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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

Corporate Secretary
Autorité des marchés financiers
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The Secretary
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20 Queen Street West
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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

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

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.

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

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

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.

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

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.