

September 17, 2021

Delivered by Email: comment@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

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  
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Attention:

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**Re: CSA NOTICE AND REQUEST FOR COMMENT –**

**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***

Dear Sirs and Mesdames:

This letter is submitted in response to the Request for Comment regarding proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations* dated May 20, 2021 (the “proposed amendments”). Nutrien Ltd. is the world’s largest provider of crop inputs and services, with a market capitalization of approximately US \$36 billion. Our shares are publicly traded on the New York Stock Exchange and the Toronto Stock Exchange.

We appreciate the opportunity to comment on the proposal as we commend all efforts to improve the quality and accessibility of disclosures for investors.

As we understand it, the stated goals of the proposal as noted in part 2 are to:

- *reduce regulatory burden by fostering streamlined reporting and increasing reporting efficiency for reporting issuers;*
- *increase the quality and usability of the disclosure to be provided to investors; and*
- *not to compromise investor protection or the efficiency of the capital markets.*

We have reviewed the details of the proposed amendments and are in agreement as they relate to eliminating duplication or overlap between the disclosure requirements of financial statements, MD&A and AIF. We agree that a wholistic review of all regulatory filings will potentially reduce administrative burden and minimize duplication.

We have strong concerns over Part 4 of the proposed amendments – section #2: Combine documents into an Annual Disclosure Statement. In our view, the combination of the AIF with the annual financial statements and related MD&A will obfuscate relevant information and will not reduce regulatory burden – instead it will potentially increase the regulatory burden for us. We do agree that the MD&A should be combined with the annual financial statements, as this is already common practice for Canadian reporting issuers in an “annual report”. However, we do not agree with inclusion of the AIF within this combined document. As an alternative, we suggest that inclusion of the AIF in an Annual Disclosure Statement be voluntary or maintain the AIF as a separately filed document.

We understand that 20 commenters supported the inclusion of the AIF in an annual disclosure statement in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*. We also noted 13 commenters expressed support for this option *only* if the use of a consolidated document was voluntary and not mandatory, and four commenters did not support this option. We share the concerns raised in the original consultation in response to Consultation Question #29, and we have our own concerns about inclusion of the AIF with the annual financial statements and related MD&A, as follows.

### **Excessively Long Annual Disclosure Statement**

Nutrien is a large reporting issuer in the fertilizer mining and farm supply retail businesses, with approximately 23,000 employees in 13 countries, over 2,000 retail locations, and 26 mines or processing sites. This scale of our business requires lengthy disclosures as we have four separate business units with different economic drivers and risks. Our mining projects require extensive disclosures under NI 43-101 *Standards of Disclosure for Mineral Projects*. For us, an Annual Disclosure Statement, as proposed, could be longer than 300 pages. Several sections would not be pertinent to all readers, such as the text of the audit committee’s charter or summary of the technical reports which are disclosed in the AIF. These sections add to the length and may obfuscate pertinent information. We respectfully submit that a lengthy document would run counter to the CSA intent to have investors benefit from a “shorter and more focused document”.

We view the MD&A and financial statements with a different lens than the AIF since the documents serve different purposes and have a different tone. The MD&A is generally more conversational in tone. The MD&A focuses on discussion of financial position and results of operations as well as narrative explanation from the perspective of management on risks and trends that are reasonably likely to affect the company’s financial position or results of operations. The AIF is required to provide disclosure of the description of issuer's business, properties, and operations at a point in time (i.e., year-end), and include risks associated. Combining these documents would make this disclosure document overly lengthy and potentially less relevant.

Our primary objective in any disclosure is preserving its relevance to users. We are concerned that producing an excessively long Annual Disclosure Statement will increase regulatory burden and obscure key information. We have strong concerns our investors will read the news release *instead* of the Annual Disclosure Statement, which is meant to provide a complete

review of our company's financial information and is intended to be read together with our news releases, which discloses material information in summary format only. We see this as being potentially counter to the objectives of the proposed amendments.

### **Coordination with Integrated Reporting**

As we look to the future of financial reporting in the realm of continuous disclosure obligations, we note that this proposal does not address the increasing demand and materiality of Environmental, Social and Governance (“ESG”) reporting, and potential state of integrated reporting with our continuous disclosure obligations under Canadian securities regulation. This has become a focus point of stakeholders and, as such, the disclosures have increased as well. Our ESG report for 2021 was almost 100 pages; if incorporated in the Annual Disclosure Statement, our filing would near 400 pages. We note that if all these lengthy requirements are included, it is counterproductive to a relevant streamlined document as stated in the goals of the proposed amendments. The CSA should consider the implications of a lengthy combined Annual Disclosure Statement with any future integrated reporting initiatives or requirements.

