September 17, 2021

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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Care of:

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Re: CSA Notice and Request for Comment Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting - Venture Issuers on a Voluntary Basis (the Proposed Amendments)

We would like to thank the Canadian Securities Administrators (CSA) for their work to date on the Proposed Amendments. Overall, we agree that regulatory requirements and the associated compliance costs should be balanced against the significance of the regulatory objectives and the value provided by such regulatory requirements to investors and other stakeholders.

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 questions raised by the CSA and we hope you find our input useful as you finalize the Proposed Amendments.

Question relating to additional disclosure for venture issuers without significant revenue

We have kept the current disclosure requirement in Section 5.3 of NI 51-102 (as proposed Section 8 of Form 51-102F1 Annual Disclosure Statement) to apply only to venture issuers that have not had

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significant revenue from operations in either of their last two financial years. However, for non-venture issuers that have significant projects not yet generating revenue, an itemized breakdown of material components of the following may help investors understand how the reporting issuer performed during the period covered by the MD&A:
• exploration and evaluation assets or expenditures;
• general and administrative expenses; and
• other material costs.

1. *Do you think this requirement should apply more broadly or more narrowly? For example, should we extend this disclosure requirement to non-venture issuers that have significant projects not yet generating revenue as well? Why or why not?*

   We do not believe there is a need to apply this requirement more broadly than currently included in proposed Section 8 of Form 51-102F1 Annual Disclosure Statement (ADS). The current requirements in International Financial Reporting Standards (IFRS) as well as the requirements to describe the overall performance of the company within the proposed annual disclosure statement adequately meet the needs of investors in non-venture issuers.

Questions relating to risk factors

We have retained instruction (i) to Section 5.2 of the Current AIF Form (as proposed Section 16 of Form 51-102F1 Annual Disclosure Statement) which requires a reporting issuer to disclose risks in order of seriousness from the most serious to least serious. Proposed instruction (3) to the same section suggests that "seriousness" refers to impact/probability assessment.

2. *Would it be beneficial for reporting issuers if we provided further clarity on what "seriousness" means and how to determine the "seriousness" of a risk? SEC's Modernization of Regulation S-K Items 101, 103, and 105 adopts amendments which require the following:*
   • grouping similar risks together;
   • disclosing generic risks under the heading "general risks"; and
   • requiring a summary of risk factor disclosure if the risk factor disclosure exceeds 15 pages.

   We support grouping similar risks together as well as disclosing general risks together under a separate heading as this facilitates the understanding of entity specific risks for users of the financial statements. We also support the proposal to suggest including the risks in a tabular format as it makes the information more easily comprehended by the user. Additionally, convergence to SEC rules promotes comparability to US peer companies and therefore we support the grouping of similar risks together, disclosing generic risks under the heading "general risks" and requiring a summary of risk factor disclosure if the risk factor disclosure exceeds a certain length. Both reporting issuers and investors often consider the entirety of North America when defining the peer group of a particular entity and therefore convergence with the SEC rules is beneficial to both groups.

3. *If we adopted similar requirements to the SEC's amendments, what would be the benefits and costs for investors and reporting issuers?*

   We have discussed the benefits above in our response to Question 2. We believe that the matter of cost is a question best answered by reporting issuers.

Questions relating to the requirement to name authors of technical reports

We believe that Questions 4 through 6 are best answered by reporting issuers and authors of technical reports.

Question relating to impact of refiling on auditor's report

7. *Considering that the annual disclosure statement will include annual financial statements, MD&A and, where applicable, AIF, do you think there will be an impact, including on auditing requirements, if a reporting issuer amends or re-files only one of these documents, or re-files the annual disclosure statement in its entirety?*

   On the initial filing of the ADS, both the MD&A and AIF (if applicable) will be considered 'other information' for purposes of the auditor's report. Similarly, the filing of the ADS would require the auditor's consent for their report to be included in a designated document (Section 7170) as the financial statements are included in a single document being filed on SEDAR. This extends the auditor's responsibilities for other information as the AIF is not currently considered to be other information and for auditor consent procedures to cover the AIF information, as currently the consent requirements are triggered upon filing of the annual report typically containing only the financial statements and the MD&A. This would result in incremental auditor's procedures over the information in Part 3 of the ADS for all non-venture issuers and those venture issuers that choose to file Part 3 of the ADS, resulting in additional time and cost for auditors to complete these procedures prior to filing.

