CFA Societies Canada

Canadian Advocacy Council
120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1
+1 (416) 366 3658 tel
www.cfacanada.org

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VIA EMAIL

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

The Secretary, Ontario Securities Commission
20 Queen Street West 22nd Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar 2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Re: 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 (the "Proposed Amendments")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following comments on the Proposed Amendments.

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[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.
CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are over 173,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 161 local member societies. For more information, visit www.cfainstitute.org.

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Introductory Comments

We are supportive of the CSA's intent to streamline and reduce duplicative disclosure, which we believe will help convey high quality, important information to the investing public. While we are supportive of many of the Proposed Amendments, our comments below outline some concerns and additional guidance requested with respect to some of the information proposed to be deleted from disclosure requirements, express our lingering concerns with the potential semi-annual reporting framework, and outline some other areas relating to continuous disclosure that we believe should also be a regulatory focus.

We understand that the Proposed Amendments are intended to streamline and clarify disclosure requirements by, among other things, combining the financial statements, management's discussion and analysis ("MD&A") and the annual information form ("AIF") of a reporting issuer into one reporting document. The CSA expects the Proposed Amendments will reduce regulatory burden on issuers and increase the quality of the disclosure provided to investors. We are particularly supportive of this proposed change in reporting requirements because of the harmonized efforts to reduce the regulatory burden on issuers without having a negative impact on investor protection.

We also support the other Proposed Amendments that eliminate duplicative disclosure, provided however, that any disclosure that is removed because the information can be found in another public document is in fact available for free and easily accessible to investors and not only attainable through a paid third-party subscription service. As noted below, we reiterate our view that the existing SEDAR systems' accessibility and (lack of) ease of use and machine readability represent impediments to investor access.

We understand the new disclosure statements will also generally remove certain materiality qualifiers and have all disclosure requirements subject to the qualification that issuers must focus on material information as set out in the instructions. We support clear requirements in this respect but would appreciate confirmation that any such change would conform with the understanding of and thresholds relating to materiality in Canadian accounting standards and under IFRS.

We remain concerned, however, with respect to the potential framework for semi-annual reporting for certain venture issuers, as discussed in more detail in our responses to the specific consultation questions below.

Given the current global policy and regulatory focus on ESG-related disclosure and standards, particularly those relating to issuer disclosure[2], we were surprised that additional annotations and amendments were not provided with respect to the future integration of ESG reporting which will become an essential part of a reporting issuer's continuous disclosure. We firmly believe that any such mandated disclosure should be an integrated part of annual disclosure statements and not be contained in a stand-alone document for ease of investor access and reference.

[2] IOSCO – Report on Sustainability-related Issuer Disclosures, 2021

As set out in our prior comment letters, while not specifically addressed by the Proposed Amendments, we continue to support the SEDAR+ project, and were disappointed by the delay in its implementation. We believe any amendments made to NI 51-102 should of course contemplate any changes for SEDAR+ as it is very important for end investors and analysts to access important documents on a consistent, user-friendly basis. The reality of emerging technologies is such that investors expect information to be much more readily and easily accessible, and if information is too difficult to locate it could discourage those needing the documents from initially seeking them out. As we have noted the CSA should use structured data standards such as XBRL for machine-readability more often as a strategic enabler and generally reduce redundant requests for information from issuers.

With respect to exemptive relief that has previously been granted to reporting issuers, the Proposed Amendments will generally allow a reporting issuer to continue to rely upon such existing exemptions or waivers relating to continuous disclosure obligations if it relates to a substantially similar provision in the revised NI 51-102. The securities regulatory authority will review the notice of reliance on the exemption to determine if in fact the new provision is substantially similar to the provision in the exemption. We believe that market participants would benefit from additional transparency with respect to this process and whether or not there will be any shift in baseline disclosure expectations affecting future exemptions, as a result of continued reliance on the exemptions, or as a result of the Proposed Amendments.

We note that the forms will continue to require certain information with respect to an issuer's credit rating, while removing the requirements for much of this information that can be found by investors elsewhere. Going forward, we suspect some issuers may also wish to include information with respect to their ESG or sustainability rating(s), which may cause some investor confusion if not contextualized as being presented without assurance and properly representing these ratings' assignment by and redistribution from third parties, with appropriate links to respective ratings frameworks and methodologies. Further, it should be made clear that such ratings are not an assurance of performance, and are being passed forward without endorsement, similar to the handling of a credit rating in disclosure materials. In the event there is a future CSA project with respect to disclosure of ratings (either credit, sustainability, or ESG-related) information, we would be pleased to assist and participate in any working group or related consultation.

