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September 17, 2021

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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

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

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CONFIDENTIAL

Dear Sirs and Mesdames:

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

Manulife Financial Corporation (“Manulife”) is pleased to have the opportunity to submit comments to the Canadian Securities Administrators (CSA) on 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 published on May 20, 2021 (together, the “Proposed Amendments”).

Overview

Manulife strongly supports the CSA’s objectives of promoting disclosures that yield decision-useful information for investors and reducing regulatory burden by fostering streamlined reporting and increasing reporting efficiency for reporting issuers. We believe that the Proposed Amendments if implemented will help to further these goals. In particular, we support the efforts to eliminate duplicative disclosure as well as to eliminate disclosure where the burden on the reporting issuer to provide the disclosure is greater than the benefit that investors obtain from it. We are also pleased that the CSA recognizes that certain information can be easily obtained from publicly available sources and in that case need not be required to be included in an issuer’s disclosure documents.

Despite our support for the purpose of the Proposed Amendments, we believe there are several areas where improvements can be made and we suggest alternative proposals in our comments below.

Specific Comments

1. Requirement for issuers other than venture issuers to include the AIF in the Annual Disclosure Statement

Manulife does not support the proposal to require issuers that are not venture issuers to include as part of their Annual Disclosure Statement (ADS), an AIF. Instead, we propose that all issuers be given the option to decide whether to include the AIF as part of their ADS, or continue to prepare and file the AIF with regulators as a stand-alone document at the same time as the ADS is filed.

- We do not believe there is a demand to include in an Annual Report the information currently disclosed in the AIF and the rationale for introducing such a requirement is not clear.
- With the inclusion of the AIF in the ADS, the Annual Report that issuers deliver to shareholders will become significantly longer (we estimate approximately 20 to 30 pages longer in Manulife’s case, even after taking into account the proposed elimination of certain AIF disclosure). We understand that the CSA proposes these delivery changes in light of the

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“access equals delivery” model outlined in CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. Because of their governing legislation (e.g. the *Insurance Companies Act* or *Bank Act*), not all issuers are able to use the existing “notice and access” delivery options in the same manner as other issuers subject to different governing legislation, nor without further legislative changes will they have a similar ability to use “access equals delivery” in the future. Consequently, for Manulife and some other issuers, the Proposed Amendments could result in an increase in Annual Report preparation and mailing costs, more complex logistics, and a greater negative environmental impact. In our view, the burden of requiring issuers to prepare and deliver an ADS that includes the AIF is greater than the benefit to investors, especially considering that the AIF can continue to be made available electronically to those stakeholders who choose to read it.

2. Additional Streamlining of AIF Content

Manulife appreciates the CSA’s efforts to streamline the content of the AIF by removing duplicative disclosure requirements and by recognizing that some of the information is available from alternative public sources. We believe there are further opportunities to remove duplicative and publicly available information including the following:

- *Ratings Information.* Manulife believes that the requirement in Section 20. (3) of the Proposed ADS Form to include ratings information should be eliminated, or alternatively can be satisfied by an issuer referencing in the AIF where the information is publicly available. Most of the ratings-related information required to be included in the AIF is obtainable by stakeholders from other sources. Current ratings are generally available through news releases published by the rating agencies and posted on their websites. The lengthiest part of the required AIF disclosure relating to ratings is the definitions or descriptions of the categories in which the credit rating organization rated the securities and the relative rank of each rating within the organization’s overall classification system. This information, which is the same for all issuers who are rated by the same agency, is available to the public at each credit rating agency’s website. Stakeholders can therefore access the most current ratings information by accessing the websites of the rating agencies. If the CSA determines to retain the ratings disclosure requirements in the AIF, we recommend that issuers be permitted to satisfy the requirements by referencing in the AIF the publicly available sources of any part of the required information, including the issuer’s own website.
- *Directors and Executive Officers.* Manulife believes that the requirements in the AIF as they relate to directors are duplicative of the requirements in Part 2, item 7.1 of Form 51-102F5 – *Information Circular*. Item 7.1 requires information about each person proposed to be nominated for election as a director of the issuer and about each other person whose term of office as a director will continue after the meeting. We believe that an information circular related to the election of directors is the more appropriate location for this information so that investors have the benefit of it when determining whether to vote in favour of a director. The purpose of largely repeating the information in the AIF is unclear. In addition to being duplicative of the disclosure in the information circular, it is also a potential source of confusion given that the effective dates of the AIF and the information circular are different and therefore the director lists can be different, even though the two documents are issued