   We observe that the general instruction 11 for Parts 2 and 3 states that the company must take into account information available up to the date of filing so that the MD&A and AIF are not misleading when filed, consistent with the current requirements over filing of the MD&A. We also observe in Item 12 of Part 3 that the AIF must be dated within 10 days before the filing date. It is unclear why the dating and filing requirements for the AIF are different from that of the MD&A if both form part of a single ADS, and issuers may find this confusing as it suggests that a filing within 10 days of the date of the ADS is acceptable as long as there is no information that is misleading when filed. We support the timely filing of financial statements and MD&A as soon as practicable after the respective documents are dated and authorized. We believe that the instruction on the AIF filing is superfluous in the context of the initial filing of an ADS given the general instruction 11. If the instruction is intended to be helpful in other situations, such as a later filing of Part 3 of the ADS then we believe this could be clarified in the instruction.

When an ADS is refiled in whole or in part (as permitted by proposed Section 11.5), and this includes refiling the annual financial statements, this may trigger a contractual requirement for an auditor's consent for their report to be included in a designated document (Section 7170) as the financial statements are included in a single document being (re)filed on SEDAR. As the ADS is a more comprehensive document this may occur with more frequency.

When a part or a section of a part of the ADS is refiled as an amendment, not including the annual financial statements, we understand there would be one ADS, but with different elements available in two separate filings that must be read together with the amended information dated as at a different date. The auditor would be required to consider update procedures over "other information" that is subsequently amended but would not be required to provide a consent.

Question relating to proposed amendments to Form 41-101F1 Information Required in a Prospectus and Form 44-101F1 Short Form Prospectus

8. *To align the continuous disclosure and prospectus regimes, we are proposing to remove certain prospectus disclosure requirements. Are there any concerns with the removal of this information from a prospectus? Please explain.*

We do not believe that there will be a significant impact of removing these requirements from 41-101F1 and therefore have no concerns with the proposal.

Questions relating to semi-annual reporting for certain venture issuers on a voluntary basis

9. *Should we pursue the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers? Please explain.*

We do not believe that the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers (Proposed Semi-Annual Reporting Framework) should be pursued for several reasons. We continue to believe there is value in regular and timely communication from management about a company's financial performance and financial condition, including management assertions around uncertainties surrounding the going concern assumption and liquidity risk. Quarterly reporting provides investors with more data points to evaluate trend analysis over time and provides an early warning if something is starting to go wrong.

Firstly, comparability between venture issuers and between venture and non-venture issuers (or venture issuers filing optional interim statements versus those not filing such statements) will be reduced under the Proposed Semi-Annual Reporting Framework because different accounting results may arise because of different financial reporting periods. Under IFRS certain facts are considered only at the end of a reporting period. For example, preparers are only required to assess goodwill impairment triggers at the end of a reporting period and as clarified by IFRIC 10 – *Interim Reporting and Impairment*. Two entities with different reporting frequencies may experience differences in the timing and amount of impairment charges. For example, considering the events of the first half of 2020, a reporting issuer that prepared quarterly financial statements at March 31, 2020 may have been required to take a goodwill impairment at that date and would have disclosed information around the uncertainties that the entity faced to allow investors to be able to make timely decisions. Conversely a similar reporting issuer that was permitted to report only half yearly may have avoided a goodwill impairment by assessing triggers at June 30, 2020, by which time many markets had started to recover.

