

September 17, 2021

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 of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Dear Madam/Sir,

Re: Proposed amendments to National Instrument 51-102 Continuous Disclosure Obligations and Other Amendments and Changes Relating to Annual and Interim Filings for Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis

We have reviewed the above referenced consultation document and we thank the Canadian Securities Administrators (CSA) for the opportunity to provide you with our comments.

CCGG's members are Canadian institutional investors that together manage approximately \$5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

OVERVIEW/GENERAL COMMENTS

As noted in its [July 2017](#) submission to the CSA in response to Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers, and its [February 2019](#) submission to the Ontario Securities Commission OSC Staff Notice 11-784: Burden Reduction, CCGG is generally supportive of the proposal to streamline disclosure requirements currently set out in the MD&A, the Annual Information Form (AIF) and the financial statements into a single reporting document, the Annual Disclosure Statement. Overall, we consider the approach taken by the CSA in developing the Annual Disclosure Statement to be reasonable, as it is focused on eliminating disclosure requirements only where they overlap, duplicate other disclosure or are redundant (such as elimination of summary information for the prior eight quarters which is otherwise available in previous filings, and the elimination of disclosure of security price ranges and volumes on the basis that this information is otherwise easily obtained in the marketplace).

With respect to the proposed semi-annual reporting framework for non-SEC venture issuers (as described in more detail below), CCGG is not supportive of the CSA pursuing this initiative. CCGG has consistently advocated against Canadian regulators pursuing changes to the current disclosure reporting cycle that would have the effect of creating different disclosure cycles for different kinds of issuers and that would remove information from the public realm that is useful to investors. Further, we are of the view that smaller cap venture companies, especially those relatively new to public markets, benefit from the discipline of quarterly reporting in the monitoring of changes to operating performance and risk management. While we reiterate our positions in response to the specific questions posed by the CSA in this consultation, we would also refer the CSA to our response to Consultation Paper 51-404 (as noted above) and to our submission to the Ontario Capital Markets Modernization Taskforce of [September 2020](#), which responded to a similar recommendation in the context of the recommendations made by that Taskforce.

In the remainder of our submission, we have provided responses to the consultation questions most relevant to CCGG's Members and its corporate governance focused mission.

CONSULTATION QUESTIONS

Questions relating to risk factors

The consultation document indicates that the CSA is proposing to retain instruction (i) to section 5.2 of the Current AIF Form (as proposed section 16 of Form 51-102F1 Annual Disclosure Statement) which requires a reporting issuer to disclose risks in order of seriousness from the most serious to least serious. Proposed instruction (3) to the same section suggests that “seriousness” refers to impact/probability assessment.

In addition, the consultation notes that the SEC’s Modernization of Regulation S-K Items 101, 103, and 105 adopts amendments which require the following:

- grouping similar risks together;
- disclosing generic risks under the heading “general risks”; and
- requiring a summary of risk factor disclosure if the risk factor disclosure exceeds 15 pages.

Finally, the CSA flags, as a “noteworthy change” that it intends to remove materiality qualifiers such as “material”, “significant”, “critical”, “major” and “fundamental”, and “have all disclosure requirements subject to the qualification that issuers are to focus on material information”, except where there are explicit exceptions noted in the disclosure instructions or where the qualifier is otherwise part of a defined term¹.

In light of the foregoing the consultation poses the following questions:

2. Would it be beneficial for reporting issuers if we provided further clarity on what “seriousness” means and how to determine the “seriousness” of a risk?

CCGG is of the view that in light of the proposal by the CSA to remove materiality qualifiers, guidance as to what is meant by “seriousness” and how to determine “seriousness” as between identified material risks would be helpful to both issuers and investors. Given increasing investor interest in disclosure of environmental, social and governance risks, especially with respect to climate change impacts, one aspect of determining “seriousness” that may be useful to build into such guidance, could be a consideration of time horizon and the impact of time horizon on the assessment of impact and probability². It would also be helpful to require the issuer to provide context in which the seriousness of the risk was assessed (for example, risk to revenues, risk to asset values, to customer relationships, risk of cost escalation impacting probability, etc.) and a materiality threshold such as, by way of example, a 10% impact on revenues or asset value.

¹ Chapter 6 Request for Comments, (2021), 44 OSCB 4209-10 (May 20, 2021).

² See [CCGG The Directors E&S Guidebook](#), May 2018 Guiding Principle II Risk Management, recommendation 5: “In reviewing risk assumptions, the board should be comfortable that the methodology captures the long-term nature of E&S risks, including how their inherent and residual risk factors may evolve and manifest over a various time horizons” at 15-16.

3. If we adopted similar requirements to the SEC's amendments, what would be the benefits and costs for investors and reporting issuers?

