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VIA E-MAIL

September 16, 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
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

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Dear Sirs and Mesdames:

RE: Request for Comments: 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

We write to you in response to the CSA Notice and Request for Comment: *Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations* and to submit our comments for further consideration by the Canadian Securities Administrators (the "**CSA**").

These comments are those of the writers noted below and do not necessarily reflect the views of clients or of others in our firm.

The commentary is divided into three sections:

- Section 1: Structural Comments – General Instrument Amendments
- Section 2: Drafting Comments – General Instrument Amendments
- Section 3: Missed Opportunities – General Instrument Amendments

As such, please find below a summary of our comments:

Section 1: Structural Comments - General Instrument Amendments

1. Proposed Risk Factor Amendments[1]

We submit that the proposed requirements and accompanying instructions related to the disclosure of risks in an Annual Disclosure Statement should be revisited.

Currently, an annual information form (and prospectus) provides disclosure of risk factors relating to a reporting issuer and its business. Such disclosure highlights to investors the risks that are most likely to influence an investor's decision to purchase securities of issuer (or, in the case of a prospectus, the factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed). The CSA also further instructs issuers that "A risk factor must not be de-emphasized by including excessive caveats or conditions." Such disclosure by issuers includes a discussion of the potential for the risks to materially and adversely impact the issuer's business, prospects, financial condition, financial performance and cash flows, as well as its ability to pay dividends and/or interest to holders of its securities and the trading price of the issuer's securities which could decline such that investors could lose all or part of their investment in such securities.

Currently, a management's discussion & analysis ("**MD&A**") provides disclosure of, among other risk-related matters, important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future. MD&A includes both a discussion of the potential impacts of such matters should they occur, as well as the potential or expected costs of preventing or such mitigating risks.

[1] *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,* Canadian Securities Administrators, CSA Request for Comments (20 May 2021), (2021) 44 OSCB 4205 at 4246-4247.

We submit that the foregoing annual information form and MD&A disclosure requirements are distinctly different from one another and serve different purposes, which although they may overlap in some respects, are not the same. Accordingly, combining such risk disclosures into one form requirement in an Annual Disclosure Statement is not workable. For example, the proposed instruction, carried over from the current annual information form requirements, that "A risk factor must not be de-emphasized by including, for greater certainty, excessive caveats or conditions.", which is irreconcilable with the newly-created instruction for risk disclosure to include "your company's risk mitigation strategy relating to it." Any de-emphasizing of a risk factor through proximate disclosure of the issuer's risk mitigation strategy relating to it serves to expose the issuer to the potential for additional, unnecessary liability should the risk occur and also may inappropriately give a potential investor the impression that an investment in securities of the issuer is safer than it really is.

We further submit, if the CSA wishes to pursue this risk factor table format, then it would be beneficial for the CSA to provide a set list of example risk nature types. A uniform set of descriptors would be helpful in creating consistency among disclosure across issuers.

2. Requirement to Name Authors of Technical Reports[2]

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

We submit that permitting grouping together similar risks makes sense (and is already a practice followed by many issuers), . However, we do not believe that requirements for grouping should be prescriptive, as different groupings will make sense for different issuers. An unintended consequence of requiring a summary of risk factors if the disclosure exceeds 15 pages is that issuers may inappropriately edit their disclosure specifically to keep their disclosure under 15 pages. We do not believe that investors will benefit from less description of the risks of investments.

Question 4: "What challenges, if any, do reporting issuers face in obtaining technical report author consents for short form prospectus offerings"

Many offerings contain multiple technical reports from various experts. The often large number of experts creates logistical issues in engaging with experts in a wide array of geographic locations and time zones.

Question 5: "If the requirement to name the technical report authors in the AIF (and as a result, provide consents for short form prospectus offerings) were removed, would reporting issuers continue to obtain approval of prospectus disclosure from technical report authors or would they rely more on internal or external non-author QPs?"

We submit that if this requirement were to be removed then reporting issuers would rely on internal QPs (for example, in-house geologists) and their opinions.

[2] *Ibid* at 4213.

Question 6**:** *"If reporting issuers were to rely on internal or external non-author QPs for purposes of providing consents for short form prospectus offerings, in your view, would investor protection be impacted? Would relying on an internal QP for consent purposes (where an external QP authored the original report) raise potential conflict of interest concerns?"*

We submit that in practice issuers do not substantively revise the disclosure in technical reports which is summarized in the disclosure in the annual information form. Therefore, we submit that reliance on the internal QP consent would not likely impact investor protection because the technical disclosure is typically the same as the disclosure prepared by the external QP.

Question 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."

We submit that few companies would be willing to adopt the proposed semi-annual reporting regime if it exposed them to a possibility of having to create retroactive filings. Retroactive filings would be a costly burden on issuers. This is of particular concern when companies "graduate" from the TSXV to the TSX, as in this case such issuers would have to develop a previously exempted quarterly report to fulfill TSX listing requirements. The CSA should develop regulations that preclude the use of so-called "lookback" disclosure requirements. Importantly, this should not be a mere temporary delay in the requirement to file these statements, but an express guarantee that prior-exempted disclosure will not need to be produced at a later date.

We submit that the proposed semi-annual reporting regime should not be restricted to a further category of venture issuers (whether based on market capitalization, revenue size, etc.). "Venture issuer" is already a well-defined and sufficiently tailored category of issuers and the imposition of further criteria is unnecessary and increases burden on issuers.

Furthermore, market pressures will serve to address the stated concerns of commentators—that larger venture issuers will adopt this more relaxed reporting regime—as investors will still expect detailed quarterly disclosure from more sophisticated venture issuers. Practically, if investors are not satisfied that an issuer is making sufficient disclosure in the adoption of the new semi-annual reporting regime, the share price will reflect this dissatisfaction and ultimately drive issuers to continue with quarterly reporting.

