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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
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-8122
Email: comments@osc.gov.on.ca

-and-

Me Philippe Lebel
Corporate Secretary
Autorité des marchés financiers
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comments – ***Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements Related to Financial Statement Requirements***

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We are writing in response to the Canadian Securities Administrators (the "**CSA**") Notice and Request for Comments – *Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements Related to Financial Statement Requirements* (the "**Notice**").

As partners of Goodmans LLP who practice corporate securities law, we work with numerous reporting issuers and other capital markets participants. We have played a leading role in assisting Canadian and non-Canadian companies in accessing the Canadian capital markets for many years and we support the CSA's initiative to reduce the regulatory burden on Canadian public companies to ensure Canada's public markets remain competitive with those in the United States and with private capital.

We are pleased to provide our views on certain of the proposed changes referenced in the Notice. These comments should not, however, be taken as the views of any of our clients or Goodmans LLP.

Set out below are our comments on certain proposed changes set out in the Notice (with the numbers corresponding accordingly).

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(4) The significance test for "primary businesses" should be a two-part test.

While we strongly support the harmonization of the "primary business" test across all members of the CSA, we believe that further modifications are appropriate. Specifically, we believe that the significance test for "primary businesses" should be a two-part significance test, similar to what is done under the business acquisition report ("**BAR**")[1] rules in order to ensure that the "primary business" test is only triggered for truly significant acquisitions at the 100% level or higher.

A One-Part Test Will Lead to Anomalous Results.

We have seen numerous examples where the application of a one-part test and in particular, the profit or loss test, leads to anomalous results. For example, where an acquired business was closely held, the prior owner(s) may have taken certain steps to suppress net income, such as through the payment of abnormal management fees or salaries or by maintaining high leverage. If the issuer does not intend to replicate these arrangements following closing of an acquisition, the significance of the acquisition under the profit or loss may be understated. Alternatively, if a prior owner operated a business with minimal cost structure or no leverage the significance of the acquisition may be overstated.

We also see examples where non-cash deductions lead to anomalous results under the profit or loss test by exaggerating the significance of an acquisition in relation to its economic or operational significance on an objective basis. This is particularly true in the real estate industry where net income is often suppressed due to depreciation expense.

Issuers Will Be Subject to Unnecessary Additional Financial Statement Disclosure.

Utilizing a one-part test will lead to issuer-level historical financial disclosure being required for acquisitions that are not truly significant. Often these financial statements are not available and either cannot be prepared (therefore requiring a time consuming and expensive exemptive relief process if an IPO is to proceed) or can only be prepared at significant time and cost to the issuer.

Our Proposal

Given the shortcomings of a one-part significance test, the "primary business" test should be harmonized with the BAR significance test. In implementing the changes to the significance test for a BAR, the CSA concluded that a two-part test to determine significance would not compromise investor protection and would continue to provide investors with historical financial disclosure for acquisitions where appropriate. In our view, the same rationale applies to the "primary business" test.

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[1] The BAR rules require that an issuer must disclose certain historical financial statements for an acquisition if at least two of the three significance tests (asset, investment and profit or loss) are exceeded.

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(5) A materiality threshold or coverage ratio should be introduced for REITs or other roll-up issuers that have not existed for three years (two years for venture issuers) to address the inconsistency between the treatment of different types of IPO entities.

We feel strongly that the same principles that apply to an evaluation of the "primary business" test should also apply to the evaluation of the financial statement requirements for predecessor entities under paragraph 32.1(1)(a) of Form 41-101F1 (the "**Predecessor Entity Requirements**"). We see no regulatory basis to require 100% financial statement coverage for issuers subject to the Predecessor Entity Requirements when all other issuers conducting an initial public offering are not held to this standard. Requiring 100% financial statement coverage under the Predecessor Entity Requirements imposes a significant burden on issuers. Although the Notice indicates that pre-filing procedures under NI 41-101 are available in situations where financial statements cannot be provided or the business owned by a predecessor entity is immaterial, the pre-filing process imposes significant additional costs and delay and creates uncertainty for issuers. From an investor perspective, as has been recognized for other issuers conducting an IPO and has been approved following numerous pre-filing processes for REITs or other roll-up issuers, some level of missing financial statement disclosure is not prejudicial to the public interest.

The Predecessor Entity Requirements can lead to significant inequities among issuers going public. For example, a non-venture issuer going public in September 2021 that was initially formed in October of 2018 would be considered under the Predecessor Entity Requirements (being formed within three years of the IPO) and require 100% financial statement coverage for acquisitions completed in 2018, 2019, 2020 and 2021. In contrast, if that same issuer was formed in August of 2018 (more than three years before the IPO), it would be subject to the primary business test and, assuming none of the acquisitions constitutes the issuer's "primary business", would only require financial statement disclosure for acquisitions that are significant acquisitions under Item 35 of Form 41-101F1. Further, for any acquisitions that are significant under Item 35, the issuer would have the benefit of much less onerous disclosure requirements for those acquisitions under Item 35. We feel that this inequity should be addressed with a construct that permits a level of missing financial disclosure similar to the regime for the "primary business" test.

In particular, entities that go public as a REIT are not treated fairly under the Predecessor Entity Requirements as the issuer entity for REIT IPOs is a newly formed trust entity and under the guidance proposed in the Notice, would be subject to the Predecessor Entity Requirements. As a result of this structure, 100% financial statement coverage is the default for REITs conducting an IPO. This result puts REITs at a significant disadvantage in conducting and IPO and can greatly increase the time and cost associated with an IPO.

Our proposals

For REITs or other similar entities conducting an IPO through a newly formed entity, the financial statement requirements under item 32 of Form 41-101F1 should look through the newly formed entity and consider the financial statement requirements against the properties or business owned

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by the IPO sponsor that will be acquired by the newly formed issuer at the time of the IPO. The financial statement requirements under Item 32 would then be considered on the basis of the "primary business" requirements described above (assuming the business had been owned by the sponsor for more than three years prior to the IPO).

For situations where the business going public has not existed for three years, we would propose that a sliding scale coverage ratio requiring a minimum level of financial statement coverage for each year leading up to the IPO be implemented. This approach would be similar to the approach taken by CSA members in evaluating applications for exemptive relief over the past decade.

The sliding scale would require higher levels of financial statement coverage for recent fiscal years and lower levels for older years. For example, the coverage ratio for a non-venture issuer[2] could be structured as follows:

- most recent fiscal year – minimum 70% coverage
- second most recent fiscal year – minimum 60% coverage
- third most recent fiscal year – minimum 50% coverage

We propose that the percentage of financial statement coverage in each year be calculated based on an asset test comparing the acquired business' assets as at the end of its most recent fiscal year prior to the date of the acquisition to the pro forma assets of the issuer at the time of closing the IPO. Other measures could be considered to calculate the percentage of financial statement coverage.

A 70% coverage ratio for the most recent fiscal year would align with the BAR requirements which trigger financial statement disclosure for completed or probable acquisitions that exceed the 30% significance test in Part 8 of NI 51-102. Further, a high level of coverage for the most recent fiscal year recognizes the importance of that information for investors. For the second and third fiscal years prior to the IPO, the sliding scale would allow a lower level of financial statement coverage recognizing that financial disclosure for acquisitions completed during those years has less relevance to investors.

We would also note that financial statements for those older years are often the most difficult for issuers to obtain or prepare and impose a significant burden on issuers conducting an IPO. As a result, a lower level of coverage for these years provides a significant benefit to issuers while not compromising investor protection.

We recognize that establishing a sliding scale test involves some complexity and would be happy to discuss further with members of the CSA to establish an approach on the Predecessor Entity

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[2] We would propose that a similar sliding scale coverage ratio be adopted for venture issuers covering the two-year annual period prior to an IPO.

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Requirements that works for all interested parties.

Thank you for considering our comments. Please contact any of the undersigned if you would like to discuss the above.

Very truly yours,

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