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September 17, 2021

Without Prejudice
By E-mail

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches 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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Dear Sirs/Mesdames:

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

- and -

Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the "**CSA**") on May 20, 2021 with respect to proposed amendments (the "**Proposed Amendments**") to National Instrument 51-102 ("**NI 51-102**") and soliciting feedback on a proposed framework for semi-annual reporting for venture issuers (the "**Proposed Framework**").

We have organized our comments below with reference to the proposed rule, policy or form to which the comments relate and, where applicable, with reference to the specific consultation question posed. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments and Proposed Framework. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

A. General

We are generally supportive of the Proposed Amendments. We are of the view that the reduced regulatory burden that would result from the implementation of the Proposed Amendments would help in reducing some of the unnecessary barriers to becoming a reporting issuer in Canada for smaller companies.

We applaud this effort by the CSA to reduce the regulatory burden that Canadian securities laws may impose on existing and prospective reporting issuers and believe that a reduction in such burden will encourage capital markets activity in Canada. However, any amendments to Canadian securities law, including the national and multilateral instruments and policy statements, should serve to clarify and modernize current rules in an effort to, among other things, ensure that issuers are able to assess their compliance costs up front. We submit that such rules should not be subject to significant CSA Staff discretion and interpretation which effectively reduces the benefit of any transparency and predictability in Canadian capital markets.

1. Section 3A.6 Delivery of Annual and Interim Disclosure Statements and Certain Other Continuous Disclosure Documents

It has been our experience that issuers, along with other capital markets participants, generally want to be able to deliver disclosure documents electronically. We submit that it would be appropriate for a reporting issuer to satisfy delivery requirements of the Proposed Amendments by making the annual disclosure statement and interim disclosure statement electronically available without prior shareholder consent. In particular, we would support electronic delivery of all continuous disclosure documents with an annual notice to investors indicating that documents will be available on SEDAR and the issuer's website unless paper copies are requested. We note that electronic delivery of disclosure documents would not only reduce burden on issuers, but would also be beneficial to the environment and is particularly timely given the increased focus on environmental related disclosure and governance in Canadian (and global) capital markets.

We also note that subsection 3A.6(6) makes reference to both the "annual disclosure statement" and "annual financial statements"; however, Part 1 of the "annual disclosure statement" would be comprised of the issuer's annual financial statements. We respectfully suggest that this subsection be revised to remove the reference to annual financial statements.

2. Section 4.1 Requirement to File Audited Comparative Annual Financial Statements as Part of an Issuer's Annual Disclosure Statement; Section 4.3 Requirement to File Interim Financial Report as Part of an Issuer's Interim Disclosure Statement; Section 5.1 Requirement to File an MD&A as Part of an Issuer's Annual or Interim Disclosure Statement

We respectfully suggest that the language in subsections 4.1(1), 4.3(1) and 5.1(1) and (2) be revised to clarify that the requirement to file annual financial statements, interim financial reports and MD&A is satisfied by the inclusion of such disclosure in the issuer's annual or interim disclosure statement, as applicable.

3. Part 6 Annual Information Form

We respectfully suggest that additional language be added to Part 6 of NI 51-102 indicating that a venture issuer may file an AIF on a voluntary basis and that such AIF may form part of the issuer's annual disclosure statement, as a standalone document or as part of the issuer's interim disclosure statement.

4. Section 11.5 Refiling Documents

We submit that the language of section 11.5(1) be clarified with respect to "the decisions set out below" as it is not completely clear that this language is referring to the decision to refile a document in whole or in part or to restate financial information for comparative periods in financial statements as referenced in (a) – (c) of this subsection. We also suggest that clarification be made to (b) with respect to the ability to file a part of an annual or interim disclosure statement (i.e., the financial statements/report, MD&A or AIF) as a stand alone filing.

5. Form 51-102F1 Annual Disclosure Statement - General Instructions and Form 51-102F2 Interim Disclosure Statement – General Instructions

Instruction (8) provides that a company is not required to repeat information disclosed elsewhere in the annual disclosure statement. We suggest that this instruction be revised to clarify whether the provisions of National Instrument 52-112 *Non-GAAP and Other Financial Measures* that permit incorporation by reference of non-GAAP financial measure disclosure requirements will be available upon the filing of an annual or interim disclosure statement and further, as to whether certain non-GAAP financial measures disclosure requirement that must be in proximity to the first use of the measure (e.g., an explanation that a non-GAAP financial measure is not standardized as per section 6(1)(e)(i) of NI 52-112) will be satisfied by including such disclosure in one Part of the annual or interim disclosure statement or if such disclosure would have to be included in both Part 2 and Part 3 of the disclosure statement.

We are supportive of revisions made to Form 51-102F1 and Form 51-102F2 that eliminate duplicative disclosure requirements from the MD&A and AIF. We do not believe that issuers should be required to provide the same disclosure in two separate documents, nor do we believe that removal of duplicative information would deprive an investor's access to relevant and material information. The consolidation of the MD&A, AIF and financial statements into one document is an efficient way to reduce duplication in an issuer's filings. A single document will also serve to assist issuers with compliance and, in particular, will facilitate greater consistency in an issuers public filings.

B. Questions Relating to Risk Factors

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

We are generally supportive of additional clarity from the CSA as we believe that clarity provided greater certainty to issuers and assists with compliance. Alternatively, the concept of "seriousness" could be removed from the instructions altogether and replaced with alternative instructions for the arrangement of risk factors (for example, the SEC model as described in the CSA's Request for Comments).