CCGG is supportive of adopting similar risk disclosure requirements as the SEC on the basis that this approach supports transparency and consistency in disclosure and will also support the ability of investors to compare issuer disclosures as between peers and across sectors. We are not of the view that this approach would increase costs for investors.

Questions relating to semi-annual reporting for certain venture issuers on a voluntary basis

The CSA is seeking feedback on the following proposed framework relating to semi-annual reporting for certain venture issuers on a voluntary basis:

- Semi-annual reporting would be limited to venture issuers that are not SEC issuers (but would not be otherwise restricted by the market capitalization of the non-SEC venture issuer);
- Semi-annual reporting would be voluntary; and
- Alternative disclosure would be provided (through a news release, within 60 days of the end of the issuer's interim period for which financials and MD&A would not be filed).

9. Should we pursue the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers? Please explain.

No.

General Observations:

CCGG is not supportive of the proposed voluntary semi-annual reporting framework for venture issuers that are not SEC issuers.

As noted above, CCGG reiterates its opposition to semi-annual reporting as outlined in its response to the CSA's 2017 Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers, and more recently in its response to the recommendations of the Ontario Capital Markets Modernization Taskforce. Nothing in the current proposed framework has altered our view and we would encourage the CSA not to pursue this initiative.

Timely, predictable and consistent information is essential to assessing and monitoring the quality of an investment. CCGG's members strongly regard the information provided by quarterly financial reports to be important and relevant. In order for investors and analysts to have timely financial information available to them, the current quarterly reporting obligation should be maintained. As one of our members stated, "information gives confidence".

Semi-annual reporting should not be optional:

The recommendation suggests that the right to file semi-annually should be optional or voluntary for non-SEC venture issuers. For reasons of both principle and practicality, CCGG does not agree that non-SEC venture issuers should be provided with a voluntary option to file semi-annual reports.

A voluntary disclosure requirement would lead to inconsistent reporting among issuer peers, decreasing comparability among issuers reporting in different time frames. It would be confusing and increase the monitoring burden on investors. The proposed framework permits eligible issuers to file a notice opting in or out of the semi-annual reporting cycle annually at the beginning of the issuer's fiscal year for a minimum commitment of one year, subject to some exceptions including if it becomes an SEC listed issuer or if it ceases to be a venture issuer³. Monitoring venture issuer notices in order to determine which issuers are in which reporting framework annually will increase the administrative and resource burden on investors. There is also a concern with respect to selective reporting; those issuers which investors perceive to be most in need of quarterly reporting may be the ones most likely to opt in or out of the semi-annual framework strategically to delay providing unfavourable information to the market. Notwithstanding the issuer's material change reporting obligations, it is important to note that often venture capital companies are issuers with less experience in the capital markets and therefore less experience in assessing whether or not disclosure of specific information and corporate developments will have a material positive or negative impact on its share price, making regular quarterly reporting a key protection for investors.

Limiting semi-annual disclosures to non-SEC venture issuers is self-defeating:

We understand the intuitive logic behind the CSA's proposal to limit the availability of semi-annual reporting to non-SEC listed venture issuers, as SEC cross-listed venture issuers will still be subject to the SEC's quarterly reporting requirement. In our view, however, this distinction will likely make adoption of a semi-annual reporting regime unattractive or unworkable for many non-SEC venture issuers on the basis that it will make such issuers less attractive to investors and competitive pressures will lower the likelihood of issuers implementing reduced disclosure.

Even for non-SEC listed venture issuers, there is practical and financial value in maintaining consistency with the U.S. quarterly reporting cycle. Dual-listed venture issuers will have to continue to report quarterly. Research in other jurisdictions has shown that where issuers are permitted to voluntarily adopt a more, or in the case of the CSA's proposal, a less frequent reporting schedule, there is a loss of investor attention away from semi-annual reporters in favour of more frequent quarterly reporters, which demonstrates an investor preference for issuers providing more information rather than less. A voluntary move to semi-annual reporting could therefore have an impact on the ability of non-SEC venture issuers to attract

³ [Chapter 6 Request for Comments, \(2021\), 44 OSCB 4328 at Annex G \(May 20, 2021\).](#)

capital, impacting their market value, cost of capital and access to liquidity in comparison to U.S. and Canadian cross-listed counterparts where more frequent reporting is available⁴.

In addition, Canadian venture issuers whose peers are subject to SEC quarterly reporting requirements are likely to continue to supply quarterly financials to remain competitive for investor attention. The experience of other jurisdictions that have moved away from mandatory quarterly reporting demonstrates that when voluntary semi-annual reporting is available there is not significant uptake of this opportunity where peers continue to report quarterly. A 2019 study of EU reporting practices after the deregulation of mandatory quarterly reporting in Europe revealed that only 11.1 percent of eligible firms had stopped reporting quarterly two years after the requirement to report quarterly was removed. The same study also observed that companies which did opt-in to a reduced reporting schedule experienced a reduction in liquidity, which the authors attributed to the idea that “incremental transparency” is important to investor decision-making and that investors were unable to obtain the information they needed from other publicly available sources⁵.

