

Susan Copland, LLB, BComm
Managing Director
scopland@iiac.ca

November 28, 2019

The Secretary
Ontario Securities Commission
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorite des marches financiers
Consultation-en-cours@lautorite.qc.ca

Dear Sir/Madam:

Re: Proposed Amendments to NI 51-102 *Continuous Disclosure Obligations* – Related to the Business Acquisition Report Requirements (the “Proposed Amendments”)

The Investment Industry Association of Canada (the “IIAC” or “Association”) appreciates the opportunity to comment on the Proposed Amendments.

The IIAC is generally supportive of the Proposed Amendments, which would, for non-venture issuers, deem the acquisition of a business or related businesses to be a significant acquisition for the purposes of requiring a Business Acquisition Report (“BAR”) only if at least two of the existing Asset, Investment or Income Tests of significance are triggered, and increase the threshold of these significance tests from 20% to 30%.

The Proposed Amendments will reduce the number of acquisitions which are not, in substance, significant acquisitions in the context of the issuer’s circumstances, that trigger the BAR threshold. The increase in the threshold from 20% to 30% appropriately recognizes the relatively smaller size of Canadian issuers, and the burden of preparing a BAR for smaller transactions.

We believe, however, that to more accurately reflect the fair value of an acquired business in relation to the issuer, the CSA should consider an element of the recent amendments proposed by the SEC in

respect of U.S. requirements for financial disclosures relating to acquired businesses.¹ Although we are of the view that the proposed 30% Canadian threshold is appropriate in the Canadian context given the differences in the profile of Canadian vs US issuers, we believe there is a component of the proposed US version of the Investment Test that is appropriate to incorporate into the Canadian version of the Investment Test. Specifically, the SEC's proposal to revise the Investment Test so that the issuer's investment in an acquired business would be compared to the aggregate worldwide market value of the issuer's voting and non-voting common equity². In our view, the Canadian Investment Test should be similarly revised to more accurately demonstrate the economic significance of the acquisition to the issuer.

As noted in the SEC's proposed amendments, while the purchase price of an acquisition should generally be consistent with the fair value of the acquired business at the time of acquisition, the consolidated assets of the issuer may not fully reflect the issuer's current fair value. For example, in the case of high growth issuers, market value can be significantly higher than their book value. Using aggregate worldwide market value provides a much better proxy of the issuer's current fair value and, as such, is better (from an investment perspective) for assessing the acquisition's relative importance to the issuer.

In order to further refine the Canadian version of the Investment Test, we recommend that rather than ascertaining aggregate worldwide market value based on the last business day of the most recently completed fiscal year, as proposed by the SEC, the aggregate worldwide market value should instead be determined as of a date that is in close proximity to the fair value measurement date of the acquired business (such as when the purchase price was agreed to). This would allow the issuer's fair value determination to be reflective of all current developments in the relevant business and industry and markets in general.

Consideration should also be given to using a volume weighted average price over a number of trading days immediately preceding the applicable date, rather than just using a single day, to address the potential for an anomalous result due to light trading or volatility in an issuer's stock.

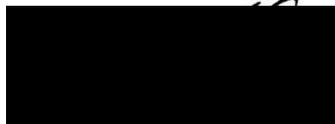
We are pleased that the CSA is undertaking action to improve the capital markets, and that recent proposals, including the At-the-Market consultation and this BAR proposal, have reflected industry input.

¹ SEC Release Nos. 33-10635; 34-85765 - Amendments to Financial Disclosures about Acquired and Disposed Businesses

² Consistent with the Canadian version, the US version of the Investment Test currently compares this investment to the carrying value of the issuer's total assets. Under the revised Investment Test, if the issuer does not have an aggregate worldwide market value, the existing Investment Test (i.e., using the value of the assets of the issuer) would continue to apply.

Thank you for considering our comments. If you have any questions, please don't hesitate to contact me.

Yours sincerely,

A black rectangular redaction box covering the signature of Susan Copland.

Susan Copland