Responses to Specific Questions

Question relating to additional disclosure for venture issuers without significant revenue

We have kept the current disclosure requirement in section 5.3 of NI 51-102 (as proposed section 8 of Form 51-102F1 Annual Disclosure Statement) to apply only to venture issuers that have not had significant revenue from operations in either of their last two financial years. However, for non-venture issuers that have significant projects not yet generating revenue, an itemized breakdown of material components of the following may help investors understand how the reporting issuer performed during the period covered by the MD&A:

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1
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- *exploration and evaluation assets or expenditures;*
- *general and administrative expenses; and*
- *other material costs.*

1. *Do you think this requirement should apply more broadly or more narrowly? For example, should we extend this disclosure requirement to non-venture issuers that have significant projects not yet generating revenue as well? Why or why not?*

The disclosure requirement should be broadened to apply more widely, particularly to certain non-venture reporting issuers that may have significant projects that are not revenue-generative. There are both venture and non-venture reporting issuers with no current revenue-generative business operations, which through their promotional activities attract mainly retail investors, leading to an investor protection concern. We believe this is an area that requires further research and analysis and should form the basis of a future policy project.

Questions relating to risk factors

We have retained instruction (i) to section 5.2 of the Current AIF Form (as proposed section 16 of Form 51-102F1 Annual Disclosure Statement) which requires a reporting issuer to disclose risks in order of seriousness from the most serious to least serious. Proposed instruction (3) to the same section suggests that "seriousness" refers to impact/probability assessment.

2. *Would it be beneficial for reporting issuers if we provided further clarity on what "seriousness" means and how to determine the "seriousness" of a risk?*

SEC's Modernization of Regulation S-K Items 101, 103, and 105 adopts amendments which require the following:
- *grouping similar risks together;*
- *disclosing generic risks under the heading "general risks"; and*
- *requiring a summary of risk factor disclosure if the risk factor disclosure exceeds 15 pages.*

Reporting issuers and their advisors would benefit from any and all additional guidance and clarifications with respect to how to determine the "seriousness" of a risk in order to appropriately rank the risk factors. Understanding regulatory expectations from the beginning will lead to more consistent and generally higher quality disclosure. We are supportive of requirements to group similar risks together, disclose generic risks under a general heading and, in particular, requiring a summary of risk factor disclosure if it would otherwise exceed 15 pages. We would prefer a shorter threshold such as 10 pages, but understand the downside to disharmonizing with the SEC's existing requirements. We believe the requirement to prepare a summary will disincentivize behaviour where all possible outcomes regardless of materiality or likelihood are enumerated, leaving the risk disclosure impossible to read and analyze, and instead help focus the disclosure on more concise "must have" information from the applicable business units and operations of the issuer. Reporting issuers should be further encouraged to reduce their general risk disclosure (which has the potential to obfuscate

probable risks) in favour of more issuer-specific, probable risks, which could be expected to change from time to time.

We wish to note, however, that historically the risk factors contained in an AIF and those contained in MD&A have had a slightly different focus, in that as described in an AIF risk factors tended to be described as historical and retrospective, while those in the MD&A were more future focused and prospective. If combined into one document, it will be important for the instructions/annotations to clarify regulatory expectations, including with respect to if or how such risk factors should be grouped together.

Questions relating to the requirement to name authors of technical reports

Subsection 5.4(1) of the Current AIF Form requires reporting issuers to cite the date and title of the current technical report for each material mineral project and name the author(s) of the report. The Current AIF Form also contains disclosure requirements for mineral projects which may be satisfied, at the option of the reporting issuer, by incorporating by reference into the AIF some or all of the information in the current technical reports. There is no requirement to incorporate by reference technical reports, as a whole, into the AIF.

The short form prospectus requirements for expert consents in paragraph 4.2(a)(vii) of NI 44-101 and subsection 10.1(1.1) of National Instrument 41-101 General Prospectus Requirements (NI 41-101) require technical report authors who are named in the AIF to file expert consents for a short form prospectus filing. This is the case even if the technical report is not incorporated by reference and the mineral project disclosure in the prospectus is prepared or approved by another qualified person (QP). The impact of providing an expert consent is that the consenting QP assumes personal liability for the disclosure for which they provide a consent.