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relatively close together. We therefore propose that the AIF requirements be amended to remove the disclosure requirements relating to directors provided that an issuer has filed an information circular in the form required by Form 51-102F5 within the previous 12 months. This would allow issuers to avoid repeating information that investors can easily access elsewhere. It would also avoid potential confusion among readers of the AIF and the information circular.

- *Audit Committee Charter.* The Instruction to Section 31 of the Proposed ADS Form provides that issuers must provide additional information in their AIF as set out in Form 52-110F1 *Audit Committee Information Required in an Annual Information Form*. The first item of Form 52-110F1 requires an issuer to disclose the text of the audit committee’s charter. Manulife recommends that Form 52-110F1 be amended, so that an issuer has the option to satisfy item 1 by stating in the AIF that its audit committee charter is publicly available on its website and/or on SEDAR. The audit committee charter is a lengthy document that typically changes modestly over time. We believe that the benefit to readers of including the text of the charter in the AIF does not justify the burden to the issuer, when readers can be provided with easy access to the charter elsewhere.

3. Risk Factors

We note that instruction (3) to Section 16 of the Proposed ADS Form is new and intended to clarify that the “seriousness” of a risk factor refers to an impact/probability assessment and asks whether additional guidance is required. Manulife does not believe that it would be beneficial for the CSA to provide further guidance on what “seriousness” means and how to determine the “seriousness” of a risk. This determination should be left to each issuer in the context of its business.

The CSA has also asked for comments about what would be the benefits and costs for investors and reporting issuers if the CSA adopted similar requirements relating to risk factor disclosure as the SEC has in its modernization of Regulation S-K. We offer the following comments.

- Grouping similar risks together makes sense and this is something that Manulife already does, by organizing our detailed risk factors into several principal categories of risk.
- The CSA has proposed requiring disclosure of generic risks under a “general risks” heading, however we do not believe there are many, if any, risks that could be categorized as “generic”. Risks are experienced differently, and with varying level of “seriousness” depending on the specific nature of an issuer’s business and we are concerned that labelling a risk as “generic” may give readers the incorrect impression that these risks are the same for all issuers and, therefore, do not think it is a helpful category.
- We do not think that it will benefit investors to require issuers to include a summary of risk factor disclosure if the risk factor disclosure exceeds 15 pages. We believe that investors will be less likely to read a detailed discussion of risk factors if there is a summary, and that having a summary will not necessarily aid readers in their understanding of the risks inherent an issuer’s operations. In addition, some issuers may shorten their detailed risk factor disclosure



to fall below the 15-page trigger for a summary, reducing the quality of their disclosure. In our opinion, it is best to let the issuer decide whether or not to include a summary. Instead of making it a requirement to include a summary of risk factors, we propose that issuers be instructed to consider whether a summary would or would not be helpful to readers.

4. Transition and Effective Date

Manulife believes that the proposed transition period is not long enough.