Nonetheless, the general concern that the proposed semi-annual reporting regime will allow venture issuers to conceal negative financial information should be directly addressed in the comment letter. Similarly, if the CSA does adopt further eligibility requirements for this new regime, a criterion based on revenue/expenses is preferrable to market capitalization; as such information more effectively conveys whether a venture issuer operates as a "shell" and thus does not need to provide as frequent disclosure as those that operate fully.

3. Use of Hyperlinks in Disclosure[3]

We seek clarification as to whether the use of hyperlinks within disclosure documents deem the documents to which they reference as being incorporated within the disclosure document.

Section 2: Drafting Comments - General Instrument Amendments

This section outlines explicit changes and comments to the proposed language. The relevant parts and sections have been cited and refer to NI 51-102 as proposed by the *CSA Request for Comments*.

1. Part 1 – s. 3(2)(a)-(c)[4]

Make the addition of "compared to prior year" to align this change with the change made to s. 3(3).

Existing Language	Describe the business of your company and its reportable segments as that term is interpreted in the issuer's GAAP, including …
Proposed Language	Describe the business of your company and its reportable segments as that term is interpreted in the issuer's GAAP, for the most recently completed financial year compared to the prior year, including …

2. Part 1 – s. 3(4)(a)-(c)[5]

The descriptions should all relate to the specific project or activity which has not yet generated revenue, as opposed to the business generally. Additionally, the language should reflect the distinction between "change of business" and "change of business model".

3. Part 1 – Instruction 1 to s. 3[6]

The first and second sentences should be combined by adding the word "rather", as indicated below.

Existing Language	In discussing and analysing its overall performance, your company must not only disclose the amount of the change in a financial statement item from period to period. Your company must explain the nature and reason for the change to investors.
Proposed Language	In discussing and analysing its overall performance, your company must not only disclose the amount of the change in a financial statement item from period to period, rather your~~. Your~~ company must explain the nature and reason for the change to investors.

[3] *Ibid* at 4227.
[4] *Ibid* at 4231.
[5] *Ibid* at 4232.
[6] *Ibid* at 4234.

4. Part 1 – Instruction 8 to s. 5[7]

We submit, this proposed section adds unnecessary additional disclosure requirements which are not appropriate for an MD&A. Although the disclosure is consistent with concepts in a prospectus, we seek clarification as to the rational for importing disclosure required for the purpose an offering into a quarterly reporting context. We suggest disclosure required by subsection 3(6) is sufficient to allow investors to make informed decisions regarding any deficiencies in quantity of funds available.

5. Part 1 – Instruction to s. 13[8]

References to AIF or prospectus should be expanded to also include other disclosure documents such as Listing or Filing Statements.

6. Part 1 – Instruction 1 to s. 29[9]

References to AIF or prospectus should be expanded to also include other disclosure documents such as Listing or Filing Statements.

7. Annex C – Instruction 8[10]

Add permissive language, as opposed to required language, at the beginning of the last sentence.

Existing Language	Your company is not required to repeat information disclosed elsewhere in the interim disclosure statement. If disclosure in the interim disclosure statement refers explicitly or implicitly to disclosure in another section of the interim disclosure statement, include a reference to the other disclosure. Repeat the information disclosed in the financial statements to which the MD&A relates if it assists with an understanding of the information included in the MD&A.
Proposed Language	Your company is not required to repeat information disclosed elsewhere in the interim disclosure statement. If disclosure in the interim disclosure statement refers explicitly or implicitly to disclosure in another section of the interim disclosure statement, include a reference to the other disclosure. Your Company may repeat~~Repeat~~ the information disclosed in the financial statements to which the MD&A relates if it assists with an understanding of the information included in the MD&A.

[7] *Ibid* at 4239.
[8] *Ibid* at 4244.
[9] *Ibid* at 4257.
[10] *Ibid* at 4263.

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Section 3: Missed Opportunities – General Instrument Amendments

8. Regarding Cautionary Notes

We submit that a proposal should be made to clarify what is expected of the disclosure in the cautionary notes of disclosure documents. In practice, the application of Section 4A of 51-102 and 4A of CP 51-102 has resulted in disclosure which is duplicative of the risk factors. We submit, in practice the current forward looking statements regime does not add to clarity, nor does it enhance the protection of investors.

We suggest that the proposal should centre around the adoption of a concise, universally applicable opening cautionary note that serves to highlight the risks of forward-looking information contained in the documents. This type of section would denote the use of forward-looking information throughout disclosure documents, namely, to alert investors of such information in a more efficient manner. This change should make it clear that issuers have fulfilled their obligations to disclose risk of forward-looking information, and thus, preserve the same protections that are offered by the current cautionary notes.

9. Regarding Definitions

We submit that a proposal should be made to add a definition of "subsidiary" to NI 51-102 and "parent" to National Instrument 52-110. While NI 51-102 currently explains the meaning of "affiliate" and "control", the absence of a definition for the term "subsidiary" appears to be an oversight. Similarly, while National Instrument 52-110 explains the meaning of "affiliated entity", "subsidiary entity" and "control", absence of a definition for the term "parent" appears to be an oversight.

We trust you find the above satisfactory; however, should you have any questions concerning the comments in this letter, please do not hesitate to contact Steven McKoen (604.631.3319, steven.mckoen@blakes.com) or Matthew Merkley (416.863.3328, matthew.merkley@blakes.com).

Yours truly,

(signed) *"Steven McKoen"*

(signed) *"Matthew Merkley"*