### **Ordering of Annual Disclosure Document**

With a goal of ensuring that relevant information is prioritized, we noted that Annex B of the proposal suggests the location and organization within the proposed Annual Disclosure Statement: Part 1 – Annual financial statements, Part 2 - MD&A, and Part 3 - AIF. We were unable to ascertain from the proposal if this order is prescribed or not: while General Instruction (15) in the proposed annotated Form 51-102F1 *Annual Disclosure Statement* states that the numbering and ordering of sections included in Part 2 - MD&A and Part 3 - AIF of the Form are intended as guidelines only, there is no express statement to this effect regarding the ordering of Part 1, Part 2 and Part 3 of the Form.

It is our view that users prefer the MD&A to be the first document to review a company’s financial performance and financial condition, and this is the current structure of the annual report. We feel that it may be inconvenient to users to search past the 50+ pages of audited annual financial statements, or to scroll through a long PDF, to see the related discussion of financial results and performance and understand the pertinent messaging. While we recognize that the CSA is proposing innovative approaches to disclosure including use of hyperlinks, we note that we have a substantial user population that utilizes paper copies to review our disclosure documents.

If we are required to order the document in such a way that the key points are in the middle of a several hundred-page document, it will be easier for users to locate the pertinent information in a news release, making our full MD&A and financial statements less relevant. Therefore, we propose that the CSA remain flexible on ordering that is traditional with the current annual report that starts with the MD&A, financial statements next, and lastly the AIF (subject to the suggestion that inclusion of the AIF remain voluntary or be excluded from the combined document).

### **Annual report**

Finally, we understand that this proposal does not prohibit alternative disclosures or documents. Commensurate with applicable securities law, we can still file news releases, investor packages and compile a traditional annual report. Due to the reasons noted above regarding preserving relevance and highlighting pertinent information, this may be beneficial for our stakeholders should this proposal proceed. However, it is counterproductive to the goals of the proposal in that it will result in duplication of documents and increase regulatory burden, as this would be produced as an additional document over and above the proposed Annual Disclosure Statement.

**In summary**

Our goal is to keep the MD&A and financial statements as a highly relevant document about our Company and financial performance. However, the changes proposed may result in lengthy continuous disclosure documents including extensive summaries of our 43-101 technical reports. We want to reiterate that the goals in this proposal are commendable and worthwhile pursuing. However, we respectfully submit that the proposed amendments as outlined without a further meaningful reduction in duplicative or extraneous disclosures may not achieve the stated goals and purpose.

We encourage the CSA to reconsider the required combination of the AIF with the financial statements and related MD&A as we do not see the long-term benefits of consolidation as outlined in the proposed amendments. As an alternative, inclusion of the AIF should be voluntary or excluded from the proposed Annual Disclosure Statement. As a further alternative, we would suggest the CSA take additional steps to streamline disclosure requirements by eliminating duplicative or extraneous disclosures such as those in both the AIF and 43-101 technical reports in order to meaningfully reduce the regulatory burden on reporting issuers with material mineral projects.

We have also answered specific questions of part 9 of the proposal in the Appendix and offer some additional suggestions to the proposed amendments.

We appreciate your thoughtful consideration of the views and recommendations provided in this letter. If you have any questions or need additional information, please do not hesitate to contact me.

Respectfully,

(signed) "*Janice Anderson*"

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## Appendix A – Additional matters

In addition to the concerns noted above, we have the following concerns and recommendations that the CSA may want to consider to further streamline disclosures and reduce regulatory burden:

### Access Equals Delivery

There is currently no requirement to deliver the AIF to certain investors as there is for the financial statements and MD&A. The Proposed Amendments provide that reporting issuers will be required to deliver their Annual Disclosure Statement, which will include the AIF and result in increased printing and mailing costs. To reduce this burden, we would suggest that the “access equals delivery” model be adopted and in force contemporaneously with the Proposed Amendments.

### Auditor involvement

The AIF is currently not in scope of the auditor’s requirements under CAS 720 *The Auditor's Responsibilities Relating to Other Information in Documents Containing Audited Financial Statements* (“CAS 720”). CAS 720 requires auditors to read the other information in scope of the standard to identify material inconsistencies, if any, with the audited financial statements. Some of the data in our AIF, including our summaries of our 43-101 technical reports could be challenging to provide this type of negative assurance. Summaries of our technical reports included in our AIF are approximately 50 pages of data across several projects – with many assumptions about the recoverability, pricing and profitability of our mineral reserves and reporting. Given the length of our AIF, including the scale of summary information about our technical reports, our auditors will require additional time and expertise to review the document for compliance with CAS 720, which will increase the cost of our audit.

### Elimination of third statement of financial position

As a further reduction in regulatory burden, we propose that the CSA consider removing the requirement in NI 51-102 section 4.1(1)(c) and 4.3(1)(d) which requires a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year if the reporting issuers either (A) applies an accounting policy retrospectively in its annual/interim financial statements, (B), makes a retrospective restatement of items in its annual/interim financial statements, or (C) reclassifies items in its annual/interim financial statements (i.e. an “opening balance sheet”). IAS 1 *Presentation of financial statements* paragraphs 40A and 40B require an entity to present this information. We respectfully suggest allowing reporting issuers to comply with IFRS, which would also allow the requirement of the presentation of an opening balance sheet to be based on whether the information contained in the opening balance sheet is material to the financial statements. Continuing to include this identical requirement within NI 51-102 contradicts this initiative of the CSA to reduce duplication of disclosures and regulatory burden.

