

July 28, 2017

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

**To the attention of:**

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

This letter is submitted on behalf of the Institute of Corporate Directors (“ICD”) in response to the invitation to comment on the CSA’s Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

We thank the CSA for the opportunity to provide comments on this consultation. The ICD supports efforts to strengthen our capital markets, which provide growing firms access to an important source of capital and present investors with options within a regulated environment. We agree with the CSA that regulatory requirements within our markets and associated compliance costs should be proportionate to the objectives sought.

### Regulatory burden

Reporting issuers in Canada contend with significant compliance and disclosure obligations. For some – particularly smaller and earlier-stage companies – these can be burdensome. But regulatory overload, including in the form of duplication, is also costly and can distract directors away from some of their fiduciary duties, in particular oversight of strategy. In a recent survey of ICD members, 25% of respondents identified “shifting government regulations and policies” as a top external risk facing directors.

The CSA’s Consultation Paper is quite broad and addresses many diverse issues across all market cap sizes, including prospectus requirements, marketing rules, financial disclosure rules and others. While there are likely ways of streamlining rules in all of these areas, we suggest some of these could be separated to permit greater analysis than can be applied through this consultation process.

This said, some of the options proposed in the Paper are, we believe, readily achievable and would not negatively impact investor protection. These include reducing financial statement history in IPO documents to two years (Section 2.2 a) and increasing the BAR threshold (Section 2.2 b).

The ICD would also support enhancements to the electronic delivery of documents as detailed in Section 2.5. Doing so would mitigate or eliminate the significant costs associated with printing and delivering documents, which can present a significant burden - particularly to smaller issuers. Electronic delivery also better reflects how recipients of these documents use them.

Duplication is a particular area of concern and frustration for directors and the Consultation Paper presents some options that the ICD would support, including allowing the MD&A and annual information form (AIF) to be combined (Section 2.4). We would encourage the CSA to work closely with other regulators and standard setting bodies in this respect.

As a general observation, we also note that there is frequent pressure from outside forces such as proxy advisors to continue layering on regulation that may not reflect the realities of the Canadian market. The ICD believes it is important to continue testing whether future regulatory proposals from external pressure groups address challenges specific to the unique Canadian market.

### Regulation is only one factor in “going public”

It is important to note that compliance obligations are only one factor in a firm’s decision to “go public”. Others may include a founder’s desire for continued firm control, private equity interest or macroeconomic conditions. For example, 2016 was one of the most uncertain economic and political years in recent memory and also the worst-ever year for IPOs in Canada, with only eight new issues across our exchanges. 2016 was also the culmination of

many quarters of depressed commodity prices, which did not provide a particularly supportive IPO environment in a market that is heavily reliant on extractive industries.

The first quarter of 2017, a stronger period for global economic growth, has seen six new public issues on our exchanges – the second-best initial quarter result in the past decade according to a recent PwC survey. It is interesting to note that in the months between the low IPO ebb of 2016 and a higher tide in the first quarter of 2017, regulatory burden did not shift. In fact, two additional projects were introduced by the CSA in that time - one examining climate change disclosure and one encouraging better social media disclosure.

Overall, we enjoy a balance in Canada’s markets between issuers, investors and regulators, which - though not perfect - is highlighted by relatively high degrees of transparency and

lower risk, which are Canadian competitive advantages. Regulation is only one (and not always a determining) consideration for companies thinking about “going public” and we would encourage the CSA and other market participants to reflect on what effect changing regulation with a unique purpose in mind would have on the broader market ecosystem.

We note too that this consultation is occurring while other jurisdictions search for ways to spur IPO activity. In the U.S., for example, an expansion of a program under the 2012 JOBS Act will, as of June 2017, allow all companies – regardless of size – to keep their financials confidential for a longer period of time. This development could mean less transparency in that market. While acknowledging that we must remain competitive, Canada should be cautious of reducing regulation in our unique market in an effort to keep up with others at any given moment in time.

#### *Focus on coordination and effective disclosure*

Going forward, the ICD welcomes the opportunity to work with regulators and other market participants to identify which current and future rules serve the best interests of investors in our unique Canadian market while striking the right balance of proportionality.

To this end we would encourage the CSA to pursue a review of our regulatory regime that focuses on improving the effectiveness of disclosure and not solely on reducing burden. This would entail working with issuers, investors, other regulators and standard-setting bodies, as well as with legislators on ways to ensure that what is disclosed is useful to the user.

This could mean, for example, working with investors to determine which disclosures they rely on and which are less useful or duplicative. The discussion in the Consultation Paper, for example, of quarterly versus semi-annual reporting (Section 2.3 c) cannot be held simply with a view to reducing burden. Pertinent questions such as whether investors value quarterly reporting at a time when daily, relevant, forward-looking (often non-GAAP) information is also readily available should first be further explored.

Going forward, there will be increasing pressure to be more transparent with stakeholders on emerging risks, whether they be financial or not. It will be critical that such disclosures be effective and useful to the market. The ICD is, therefore, committed to continuing engagement with the CSA to contribute the directors' perspective as the regulatory environment evolves. To that end, we would be pleased to engage more deeply with our members through our various channels, including surveys and focus group roundtables to help the CSA better understand the perceived effectiveness of current and proposed regulation.

Once again, we thank the CSA for the opportunity to provide our comments.

Yours Truly,

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President and CEO  
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***About the ICD***

*The ICD is a not-for-profit, member based association with more than 12,000 members and eleven chapters across Canada. We are the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and Crown Corporation sectors. Our mission is to foster excellence in directors to strengthen the governance and performance of Canadian corporations and organizations. This mission is achieved through education, certification and advocacy of best practices in governance.*