Similar circumstances could arise with certain non-financial impairments and hedge effectiveness testing. Minimum requirements for hedge effectiveness testing are at the end of a reporting period. Furthermore, impairment indicators for non-financial assets are typically evaluated only at the end of a reporting period.

Many venture issuers use the period end close process as a key internal control. The discipline of preparing periodic financial statements and reconciliations as well as the preparation of management discussion and analysis means that such issuers need to consider the reasonableness of the internal financial information they are reporting and can better respond to changing business conditions. This is particularly true for reporting issuers with significant foreign operations where reporting packages subject to external review are often only received quarterly. In addition, the review by the audit committee would typically only occur prior to the end of a financial reporting period.

Although an issuer could maintain the rigour of its internal reporting process for optional interim periods without the requirement to file the underlying financial statements, we believe that when such information is optional, the rigour around internal reporting at these dates may decrease.

Section 7150 of the *CPA Canada Handbook - Assurance* contains certain procedures that an auditor must complete prior to issuing a consent. These rules include performing procedures designed to assess whether management has appropriately identified and dealt with intervening period events indicating the existence of material misstatements in the financial statements on which the auditor has reported. A calendar year company electing mid-year reporting could file a prospectus up to the end of August without having communicated any information on current year financial results to the market. Under the existing rules March 31 information would have been reported. Thus, the auditors intervening period events review will need to be extended to a 6-month period (assuming annual results were filed in March) as will the underwriter's due diligence. The proposals currently contemplate ensuring that the alternative disclosure in a news release required under the continuous disclosure regime is incorporated by reference in a short form prospectus. We believe that the *CPA Canada Handbook - Assurance* will need to be modified to better describe the responsibilities of the auditor where a significant period of time has elapsed since the latest financial reports have been released and to clarify what responsibilities the auditor has for financial information disclosed in the news release described above (e.g., does the underlying information have to have been reviewed to issue a consent).

We believe that this change may increase the risk of unreported subsequent events. Directors of venture issuer companies may need to do more due diligence before agreeing to approve a prospectus as will underwriters and auditors.

10. *Are there specific types of venture issuers for which semi-annual reporting would not be appropriate? For instance, should semi-annual reporting be limited to venture issuers below a certain market capitalization or those not generating significant revenue? Please explain.*

While we do not support a move to semi-annual reporting as noted in our response to Question 9, if the proposed framework is adopted, we do not support the view that the distinction between TSX-Venture Exchange issuers and non-venture issuers is sufficient to determine the appropriateness of the application of the Proposed Semi-Annual Reporting Framework. Our 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 an alternative 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 publicly traded float, less than US$50 million in revenue. The SEC also recognizes 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 adoption of 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. We do however believe that any such size-based distinction using objectively determinable metrics would have to be set at thresholds that are reflective of the Canadian capital markets.

11. *Would the proposed alternative disclosure requirements under the Proposed Semi-Annual Reporting Framework provide adequate disclosure to investors? Would any additional disclosure be required? Is any of the proposed disclosure unnecessary given the existing requirements for material change reporting and the timely disclosure requirements of the venture exchanges? Please explain.*

While we do not support a move to semi-annual reporting and do not believe that it would provide adequate disclosure to investors as noted in our response to Question 9, if the Proposed Semi-Annual Reporting Framework is adopted, we support the proposal to require additional disclosure within 60 days of the end of the issuer's interim period for which financial statements and MD&A would not be filed. The furnishing of this information would provide predictable reporting for investors.

12. *Do you have any other feedback relating to the Proposed Semi-Annual Reporting Framework?*

While the Proposed Semi-Annual Reporting Framework may reduce regulatory burden for certain venture issuers, we believe that there could be unintended consequences for other reporting issuers when interacting with stakeholders such as the stock exchange or the SEC.

