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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  
Superintendent of Securities, Nunavut

**Attention**

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22nd Floor, Box 55  
Toronto ON M5H 3S8

Me Philippe Lebel  
Corporate Secretary and Executive Director,  
Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2640 boulevard Laurier, bureau 400  
Québec, QC G1V 5C1

**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**

We are pleased to provide comments in response to the Proposed Amendments outlined in the CSA Notice and Request for Comment published on May 20, 2021 (the "**Notice**") concerning amendments to NI 51-102 and certain changes relating to annual and interim filings of non-investment fund reporting issuers.

Capitalized terms used in this letter that are not otherwise defined herein have the meanings given to them in the Notice. This letter is submitted on behalf of and contains comments of certain members of our Capital Markets Practice Group. Our comments are submitted without prejudice to any position that has been or may be taken by our Firm, whether on behalf of any client of our Firm or otherwise.

## **General Comments on the Proposed Amendments**

We welcome the Proposed Amendments and applaud the CSA for undertaking this initiative to reduce some of the regulatory burden facing non-investment fund reporting issuers. We note in particular the positive steps taken in the Proposed Amendments to eliminate certain duplicative and redundant disclosure obligations with respect to financial statements, MD&A and the AIF. This is a commendable outcome.

We note that the removal of the requirement to name the technical report authors in the AIF (and as a result, provide consents for short form prospectus offerings) would level the playing field between producing and non-producing mining issuers as internal non-author QPs could review the applicable disclosure for purposes of providing consents for short form prospectus offerings.

## **Opportunities to Further Refine the Proposed Amendments**

Notwithstanding the anticipated benefits of the Proposed Amendments, we note there may be additional challenges relating to the filing and reporting requirements that are not addressed by the Proposed Amendments, including:

### *1. Combined Documents May Result in Delayed Reporting and Other Complications*

An annual disclosure statement that includes the annual financial statements, MD&A and the AIF may lead to a delay as to when certain issuers report financial results, as some issuers have historically chosen to file their AIF after their annual financial statements and MD&A. This is especially likely in the first year of implementation of the new regime. In addition, we note that amending or refiling some or all of the documents in the annual disclosure statement, or amending or refiling the annual disclosure statement in its entirety, could trigger an obligation to have the issuer's auditors review the revised document. Currently, this potential situation does not arise if an issuer amends or refiles its MD&A or AIF.

### *2. Transition Period May Result in Inconsistent and Confusing Disclosure*

We are also of the view that there may be unintended consequences of allowing voluntary compliance during the transition period. In particular, we note concerns relating to:

- Investor confusion with issuers potentially filing different disclosure documents during the transition period. An alternative is to provide a longer transition period with a single path that all issuers, regardless of financial year-end, must follow as of a certain date.
- Specifically, the proposed transition period will result in a lack of clarity regarding how reporting issuers with financial years ending in 2023 prior to December 15, 2023 will report for the first interim period following December 15, 2023, particularly issuers in the financial sector. While providing flexibility for the aforementioned reporting issuers is helpful, in practice, it is likely that the majority of issuers that are afforded with this flexibility will take a similar approach, i.e. a market practice will develop, in determining whether to file an interim disclosure statement as the first filing after the adoption of the Proposed Amendments.

### 3. Risk Factors

We believe issuers generally understand the current approach which requires a reporting issuer to disclose risks in order of seriousness from the most serious to least serious and that no further clarity on what “seriousness” means is required. We do not believe there is a clear policy justification for risks to be grouped by section as a potential result is that risks will no longer be listed in order of significance.

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Thank you for the opportunity to comment on the Proposed Amendments. We would be happy to discuss any of the above with you further. If you have any questions, please do not hesitate to contact the undersigned at the contact information above or either of Andrew Parker (T: 416-601-7939; E: [aparker@mccarthy.ca](mailto:aparker@mccarthy.ca)) or Patrick Boucher (T: 514-397-4237; E: [pboucher@mccarthy.ca](mailto:pboucher@mccarthy.ca)).

Yours truly,

**McCarthy Tétrault LLP**

Per:

*(Signed) “Jessica Brown”*

*(Signed) “Michael J. Eldridge”*