### Streamlining AIF disclosure

We have identified two areas for the CSA to consider streamlining disclosure in the AIF: inclusion of the text of the audit committee’s charter (Form 52-110F1 *Audit Committee Information Required in an AIF*, item 1) and summarized technical reports (section 18 of the proposed amendments).

We suggest allowing the audit committee’s charter to be incorporated by reference to a website where it is published and included in the AIF at least once every three years, consistent with the U.S. Securities and Exchange Commission rules and regulations.

We have noted in the proposed amendments that a summary from a technical report can be used to satisfy the AIF requirement applicable to reporting issuers with mineral projects if such summary contains all required disclosure. We

respectively submit that consideration should be given to removing or streamlining certain disclosure reporting obligations in Item 5.4 of NI 51-102 in order to meaningfully reduce the regulatory burden on reporting issuers with mineral projects. Sections 4 to 8, Section 10 and Section 11 of Item 5.4 of NI 51-102 require issuers to include lengthy and highly technical mineral project disclosure that, in our view, is not relevant or meaningful to the average investor given its geological and technical nature. Further, the information covered in these sections is already readily available to potential investors in the reporting issuer's corresponding National Instrument 43-101 Technical Report filed publicly on SEDAR. As such, eliminating or streamlining such onerous disclosure requirements would not only reduce the regulatory burden on reporting issuers with mineral projects, but would help eliminate overlap in regulatory requirements, without impacting investor protection.

**Appendix B – Part 9: Request for Comments**

Question	Nutrien response
<p>Question relating to additional disclosure for venture issuers without significant revenue</p> <p>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?</p>	<p>More narrowly, this proposal should be voluntary. It creates additional burden in certain circumstances.</p>
<p>Questions relating to risk factors</p> <p>2. It be beneficial for reporting issuers if we provided further clarity on what “seriousness” means and how to determine the “seriousness” of a risk?</p> <p>3. If we adopted similar requirements to the SEC’s amendments, what would be the benefits and costs for investors and reporting issuers?</p>	<p>Any clarifications or guidance that can be provided on securities regulation is useful to reporting issuers.</p>
<p>Questions relating to the requirement to name authors of technical reports</p> <p>4. What challenges, if any, do reporting issuers face in obtaining technical report author consents for short form prospectus offerings?</p> <p>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?</p> <p>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?</p>	<p>We have concerns that we will face challenges if we need to name the authors of technical reports as we are an SEC Issuer as defined under NI 52-107. Given the experience that the Canadian Audit and Assurance Standards Board had with the inclusion of a requirement for the auditor to disclose the engagement partner name during the adoption of <i>CAS 700 Reporting on Audited Financial Statements</i> paragraph 46. We have concerns that a similar challenge may exist in obtaining consent for technical reports. For reference on this matter, we refer to the Basis for Conclusion for CAS 700 (April 2019).</p>
<p>Question relating to impact of refiling on auditor’s report</p> <p>7. Considering that the annual disclosure statement will include annual financial statements, MD&amp;A and, where</p>	<p>Yes, we are concerned with this matter. For example, if we need to refile our MD&amp;A, we are concerned if we also need to refile our audited</p>

<p>applicable, AIF, do you think there will be an impact, including on auditing requirements, if a reporting issuer amends or re-files only one of these documents, or re-files the annual disclosure statement in its entirety?</p>	<p>financial statements. We presume we would have to consider how this would impact our audited financial statements in terms of whether we need to consider IAS 10 <i>Events after the reporting period</i>. We also consider that there would be additional procedures that need to be performed by our auditor. It is our view that if we need to refile the MD&amp;A or AIF, that there is an option to only refile one of these documents and not the Annual Disclosure Statement in its entirety. We see this as adding additional time and complexity that would limit our ability to refile on a timely basis.</p>
<p>Question relating to proposed amendments to Form 41-101F1 Information Required in a Prospectus and Form 44-101F1 Short Form Prospectus</p> <p>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.</p>	<p>We support initiatives to reduce required regulatory disclosures. If information is material, relevant or is important to our investors or future stakeholders, we will voluntarily include this information to comply with general requirement for a prospectus to contain full, true and plain disclosure of all material facts relating to the securities being offered under such prospectus.</p>
<p>Questions relating to transition provisions</p> <p>13. Do you think the proposed transition provisions are sufficiently clear? If not, how can we make them clearer?</p> <p>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)?</p>	<p>Any clarifications that can be provided to reporting issuers on adoption of new or amended securities regulation is useful to reporting issuers.</p>