It is not uncommon for venture issuers to seek to graduate from the TSX-V to the TSX for various reasons including increased access to capital and attracting institutional investors. While the proposals contemplate a reporting issuer moving from semi-annual reporting to quarterly reporting, IFRS does not specifically address any transition relief from retrospective application for the change in reporting period and how this would affect certain accounting considerations, for example hedge accounting and impairment as discussed in our response to Question 9.

We further believe that there is significant value in the Multi-jurisdictional Disclosure System (MJDS) to reporting issuers, as it reduces the regulatory burden for Canadian reporting issuers seeking to obtain financing in the United States. We would like to encourage the CSA to ensure it is clear on whether such changes will be acceptable to the SEC from an MJDS perspective when concluding on whether to pursue the Proposed Semi-Annual Reporting Framework in order to avoid unintended consequences because losing the ability to use the MJDS system would impose significant costs on Canadian issuers.

Questions relating to transition provisions

13. *Do you think the proposed transition provisions are sufficiently clear? If not, how can we make them clearer?*

We believe that the proposed transition provisions are sufficiently clear. However, it will be important that whatever changes are made are mirrored by the TSX-V rules to the extent applicable (e.g., for filing statements etc.). To the extent the TSX-V rules impose additional requirements on issuers, the CSA proposals may actually increase complexity. Accordingly, ensuring that the TSX-V considers changes to its rules concurrently is crucial.

14. *Do you think the transition provisions in the amending instrument for NI 51-102 would provide reporting issuers with sufficient time to review the Proposed Amendments and prepare and file an annual disclosure statement for a financial year ending on, for example, December 31, 2023 if the*

final amendments are published in September 2023? Do you think more time should be afforded to smaller reporting issuers (such as venture issuers)?

We do not believe that a three-month period between the publication and effective date is sufficient for reporting issuers to transition to the Proposed Amendments as the amendments will take time for reporting issuers to understand, implement and complete the necessary levels of review by both internal and external parties. We believe that a minimum of six months should be afforded to all reporting issuers, and smaller reporting issuers could benefit from a period in excess of six months.

15. Other comments

In addition to our comments on the specific questions posed by the CSA we have additional comments on the Proposed Amendments.

Paragraph 5(5)(b) of the document proposes to require qualitative and quantitative information about debt covenants including actual ratios or amounts. The requirement to disclose qualitative and quantitative information is unclear. Specifically, it is unclear whether this means the limits or the actual calculation of the covenants compared to such limits. In addition, it is unclear whether the disclosure is limited to financial covenants or also covers non-financial covenants. Requiring a list of non-financial covenants that would be unlikely to be violated may not be useful information. Therefore, we would suggest additional clarity should be provided on the nature of these disclosures and whether cross-referencing to material debt agreements previously filed is permissible.

We have some concerns regarding the requirements for additional disclosures for investment entities and non-investment entities recording investments at fair value. Firstly, regarding the requirements in Section 10(1) to include a comparative schedule of investments, we believe this would impose stricter rules than those for the 81-106 funds where the statement of investments for the most recent period is required. Further, a requirement to provide disclosures and continuity schedules “by investment” might be excessively granular in many cases and obscure more relevant information. If the CSA believes that this disclosure is necessary as a matter of compliance, we would suggest that optional aggregation be considered.

Finally, as it relates to the definition of a non-investment entity recording investments at fair value, the Proposed Amendments include a definition of such an entity however it is unclear how to apply the definition in practice. We have concerns that certain reporting issuers, for example insurance entities recording investments at FV to match insurance liabilities, may be unintentionally brought into scope of the requirements the way they are currently worded. We would request that if the requirements in Section 10 remain in the final instrument that clarification be provided on determining whether an entity is a non-investment entity recording investments at fair value and whether this designation relates only to certain business models e.g., where investments are managed on a fair value basis, or whether the CSA’s intention is to require these disclosures for all material investments carried at fair value.

Should you have any questions regarding our response please contact Michael Walke (416-815-5011) or Lucy Durocher (416-869-2311).

Yours truly,

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