatory Options

Part 2.3 – Reducing ongoing disclosure requirements

Reducing disclosure requirements in annual and interim filings

CTC supports the initiative to refocus information currently provided in annual and interim filings on key information that is relevant to investors and analysts in understanding the business of a reporting issuer. Focusing on key information and judiciously reducing disclosure requirements that are not relevant to an investor will help to explain and convey critical information in a clear and concise manner.

We are mindful that the volume of information investors receive in the current information economy often obfuscates the purpose of providing material and relevant disclosure to investors. We believe that disclosure requirements should not be removed solely on the basis that the information may be 'burdensome' to prepare. In our view, the principal consideration should be whether the information provided is relevant to an investor's decision to make an investment decision, understanding that the appropriate level of disclosure for a particular issuer may increase or decrease accordingly based on such guiding principle. We also support the proposal that the CSA provide issuers with more clarity on expectations surrounding what they view to be relevant disclosure requirements.

We are in favour of providing an option for issuers to remove discussion of prior period results from the management's discussion and analysis ("**MD&A**") or to remove the summary of quarterly results of the eight most recently completed quarters in the MD&A on the basis that historical results can easily be retrieved from the issuer's previous continuous disclosure record. In addition, we are of the view that certain disclosure requirements in the interim MD&A may not be relevant information for a company's particular industry. For example, given the seasonal nature of the retail business, providing a comparison of a retail company's interim financial condition (i.e., balance sheet) to its financial condition as at the end of the most recently completed financial year is not relevant information to investors in the retail industry.

We are interested in seeking further guidance from the CSA as to the form and content of a proposed 'quarterly highlights' document, which could help us assess whether the information

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presented in such document would be more helpful to an investor than the current form of interim MD&A.

Permitting semi-annual reporting

CTC supports the proposal of permitting issuers to move to a semi-annual reporting model, rather than a quarterly reporting model. A semi-annual reporting model may be very relevant in industries where quarterly results inadvertently encourage investors to focus too heavily on short-term results, rather than a longer time horizon. However, we believe the overarching principle should continue to be balancing the need to provide relevant and timely information to shareholders at appropriate intervals for a particular industry, cognizant that a 'one size fits all' model may not equally apply among all companies. To this end, we encourage exploring the option and benefits of permitting semi-annual reporting, but believe it is important to preserve optionality and discretion for issuers to choose, based on their circumstances, whether they feel it appropriate to report quarterly or on a semi-annual basis.

Part 2.4 – Eliminating overlap in regulatory requirements

We believe it is important to be transparent and robust in our disclosure to our shareholders, but agree that there is merit in the initiative to reduce or consolidate duplicative disclosure requirements, particularly if information is already available to investors through different continuous disclosure filings.

In particular, we would be supportive of integrating the MD&A and the annual information form ("**AIF**") requirements into one consolidated disclosure document. At CTC, significant effort and a high degree of coordination is required among the different business work-streams to ensure consistency, continuity and accuracy of CTC's disclosure between the different continuous disclosure documents that are filed. The ability to reduce overlapping disclosure requirements reported through different documents (for example, risk factors are reported in the MD&A, the AIF and financial statements) would be of assistance from an efficiency perspective, as it reduces the overlap of work among different business work-streams in the business organization and safeguards against the risk of potentially inconsistent disclosure between documents. We also suggest that it is more helpful for an investor to receive all information in one document, rather than having to refer to multiple documents to fully understand the business of the company.

We also note that certain disclosure requirements for the AIF, which provides information at one point in time in the context of an issuer's historical development (including, for example, recent market information such as trading price history and dividends and distributions), can quickly become stale dated and is not particularly helpful to investors.

Modifying or consolidating certain disclosure requirements would not be inconsistent with the current provisions of the Canadian securities regulatory regime. For example, in the preparation of an AIF, the instructions to Form 51-102F2 *Annual Information Form* indicate that issuers may incorporate information required to be included in an AIF by reference to another document, other than a previous AIF. Companies often already adopt that approach and often incorporate information from the MD&A into the AIF and vice versa. In that regard, it is clear

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that removing duplicative disclosure does not result in a loss of significant information to an investor.

Part 2.5 – Enhancing electronic delivery of documents

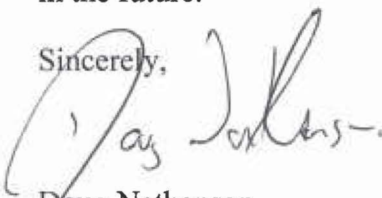
Although notice-and-access has not yet been adopted by CTC, we have followed recent regulatory developments in electronic delivery of documents with great interest. We appreciate that a number of our peers have moved to using the notice-and-access regime to fulfil the delivery requirement of materials to security holders, citing significant cost savings from printing fewer materials as the main advantage (although we are aware that implementation of notice-and-access does not always produce significant cost savings), a lower environmental footprint, and a reduction in delay between the printing and mailing of meeting materials.

We are receptive to the notion of allowing reporting issuers to satisfy the delivery requirements under securities legislation by making materials available electronically only, but our foremost priority is to be responsive and attuned to the requests of our shareholders, whose delivery preferences may change over time. As new methods of delivery continue to be explored or refined, we encourage the CSA to continue preserving the flexibility for issuers to determine the best method of delivery of materials to their security holders (either in electronic format or paper format), depending on the company's specific circumstances, the industry and the nature of their investor base.

Conclusion

We appreciate the opportunity to respond to the CSA's initiative to alleviate the regulatory burden on reporting issuers. We are committed to providing accurate and relevant information on matters of importance in a timely manner and will continue to seek better ways to effectively deliver key information to our shareholders. We are very interested in following the progress of this potential regulatory reform and look forward to further opportunities to discuss this initiative in the future.

Sincerely,



Doug Nathanson
General Counsel and Corporate Secretary

cc. Dean McCann, Executive Vice-President, Chief Financial Officer