- The CSA Notice and Request for Comment relating to the Proposed Amendments explains at page 7 that on or after December 15, 2023, a reporting issuer may elect to voluntarily file an interim disclosure statement (IDS), prior to filing an ADS for its first financial year ending on or after December 15, 2023. In such case, the issuer must include in the IDS an MD&A in the form of Part 2 of Form 51-102F1 *Annual Disclosure Statement*. Since the MD&A that accompanies an issuer's audited annual financial statements typically contains more and/or some different information than the MD&A relating to interim financial reporting, this creates a burden on issuers that voluntarily file an IDS prior to when they are first required to file an ADS. This burden increases for each successive quarter occurring prior to the filing of the first ADS. For example, a bank with an October 31, 2023 financial year end would have to file an IDS for Q1, Q2 and Q3, containing MD&A that complies with the ADS requirements. This creates a disincentive for issuers to make any voluntary filing and it could be that few issuers will choose to do so. We think that it would be simpler and more effective to require all issuers to comply with the amended disclosure requirements beginning with their first ADS required to be filed after the effective date of the amendments, subject to our next comment below.
- The proposed time between publication of the final amendments in September 2023, and their effective date in December 2023 will not provide issuers who have a December 31, 2023 financial year end with enough time to prepare the content and address the logistics of preparation of their first ADS. This challenge will be even greater if the CSA requires that the AIF be included in the ADS for non-venture issuers. The preparation and delivery of an ADS or an IDS requires substantial planning and coordination. Participants assisting the issuer, include senior management, the board, external auditors, in house and external legal counsel, translators, layout designers and printers. This process, including budgeting and planning the layout of the document, cannot properly begin until the final amendments to NI 51-102 are published by the CSA and their impact upon the document is determined. We recommend that the CSA revise the proposals to ensure that the transition period between publication of the final amendments and an issuer's effective date (i.e. the date of filing their first ADS) be at least six months. There are various ways the CSA could achieve this. For example, the CSA could require issuers to comply commencing with the filing of an ADS on the date that an ADS is required to be filed under the amendments, provided that next ADS filing date is at least six months after the publication date of the amendments, or the CSA could publish the final rule by June 2023.

5. Disclosure requirements for non-investment entities recording assets at fair value

Manulife requests clarity on the definition of “non-investment entities recording investments at fair value” that are subject to the additional disclosures required by Section 10 of the Proposed ADS Form (MD&A notation note #24). To assist issuers in determining whether they are a non-investment entity recording investments at fair value, we request that the CSA provide greater clarity in Instruction (2). Specifically, we request clarity about what constitutes an investment in “other operating entities”. It is not clear to us whether this is intended to include an individual holding of bonds and equities at fair value, where the issuer does not have a significant interest. It is also not clear to us whether Section 10 is intended to capture holding companies with a number of unconsolidated entities below the holdco. Subject to clarification about the scope of Section 10, it appears to us that some issuers to whom Section 10 applies could have a substantial new reporting burden.

6. Liquidity and capital resources

Manulife requests guidance, perhaps in the Instructions, about the intended scope of the debt covenant disclosure required by Section 5(5)(b) of the Proposed ADS Form. For example, we request clarity on whether this new requirement is intended to apply broadly to all types of liquidity and capital resources, including undrawn credit lines and outstanding external debt/capital instruments; whether financial and non-financial covenants are equally relevant; and whether the disclosure for this item should focus only on those covenants that have a connection to liquidity risks. In light of the scope and complexity of the debt covenants applicable to many large public issuers, further guidance would be helpful in facilitating disclosure that is most responsive to the Form and most useful to readers.

7. Impact upon The Multijurisdictional Disclosure System

Since the CSA does not propose any housekeeping changes to NI 71-101 *The Multijurisdictional Disclosure System* in Annex F of the Proposed Amendments, we assume that the CSA has determined that the Proposed Amendments will not have any impact upon NI 71-101 and that the U.S. Securities and Exchange Commission will accept the new IDS and ADS disclosure documents when filed by a Canadian issuer under the MJDS, in place of separately filed financial statements, MD&A and AIF. If this understanding is not correct, we request that the CSA provide clarification.

Thank you for the opportunity to provide comments. We would be happy to provide additional information or further discuss our comments at your request.

Yours truly,



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