4. *What challenges, if any, do reporting issuers face in obtaining technical report author consents for short form prospectus offerings?*

We are not aware of any challenges faced by reporting issuers in obtaining technical report author consents, and understand such requirements to be in the ordinary course of business in the oil, gas and mining industries. Currently summaries of technical reports are provided in the AIF and should continue to be made available to investors on an annual basis under the Proposed Amendments.

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 are of the view that reporting issuers would (and should) continue to obtain approvals from technical report authors, as the issuers are responsible to investors for the robustness of the disclosure.

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?

Yes, we believe investor protection would be impacted if reporting issuers were to rely on internal or external non-author QPs to provide such consents. It is important to receive verification and consent from an independent third party rather than invite conflict of interest concerns through use of a connected individual in their place.

Question relating to proposed amendments to Form 41-101F1 Information Required in a Prospectus and Form 44-101F1 Short Form Prospectus

8. *To align the continuous disclosure and prospectus regimes, we are proposing to remove certain prospectus disclosure requirements. Are there any concerns with the removal of this information from a prospectus? Please explain*.

Our concerns relate to the ability of investors to locate the information easily in other documents, as it is clearly easier for investors and analysts to find information for comparability purposes (such as a summary of financial information) if it is located in the same part of every prospectus. We do not believe the onus should be on the reader to locate external material information that used to be contained in an offering document. If the information could be hyperlinked directly to the relevant sections of other prior disclosures/disclosure documents as part of the SEDAR+ project, that would assist both investors and issuers and keeps the onus on the issuer to provide all relevant information in one place.

Questions relating to semi-annual reporting for certain venture issuers on a voluntary basis

9. *Should we pursue the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers? Please explain*.

We do not believe the CSA should pursue the Proposed Semi-Annual Reporting Framework at this time, although further study and analysis could be warranted as part of a dedicated future policy project.

In our July 2017 response to the then CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-investment Fund Reporting Issuers*, we noted our concerns about proposals aimed at reducing financial disclosure for smaller reporting issuers as it could limit the comparability of financial information between larger and smaller issuers for investors to make informed investment decisions. We argued then that a scaled down disclosure regime for smaller issuers could create a dual-regulatory system that investors might not be familiar with, and as small non-venture issuers may compete for the same capital as more senior venture issuers, it would be prudent for investors to be equipped with the same breadth (and we would argue, frequency) of issuer information to allocate capital rationally. In our view, focusing on improving the quality of disclosure (as opposed to just reducing the volume and frequency) would better serve investors.

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Even the alternative of introducing a different reporting frequency for certain issuers in Canada at this time would introduce unnecessary complexity into the continuous disclosure regime for investors, market intermediaries and issuers, and would create a different cadence for disclosure from what currently exists in the U.S., the world's largest and most widely understood financial market. While the regime could benefit the smallest reporting issuers as a result of cost savings, it is likely that such issuers would choose quarterly reporting in any event to satisfy investor information demands, and to appeal to investors that are widely comfortable with quarterly reporting.

Questions relating to transition provisions

13. *Do you think the proposed transition provisions are sufficiently clear? If not, how can we make them clearer*?

We believe the transition provisions should be revisited, in part so that they are made clearer. All jurisdictions should also release a consolidated, blackline version of the final amendments well in advance of implementation date so that all issuers, investors and their advisors are working off of the same documentation.

14. *Do you think the transition provisions in the amending instrument for NI 51-102 would provide reporting issuers with sufficient time to review the Proposed Amendments and prepare and file an annual disclosure statement for a financial year ending on, for example, December 31, 2023 if the final amendments are published in September 2023? Do you think more time should be afforded to smaller reporting issuers (such as venture issuers)?*

Issuers of all sizes would benefit from at least an additional three-month transition period – ideally, the final amendments could be published earlier, with all final ministerial or other approvals received by June 2023. The instrument could then apply to the first annual disclosure statement for financial years ending on or after December 15, 2023. If issuers are not provided with sufficient time to review the final approved National Instrument, then we anticipate the resulting disclosure will not be as concise and robust as intended.

Concluding Remarks

We strongly support efforts to reduce regulatory burden while maintaining robust investor protection. Many of the Proposed Amendments which curtail duplicative disclosure and aim to highlight material information for investors in a concise manner are laudable. To the extent information is removed on the basis that investors can locate the disclosure elsewhere, it is important to confirm that such information is in fact easily accessible. Ideally, all such information should be hyperlinked into the relevant annual or interim disclosure statements. Finally, we believe further research and consultations will be required prior to deciding upon a framework for semi-annual reporting for certain venture issuers (or any other issuers in Canada).

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1

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(Signed) *The Canadian Advocacy Council of*
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