

## CSA Notice of Consultation

### Financial Statement Requirements

#### *Draft Amendments to Policy Statement to Regulation 41-101 respecting General Prospectus Requirements*

**August 12, 2021**

#### **Introduction**

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a 60-day comment period draft Amendments to *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements* (the **Draft Amendments**).

We are also proposing consequential Amendments to *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations* (the **Consequential Amendments**).

We are issuing this Notice to solicit your comments on the Draft Amendments and on the Consequential Amendments.

The public comment period expires on **October 11, 2021**.

The text of the Draft Amendments and Consequential Amendments is published with this notice, and local matters are attached as Annex A.

The Notice will also be available on the following websites of CSA jurisdictions:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.mbsecurities.ca](http://www.mbsecurities.ca)

#### **Substance and Purpose of the Draft Amendments**

Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) requires an issuer that is not an investment fund to include certain financial statements in its long form prospectus. These required inclusions include the financial statements of the issuer and any business or businesses

acquired, or proposed to be acquired, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired (collectively, the **Primary Business Requirements**).

The purpose of the Primary Business Requirements is to provide investors with financial history of the business of the issuer even if this financial history spanned multiple legal entities over the relevant time period.

The Primary Business Requirements also apply to instances where securities legislation and exchange requirements refer to disclosure prepared in accordance with Form 41-101F1. An example of this would be the requirement in Form 51-102F5 for an information circular relating to a restructuring transaction to contain prospectus-level disclosure.

In practice, when acquisitions are involved, issuers and their advisors often consult with CSA staff to consider what financial statements must be included in the prospectus and to confirm whether one or more businesses comprised part of the primary business of the issuer. Sometimes these discussions result in inconsistent interpretation that adds time, cost and uncertainty for issuers.

The Draft Amendments aim to reduce the regulatory burden resulting from uncertainty about the interpretation of the Primary Business Requirements, without compromising investor protection.

## **Background**

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the **Consultation Paper**) to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. While not specifically identified as an option in the Consultation Paper, commenters suggested that CSA staff revisit the interpretation of Item 32 in Form 41-101F1. These comments reflected a range of suggestions, including revisiting the requirements for an issuer to include three years of historical financial statements for each entity considered the primary business. Commenters also noted that inconsistent interpretation of these requirements across the CSA can lead to additional regulatory burden.

The Draft Amendments are informed by the comment letters received in response to the Consultation Paper and other stakeholder feedback. The comment letters were summarized in CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

In considering the Draft Amendments, we monitored amendments to the financial disclosure requirements of Regulation S-X issued by the U.S. Securities and Exchange Commission on May 21, 2020. We also considered our experiences with pre-file discussions and applications.

Based on our work, we have determined that investors and issuers would benefit from a harmonized approach to the interpretation of the Primary Business Requirements among CSA jurisdictions and from additional clarity regarding historical financial information required in an initial public offering (**IPO**) prospectus. We think that the Draft Amendments will reduce regulatory burden without compromising investor protection by eliminating the time and cost of

many pre-file discussions and applications required in connection with the Primary Business Requirements.

### **Summary of the Draft Amendments and Consequential Amendments**

The Draft Amendments provide additional explanation in *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements* for both IPO venture and non-venture issuers regarding:

- the interpretation of primary business and predecessor entity;
- clarification on when an issuer can use an optional test to calculate the significance of an acquisition;
- guidance as to when and for what time periods financial statements would be required in certain circumstances;
- guidance on the circumstances when we may require additional information to meet the requirement for full, true and plain disclosure and the nature of that information;
- clarification of when we would not consider an acquisition of mining assets to be a business.

The Draft Amendments include various examples that illustrate different scenarios of when a reasonable investor would consider certain acquisitions to be the primary business of an issuer and the financial statements required by Item 32 of Form 41-101F1 in those scenarios.

The Draft Amendments further align with consultation feedback to revisit the interpretation of the Primary Business Requirements and seek to reduce inconsistent interpretation of requirements. We also expect that the number of pre-file applications will decrease significantly if the Draft Amendments are implemented.

The Consequential Amendments add clarification of when we would not consider an acquisition of mining assets to be a business requiring a business acquisition report.

### **Local Matters**

An annex to this notice outlines the consequential changes to local securities legislation and includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments will publish such an annex.

### **Request for Comments**

We welcome your comments on the Draft Amendments and on the Consequential Amendments.

Please submit your comments in writing on or before **October 11, 2021**.

Address your submission to all of the CSA as follows:

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

Deliver your comments only to the addresses listed below. Your comments will be distributed to the other participating CSA jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## Questions

If you have any questions, please contact any of the CSA staff listed below.

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**ANNEX A**  
**LOCAL MATTERS (QUÉBEC)**

**Withdrawal of a Notice**

In Québec, if the Proposed Changes are adopted, the *Notice relating to Financial Statement Requirements for IPO Issuers Acquiring Mining Claims* (published initially in the Bulletin de l'Autorité des marchés financiers of May 3<sup>rd</sup>, 2012, Vol. 9, No. 18 and again in the Bulletin of May 10, 2012, Vol. 9, No.°19) will be withdrawn, since guidance as to when an acquisition of mining assets would not be considered an acquisition of a business will be included in *Policy Statement to 41-101 respecting General Prospectus Requirements*.