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July 25, 2017

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
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"**

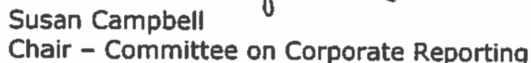
FEI Canada is the all-industry professional membership association for senior financial executives. With eleven chapters across Canada and more than 1,600 members, FEI Canada provides professional development, thought leadership and advocacy services to its members. The association membership, which 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.

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.

- 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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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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