CSA Consultation paper 51-404:

Author: James S. Hershaw, Crowdmatrix and WATT Capital
sandy@crowdmatrix.co jshershaw@wattcapital.com

	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:		

	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.

	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.

	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		

	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.

	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			

	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 .

	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.