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Re: Response to CSA published Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

The Private Mortgage Lenders Form (the “PMLF”) is pleased to provide comments in connection with the Canadian Securities Administrators (“CSA”) Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (the “Consultation Paper”) as set out below.

Private Mortgage Lenders Forum

The PMLF is composed of 18 private mortgage lenders including Mortgage Investment Corporations (“MIC”) and syndicators located in the provinces of Alberta and British Columbia. The members represent more than \$1.3 billion in private mortgage lending in Western Canada.

The PMLF is a committed association of industry members providing the private mortgage lending industry with leadership in the areas of compliance, standards of excellence, education, information and networking. The organization began in 2010 and has actively been engaged in working within and out of its industry to ensure the health and benefits of its members, regulators and the public.

The mandate of the group is:

The Private Mortgage Lenders Forum (PMLF) will provide leadership in the areas of compliance, standards of excellence, education, information and networking. In addition the mandate of the Forum will be to promote ethical, professional and consistent industry practices that will foster a healthy and sustainable industry.

The following is a list of the objectives of the group: Forum Objectives

1. Create a forum that will allow industry members to openly discuss industry related issues;
2. Develop best practices for the industry;
3. To work with provincial and federal regulators to develop legislation, rules and regulations that will:
 - a. Protect Canadian investors, consumers and borrowers from unfair, improper and fraudulent practices;
 - b. Promote best practices for transparent and reliable disclosure; and
 - c. Ensure the health and vitality of the private mortgage lending industry for the benefit of all Canadians.
4. Assist members in understanding and adhering the regulatory requirements of registration in their particular situation and jurisdiction;
5. Create effective communications for politicians, consumers and other industries practitioners, regarding the private mortgage lending industry by identifying the benefits and value provided to Canadians, the economy and the real estate industry;
6. Advocating for the health and vitality of the Private Mortgage Lending industry and Canadian economy.

Summary of Concerns

Reference

http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170405_51-404_considerations-for-reducing-regulatory-burden.htm

Potential Options to reduce burden

Streamlining prospectus requirements and public offerings for reporting issuers could meaningfully reduce the regulatory burden, however the reduction will be dependent on the individual analysts and commissions being willing to accept a streamlined process. Any significant reduction in the regulatory burden will require clear guidelines for regulators to ensure that they do not hold issuers to standards which are beyond what is intended by regulation.

2.1 Extending the application of streamlined rules to smaller reporting issuers

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

- (a) Reducing the audited financial statement requirements in an initial public offering (IPO) prospectus
- (b) Streamlining other prospectus requirements
- (c) Streamlining public offerings for reporting issuers
- (d) Other potential areas

2.3 Reducing ongoing disclosure requirements

- (a) Removing or modifying the criteria to file a business acquisition report (BAR)
- (b) Reducing disclosure requirements in annual and interim filings
- (c) Permitting semi-annual reporting

2.4 Eliminating overlap in regulatory requirements

2.5 Enhancing electronic delivery of documents

Response

1. Of the potential options identified in Part 2:
 - (a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

While the majority of our members are not reporting issuers, the PMLF would encourage the CSA to reduce regulatory burden to the areas of greatest concern. We would encourage the ability to enhance electronic delivery of documents.

(b) Which should be prioritized and why?

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

No comment.

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 comment.

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?

The PMLF does not support further division of categories as it will create further gaming of the system and not enhance the quality of investor protection.

5. If we were to adopt a size-based distinction:

- a. What metric or criteria should be used and why? What threshold would be appropriate and why?
- b. What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?
- 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?
- d. How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

No comment.

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why? [\[7\]](#)

No comment.

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:
- a. How would this amendment assist in efficient capital raising in the public market?
 - b. How would having less historical financial information on non-venture issuers impact investors?
 - c. Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?
 - d. If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

No comment.

8. How important is the ability to perform a three year trend analysis?

The PMLF would have the position that for our industry real estate moves in multi year cycles which 3 years may or may not be adequate. To determine trends.

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

PMLF has the position that this is too high of standard and not cost effect to the value of disclosure to the investor.

10. Should other prospectus disclosure requirements be removed or modified, and why?

The PMLF believes that disclosure for the mortgage industry should not included detailed information of mortgage, only summary information, as data becomes outdated very quickly.

The PMLF does not agree that detailed data of funds raise is necessary and prefer only summary for the last 12 months.

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.

No comment.

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.

The PMLF would support extending the availability of the short form prospectus offering to reporting issues. This will improve the capacity for management teams to more cost effectively allow the market to operate in and in a time sensitive manner. Reduces the barriers of entry, and encourage firms operating under reporting issuer standards to increase transparency and disclosure to investors.

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. What types of investor protections should be included under such a model (for example, rights of rescission)?
- c. Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

No comment.

14. What rule amendments or other measures could we 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 comment.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

No comment.

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 comment.

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 comment.

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?

No comment.

19. Are there certain BAR requirements that are more onerous or problematic than others?

No comment.

20. If the BAR provides relevant and timely information to investors:

- 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 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?

No comment.

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?

No comment.

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

The PMLF would encourage regulators to be thoughtful in their analysis of the value information for investors. Many boiler plate disclosures tend to reduce relevance for investors.

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

The PMLF believes that there is value in quarterly reporting and would encourage disclosure.

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?

The PMLF would support semi-annual reporting for entities that are not raising new capital.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

This is a business decision which should be left to industry to determine.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

The PMLF would encourage regulators to be flexible and allow non-venture issuers to provide investors with relevant information. Concise information tends to be more utilized by investors. We support the use of highlights as a tool.

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?

The PMLF would have the opinion that the value of an MD&A is to engage management in a dialog as to why the numbers are what they are. This dialog maybe achieve in different forms and may be suitable in different industry achieved in less formulated documents as shareholder letters.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

The PMLF would argue that while there maybe overlap the purpose of the two documents are different and are used by investors is different ways. We would argue that there needs to be overlap as a result.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

The PMLF would not agree that the MD&A and Financial statements should be put into one document. This would place a higher level of responsibility to auditors that would be ownerous.

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?

No comment.

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

No Comment.

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 delivery of proxy materials, financial statements and MD&A?
- 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? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?
- 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?
- d. Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

No comment.

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

No Comment.

Sincerely,

Dean Koeller, Chair
Private Mortgage Lenders Forum