10. Are there specific types of venture issuers for which semi-annual reporting would not be appropriate? For instance, should semi-annual reporting be limited to venture issuers below a certain market capitalization or those not generating significant revenue? Please explain

The CSA proposal is to permit all non-SEC venture issuers to voluntarily opt-in to semi-annual disclosures notwithstanding their size. We do not agree with this approach. The privilege of access to public markets comes with corresponding obligations of accountability and responsibility. Although we recognize that concessions are made for smaller or less mature companies in some circumstances, such as with respect to the different listing requirements of the TSX Venture Exchange, CCGG has long held the view that venture issuers are not *prima facie* in less need of robust governance and disclosure practices and the risk to investors of the lack thereof does not diminish with the size or maturity of the company. In fact, as noted above, in our view the opposite is true; these companies have less experience in the capital markets in gauging market relevant disclosures.

As noted by the CSA, most venture issuers have a small market cap. However, there are some large market cap companies who would be eligible to report semi-annually under the proposed framework, notably, as flagged by the CSA in the consultation document, the cannabis sector.

⁴ De George, Emmanuel T. and Phan, Minh and Stoumbos, Robert C., Negative Externalities of Financial Reporting Frequency: Peer Reporting Choice and the Loss of Investor Attention (August 5, 2019). University of Miami Business School Research Paper No. 3433828, Available at SSRN: <https://ssrn.com/abstract=3433828> or <http://dx.doi.org/10.2139/ssrn.3433828>

⁵ Hitz, Joerg-Markus and Moritz, Florian, Turning Back the Clock on Disclosure Regulation? – Evidence from the Termination of the Quarterly Reporting Mandate in Europe (September 11, 2019). Available at SSRN: <https://ssrn.com/abstract=3451938> or <http://dx.doi.org/10.2139/ssrn.3451938>. Somewhat contrastingly, though, this research also observed an increase in long-term investment over short-term performance goals in a subset of firms who reverted to semi-annual reporting where such firms were providing particularly comprehensive information before.

The cannabis sector has experienced significant volatility and corporate governance challenges. It has also struggled to secure long-term institutional investors due to concerns about governance and risk oversight⁶. Further reducing transparency and available information in this sector does not address these challenges and may exacerbate them.

For the reasons noted above, we do not agree that the CSA should move forward with the proposal to permit semi-annual reporting and we do not generally support the idea of differential standards applying to different sizes of companies or different categories of companies. That said, we note that the Ontario Capital Markets Modernization Taskforce's final recommendation, after conducting its own extensive consultation process on this topic, included a recommendation that semi-annual reporting should only be available to venture issuers with revenue of less than \$10 million annually. This represented a significant change from its initial recommendation which was broad in scope⁷. While not endorsing the Taskforce's recommended approach, we encourage the CSA to review the Taskforce's rationale for this qualifier (and the other safe-guards it proposed to support its recommendation in particular seeking shareholder approval, as discussed below).

11. Would the proposed alternative disclosure requirements under the Proposed Semi-Annual Reporting Framework provide adequate disclosure to investors? Would any additional disclosure be required? Is any of the proposed disclosure unnecessary given the existing requirements for material change reporting and the timely disclosure requirements of the venture exchanges? Please explain

We have concerns about the proposed alternative disclosure. The proposal is that this disclosure is to be issued in a news release, and that it will be selective and heavily narrative in nature and will not include financial reports⁸. The proposed format would potentially be difficult for investors to interpret and compare as between issuers. This would increase the burden on investors.

We also have some concerns that there does not appear to be any mandated CEO/CFO certification or board oversight of these disclosures, which raises questions as to internal accountability for their quality. For example, Appendix G states: "A venture issuer using semi-annual reporting would be required to certify as to their interim disclosure statement for the semi-annual reporting period. The venture issuer would not be required to file an interim

⁶ [Cannabis companies must address the 'G' in ESG to attract institutional investors: panel | Benefits Canada.com](#)

⁷ [Ontario Capital Markets Modernization Taskforce: Consultation Draft Report, July 2020, see recommendation 6 \(Streamlining the timing of disclosure \(e.g., semi-annual reporting\)\)](#) as compared to: [Ontario Capital Markets Modernization Taskforce: Final Report January 2021, see recommendation 14 Streamline the timing of disclosure \(e.g., semi-annual reporting\)](#).