With respect to the Instructions provided in Part 3 of the proposed Form 51-102F1 related to Item 16 "Risk Factors", we note an inconsistency between instruction (2) which states that "A risk factor must not be de-emphasized by including, for greater certainty, excessive caveats or conditions" and instruction (3) which suggests that issuers present risk factors in a manner (including in tabular format) that "clearly identifies…your company's risk mitigation strategy relating to it." We submit that additional clarification be included here to enable issuers to provide appropriate disclosure that satisfies the form requirements.

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

We understand that many issuers already group similar risk factors together and include a heading for "general risks". Given this practice, the biggest change to Canadian reporting issuers from the adoption of requirements similar to the SEC's amendments would be the requirement that issuers with lengthy risk factors draft a summary of such risk factors. This may impose an additional burden on issuers with very little benefit to investors. It may also lead to issuers becoming more conscious of including lengthy risk factors in their disclosure in order to avoid having to prepare an additional summary. If requirements similar to the SEC's amendments are adopted, it would be helpful for the CSA to provide guidance as to if and how the requirement to disclose risks in order of seriousness would interplay with any requirements to group similar risks together or include a "general risks" section (or, as noted above, to remove the concept of "seriousness" altogether).

C. Questions Relating to Semi-Annual Reporting for Certain Venture Issuers on a Voluntary Basis

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.

While the Proposed Framework might reduce regulatory burden for some issuers, we submit that less frequent reporting is contrary to the "efficient market" theory upon which the Canadian disclosure system is based and further increases the chances that an issuer will fail to publicly disclose negative financial results and information during the lengthier 6-month interim period. Additionally, market pressures and practices in other jurisdictions against which Canadian issuers compete, namely the United States, will likely also result in Canadian issuers reporting on a quarterly basis regardless of whether a semi-annual framework is adopted. Other unintended consequences may include increased difficulty for less seasoned, smaller issuers in preparing their annual and bi-annual filings as they will not have turned their attention to financial results and disclosure controls as frequently, and potentially reduced analyst coverage.

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.

To the extent that the Proposed Framework is implemented, we note some concerns with further classifying venture issuers. While we acknowledge that size-based distinctions may be appropriate in certain instances, one difficulty of a size-based system is that issuers must monitor their eligibility as unexpected changes to an issuer's business, including increases in revenue, changes in market cap, and market volatility, could lead to increased of different reporting obligations. If a size-based distinction is to be adopted, we suggest that consideration be given to appropriate and sufficiently lengthy transition periods applicable to issuers who could find themselves in a different class of issuer in the middle of a fiscal year and to avoid issuers having to move frequently between different reporting regimes. Maintaining an exchange-based disclosure regime provides issuers with greater certainty as to the costs of compliance and sufficient time to prepare disclosure documents, particularly as "venture issuer" is already a long-standing and well defined term in NI 51-102. Similarly, the exchange-based disclosure regime provides investors with greater certainty as to the disclosure they can expect from issuers listed on a particular exchange and a greater ability to evaluate investment decisions based on consistent disclosure schedules.

We further note that one advantage of the current exchange-based classification system is that issuers have the ability to choose which disclosure regime they prefer through selecting the exchange on which they wish to be listed. We also understand that the CSE is expected to introduce a senior issuer tier in the

near future. Should the CSA choose to adopt a size-based system, we reiterate that any test used to categorize issuers should be transparent and based on a metric that is objective and generally consistent across issuers. The metric should also be easily calculated by capital markets participants.

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.

The proposed alternative disclosure requirements are duplicative of requirements that are already imposed on issuers including the requirement to file a material change report and press release upon the occurrence of a material change and to file a press release announcing material information, per the timely disclosure rules of the TSX Venture Exchange and the CSE. Issuers listed on the CSE are also required to post to the CSE website a Monthly Progress Report (Form 7) each month disclosing, among other things, a general business overview and discussion of development of the issuer's business, expiry or termination of any contracts that have been previously announced and securities issuances. These disclosure requirements are to be satisfied on a timely basis and provide better information to the market as they are filed in real time. The proposed alternative disclosure is only required to be filed within 60 days of the end of the issuer's interim period for which financial statements and MD&A will not be filed. Material operational updates should be captures in these types of filings.

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

One additional concern with the Proposed Framework is that issuers would be required to retroactively file financial statements and MD&A for interim periods in which filings were not made if the issuer becomes an SEC Issuer or ceases to be a "venture issuer" in the middle of an annual period. Having to prepare retroactive filings will be burdensome to issuers and may also impact a venture issuer's ability to graduate to a non-venture exchange.

D. Questions Relating to Transition Provisions

13. Do you think the proposed transition provisions are sufficient clear? If not, how can we make them clearer?

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)?

Similar language was used in the transition provisions of National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* and has caused some confusion as to when the instrument will actually apply to an issuer. To the extent that the language of these provisions can be clarified, it would be greatly appreciated.

We suggest that a longer transition period (12 months) be adopted to provide issuers and their advisors with sufficient time to prepare updated and meaningful disclosure that is responsive to and compliant with a new annual disclosure statement.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Laura Levine,

on my own behalf and on behalf of

Simon A. Romano
Sean Vanderpol