CANADIAN BANKERS ASSOCIATION

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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

c/o Ms Rosann Youck
Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

Ms Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Dear Sirs and Madames:

Re: National Instrument 51-102, Continuous Disclosure Obligations

The Canadian Bankers Association ("CBA") appreciates this opportunity to provide comments on the revised version of proposed National Instrument 51-102 ("NI 51-102") and the issues raised in the accompanying Notice of Request for Comments.

Our specific comments are as follows:

Filing of Financial Statements and MD&A
We strongly disagree with the position of the CSA concerning the concurrent filing of MD&A and financial statements. During the first three quarters of a fiscal year, most of our members complete their financial statements and MD&A at the same time, obtain board approvals and file the MD&A and financial statements concurrently. At year-end, however, the completion timelines are longer, resulting in most of our members' obtaining board approvals and being ready to file annual financial statements earlier than the annual MD&A. Issuers announce their results and release their financial information by press release consistent with market expectations and the legal obligation to disclose material information immediately. The regulators should not, in our view, preclude issuers from filing the related board approved financial statements on SEDAR at that time. However, if tied to the filing of MD&A, the filing of readily available financial statements will be delayed unnecessarily. In our view, therefore, a better requirement would be to allow the filing of the MD&A "as soon as possible after the filing of financial statements".

MD&A Form – "Off-Balance Sheet Arrangements"
Form 51-102F2 on Management's Discussion & Analysis requires the discussion of "off-balance sheet arrangements". The term, "off-balance sheet arrangements", is extremely broad and will be difficult to define.

US-listed issuers have to comply with the SEC's off-balance sheet arrangement rule. Therefore, we believe the proposed rules should be consistent with the SEC rules and if a definition is to be provided, it should not be different from the SEC's definition.

MD&A Form – Critical Accounting Estimates
Form 51-102F2 on Management's Discussion & Analysis requires an analysis of the issuer's critical accounting estimates. As the CSA is seeking consistency with the requirements in the US, we believe that the CSA should not finalize the Canadian equivalent until the US has finalized its own requirements. If the CSA were to finalize these requirements ahead of the US, it could lead to a marked departure from the CSA consistency objectives, should the US equivalent change before its finalization.

Delivery of Financial Statements – Non-Voting Shareholders and Debtholders
We would ask that the CSA amend the requirement to send annually a request form to the registered and beneficial owners of its voting securities, in order to make it clear that issuers are not required to send a request form (or the financial statements and related MD&A) to non-voting shareholders and debtholders.

"Householding" Rule
We also ask that the CSA consider the US practice of "householding" as a possible alternative for proxy circular distribution. We understand that in the US, pursuant to this "householding" rule, an issuer may deliver one annual report and proxy statement to all securityholders of record that share an address. This is permitted so long as (1) the issuer delivers one copy to the shared address, (2) the envelope is addressed to all the securityholders at that address as a group, (3) a separate proxy card for each securityholder is included, (4) the issuer includes an undertaking to deliver more copies upon request, and (5) the securityholders consent.

We understand there are two kinds of consent involved in this process:

> Affirmative Written Consent: where each securityholder affirmatively consents in writing to the delivery of one copy of the material. The consent must set out the duration of the consent, types of documents it applies to, procedures for revoking the consent and the issuer's obligation to send individual copies within thirty days after revocation; and
>
> Implied Consent: the issuer need not obtain affirmative consent if (a) the securityholder has the same last name and it reasonably believes that they are of the same family; and (b) sixty days' notice has been sent to the securityholders stating that only one annual report or proxy statement will be delivered to the shared address unless the issuer receives contrary instructions (and setting out other form requirements, such as how the securityholder can contact the issuer, etc.).

Our members receive many complaints from shareholders that do not understand why they receive more than one package. We believe adopting a US style rule would address this concern and also reduce costs for the issuer.

Proxy Circular Disclosure - Item 9 - [Form 51-102F5] - Equity Compensation Plans

We note that this disclosure would be redundant, since our members provide substantively similar disclosure in notes to annual financial statements. However, if the CSA considers that the disclosure is worth repeating in the context of an annual meeting, we think that the disclosure requirement should distinguish between equity compensation plans that involve an issue of shares from treasury and those that do not. We note that there are a number of plans that use purchases in the market and phantom units that are cash-settled only. We also believe that issuers should be permitted to refer readers to the corresponding note in their annual financial statements.

Stock option plans typically involve an issue of common shares from treasury and, in accordance with exchange rules, provide a limit on the number of common shares that may be reserved for issue on the exercise of an option. Other types of equity compensation plans have diverse structures and may involve a trust that purchases common shares in the secondary market for distribution over time to plan participants. In those plans, the concept of limiting the number of common shares reserved for issuance does not apply, as there is no new issue of common shares. The proposed disclosure requirement makes sense for the structure of stock option plans, but may not be appropriate for other types of equity compensation plans and would result in "Not applicable" being inserted in certain columns (e.g., column entitled "number of securities remaining available for future issuance.") We also note that if the requirement is not changed, there is the risk that the disclosure provided in response to this item could mislead a reader into erroneously perceiving that the disclosure provided related to new share issues under all equity compensation plans and mistakenly concluding that a company's share dilution is greater than it actually is.

Material Documents

The proposed requirement in Part 12 of NI 51-102 to file material documents, including "articles, by-laws, memorandum, governing indenture, partnership agreement or other constating documents", should be reconsidered. The requirement would impose burdens without any corresponding benefits.

Constating documents are available from other sources and are available to securityholders on demand. There are specific rules with respect to the contents of AIFs, prospectuses, proxy circulars and financial statements directed at providing investors with meaningful and useful information concerning the substance of constating and other material documents, if not the documents themselves. In fact, there is very little demand for these documents. We see no practical benefit in mandating additional SEDAR filings of material documents.

"More Than Fifty Securityholders"

Part 12.1(1)(e) requires the filing of "any other contracts" affecting securityholders of a class of security held by more than fifty securityholders. The Canadian Depository for Securities holds most securities issues. CDS' recordkeeping system does not enable an issuer to verify or obtain the number of beneficial shareholders of a security. Accordingly, for most securities issues, it would be impossible to know whether there are contracts affecting more than 50 securityholders and, therefore, whether the filing requirement has been triggered. We would suggest that this threshold be clarified for securities issues held by CDS.

Filing *Bank Act* Copies

We also would ask that Part 12.1(1)(a), which requires issuers to file copies of constating or establishing documents, be revised to clarify that banks are not required to file, as material documents, copies of the *Bank Act* provisions, as amended from time to time, that constitute the banks' charters. Section 13 of the *Bank Act* (the "Act") provides that the Act is the charter of each bank listed in Schedules I and II of the Act (the "banks"). The Act is publicly available, and the complete Act as amended from time to time consists of numerous amending documents that would offer no conceivable benefit as part of each bank's continuous disclosure record. A requirement for each bank to file the Act as a material document would place a needless and substantial administrative burden on the banks in preparing and filing a copy of the Act, and then keeping that filing up to date. This would clutter SEDAR as well.

Lengthy Document Summaries

In the alternative, the Instrument could be revised to permit issuers to file summaries of particularly lengthy material documents, rather than the entire document. This would give issuers flexibility with lengthy documents and would spare securityholders having to deal with material that is irrelevant and possibly confusing.

"Materially Affects..."

We also would suggest that guidance should be provided concerning the meaning of the phrase "materially affect the rights or obligations of securityholders", in Part 12.1(1)(e).

AIF Item 5.1(4) "Social and Environmental", Form 51-102 F2

The proposed AIF requirements deal with disclosing an issuer's social and environmental policies.

The purpose of such disclosure is unclear. We ask for further consultation **prior to implementation** if you are of the view that this requirement reflects a significant investor protection policy. Since information in the AIF is generally of a financial, operational and governance nature, the requirement inappropriately expands the scope of the AIF. Additional non-material information should not be required disclosure in a document such as the AIF which is expected to be subject to CEO and CFO certification and could lead to prospectus level liability for such information.

We note that, in accordance with the *Bank Act*, our members provide similar policy information in a Public Accountability Statement ("PAS") which is available to the public and posted on the banks' websites. Such a document is a more desirable means of communicating the type of policy information contemplated.

AIF Form 51-102F1

We question the value of some of the additional AIF disclosure requirements, that repeat disclosure that is already required under prospectus disclosure rules:

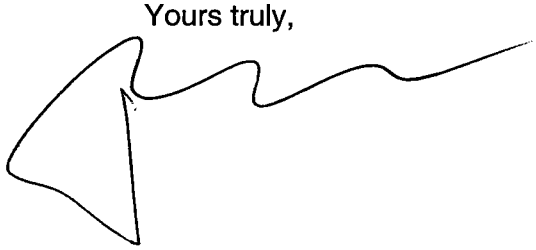
- Section 7.3 requires disclosure in the AIF of detailed information about outstanding ratings of the issuer's outstanding securities. The value of providing that information in the AIF, as at that point in time, is questionable, given that accurate and timely information is publicly available.
- The information required by sections 6.2 ("Dividends") and 7.1 ("General Description of Capital Structure") can be found in the notes to the annual financial statements and a cross-reference should suffice.
- The value of disclosing material contracts in the AIF, as provided in section 15.1, is not clear. We would refer again to our comments (above) concerning the requirements to file material contracts, in Part 12. If the requirement to disclose material contracts remains in the AIF, additional guidance would be helpful.

Disclosing Names and Interests of Experts in AIF

We question the benefit of the proposed requirements in Form 51-102F1, sections 16.1 and 16.2, to identify all experts and disclose all of their "direct, indirect or beneficial interests in any securities or other property" of the issuer, its associates and affiliates. There are specific rules with respect to the content of audited financial statements, prospectuses and information circulars aimed at providing investors with expert information that is meaningful in the context of the particular document (e.g., tax opinion in an offering document, incorporation of audited financial statements etc.) and statutory rights against the expert for the expert information. Imposing a requirement to name experts in an AIF will likely increase issuer costs, particularly if the issuer has to obtain consent from the expert simply to include the expert's name in the AIF.

We have appreciated the opportunity to express our views regarding the revised version of proposed National Instrument 51-102. We would be pleased to answer any questions that you may have about our comments.

Yours truly,



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