⁸ Chapter 6 Request for Comments, (2021), 44 OSCB 4328 at Annex G (May 20, 2021). The proposed disclosure includes: operational updates, major operating milestones, commitments, unexpected events, risks that are likely to materially affect operations going forward, and explanations of significant challenges from previous disclosures regarding the use of proceeds, and disclosure of material events including: the issue or cancellation of securities, new or modified litigation or liabilities, new or modified financing arrangements, changes to the financial condition of the issuer, the inability to pay debts as they become due, and related party transactions.

certificate as to their alternative disclosure in a news release”⁹. This raises concerns with respect to issuer accountability and internal controls applicable to the alternative disclosure and may undermine the extent to which investors rely on such disclosure. Including fully audited financials in each semi-annual report may alleviate some of this concern among investors but is unlikely to be considered a burden reduction by venture issuers or create an incentive to adopt semi-annual reporting¹⁰.

Additionally, in our view, existing requirements for material change reporting and the timely disclosure requirements of the venture exchange do not make alternative disclosures unnecessary and in fact eligibility to opt-in to a semi-annual reporting framework should be contingent on setting a high bar for issuers with respect to such disclosures. This point was expressly noted in the final recommendations made by the Ontario Taskforce which included, among other restrictions, a requirement that to be eligible for semi-annual reporting an issuer must have a continuous disclosure record of 12 months and must not be in default of its continuous disclosure obligations, which restrictions were paired with an acknowledgement that a shift toward semi-annual reporting increased the importance of material change reporting and regulatory compliance oversight of the continuous reporting¹¹. CCGG is of the view that unlike large cap mature public companies, venture issuers have considerably less expertise in assessing what constitutes a material change with respect to gauging what the impact on its share price would be in the event of disclosure – one of the key considerations in deeming a corporate development to be a material change to be reported. We would encourage the CSA to review the Taskforce’s recommendations and the capacity of provincial regulators to prioritize the necessary enhanced oversight of continuous disclosure compliance prior to moving forward with a semi-annual reporting framework.

12. Do you have any other feedback relating to the Proposed Semi-Annual Reporting Framework?

Impact on financial disclosures for issuers using a short form prospectus:

The proposed framework suggests that a “venture issuer using semi-annual reporting would be eligible to use the short form offering system. The current short form prospectus regime can accommodate a change to allow semi-annual reporting on a voluntary basis”¹². While CCGG

⁹ Chapter 6 Request for Comments, (2021), 44 OSCB 4328 at Annex G (May 20, 2021).

¹⁰ [FCLT Global, SEC Request for Public Comment on Earnings Releases and Quarterly Reports \[Release No. 33-10588, 34-84842; File No. S7-26-18\]](#); which floats as an option (although not for venture issuers only), changing the quarterly reporting regime by implementing a third model with “full financial and related reporting on a six-month basis (2Q and 3Q/Year End) with abbreviated interim trading updates (1Q and 3Q not subject to full 10-Q requirements)”.

¹¹ Ontario [Capital Markets Modernization Taskforce: Final Report January 2021, see recommendation 14 Streamline the timing of disclosure \(e.g., semi-annual reporting\)](#). Also see [FCLT Global, SEC Request for Public Comment on Earnings Releases and Quarterly Reports \[Release No 33-10588, 34-84842; File No. S7-26-18\]](#) which floats as an option, allowing companies to choose between disclosure frameworks, but if they opt to move to a semi-annual reporting model it would only be permitted if they adopt a higher bar for interim disclosures of new material information.

¹² Chapter 6 Request for Comments, (2021), 44 OSCB 4329 at Annex G (May 20, 2021).

does not support semi-annual reporting, if pursued, we would urge the CSA to require semi-annual reporting issuers using a short form prospectus to supplement their financial disclosure if more than a quarter has passed since their most recent financial statements.

Response to the recommendations of the Ontario Capital Markets Modernization Taskforce:

We note that the CSA's proposed framework does not directly address or respond to the recommendations of the Ontario Taskforce. In our view, it would be helpful for the CSA to provide some commentary on its views with respect to the recommendation in the final report. While CCGG does not in principle support the proposal to implement a voluntary semi-annual reporting regime for any public issuer and does not agree with all of the Taskforce's recommendations with respect to semi-annual reporting, should the CSA determine it wishes to pursue a pilot project or other initiative in this area, we do see some merit in some of the restrictions and requirements proposed by the Taskforce. In addition to those mentioned above in the context of continuous disclosure and regulatory compliance oversight, we would note in particular the Taskforce's recommendations with respect to requiring approval by shareholders which would be reconfirmed every three years (excluding related party).

CONCLUSION

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca.

Yours truly,

"Marcia Moffat"

Marcia Moffat
Chair, Canadian Coalition for Good Governance

CCGG MEMBERS 2021

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
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- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund