

By Email

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Canadian Securities Administrators C/O:

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AND:

The Secretary
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Re: CSA Consultation Paper 51-404 “Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers”

The Canadian Securities Exchange (“CSE”) welcomes the opportunity to comment on the consultation paper prepared by the Canadian Securities Administrators (“CSA”) with a number of proposals designed to reduce specific regulatory burdens for smaller reporting issuers in Canada. Although many of the considerations put forward by the CSA are not directly applicable to issuers listed on the CSE (as “venture issuers”, the CSE’s listed companies are already able to take advantage of a number of the measures proposed by the CSA), a few of the proposed measures merit a response from the perspective of the issuer community represented by the CSE.

The CSE has operated a recognized exchange for the trading of equity securities since 2004. The CSE currently lists 315 individual securities from approximately 300 issuer companies. Total market capitalization of the exchange exceeded \$4 billion last year for the first time. Companies listed on the CSE have raised more than \$500 million in the last 12 months, and are on pace to significantly exceed this amount for calendar year 2017. The companies are, by and large, early stage enterprises raising capital from the public markets for the first time. They have typically opted to raise money from the public markets in preference to private alternatives for a number of reasons, chief amongst them: cost of capital, control of the enterprise, liquidity for shareholders and the ease of raising additional funds. As smaller enterprises, these issuers are keenly concerned about the costs and management burden entailed in maintaining their status as reporting issuers and of raising additional capital. In preparing this submission, we have consulted with a number of issuers, and professional advisors, including lawyers, accountants, dealers and corporate finance professionals.

As many of the proposed measures would not apply, the CSE will restrict its comments to specific proposals that bear directly on the CSE issuer community.

Part 2.1 Extending the application of streamlined rules to smaller reporting issuers (Consultation Questions 4, 5 and 6)

The CSE submits that eligibility for streamlined reporting standards should not be determined by what exchange the issuer is listed on. There is no basis to assume that all issuers on the CSE will be small- and micro-cap companies in perpetuity; nor is there any basis to assume that other exchanges would always list larger capitalization securities. Instead, a common threshold across all exchanges could be established based on other relief provided to issuers in securities law and related policies. For example, Part II of National Policy 46-201 affords relief for issuers from the escrow requirement for new offerings if they exceed \$100 million in market capitalization.¹ Given that the consultation paper identifies the median market capitalization of a TSX-listed issuer as \$112 million as of March 31, 2017, the \$100 million number is a reasonable threshold to start the discussion.

Measures could be introduced to alleviate the risk of companies oscillating back and forth across the threshold from quarter to quarter. Instead of using the closing price on the last day of the quarter to do the capitalization calculation, an average price could be used as a reference point. Volume weighted average price for a month prior to the close of the quarter, for example, would limit the effect of short term price moves at the end of a quarter. It would also ensure that companies would approach the end of a quarter with assurance of which side of the selected threshold they will fall. A buffering period could also be provided: a company should be able to elect, for example, having exceeded the \$100 million threshold, to maintain their “venture issuer” status for reporting purposes for at least the remainder of the calendar or fiscal year. To ensure that the investing public is aware of which reporting regime the issuer is following, issuers should be required to identify whether they are reporting as “exempt” or “venture” companies.

Part 2.3 Reducing ongoing disclosure requirements (Consultation Questions 23 – 26)

The CSE and all of the stakeholders it consulted in preparing this submission are unified in their opposition to the proposal to permit semi-annual financial reporting. The CSE believes that the financial position of a small capitalization company is often the single most relevant piece of information for investors; reducing the timeliness and quality of this information will likely deter investors from investing in these companies. This change would likely lead to an increase in cost of capital for affected issuers. We should also compare the burden on private companies: if these companies have outside investors, they are usually required by contract to report financials on a monthly basis. The burden on the public company is by comparison, considerably lower. The CSE submits that it would be unwise to permit any public issuer to provide their financial statements on a less frequent basis than currently.

¹ Part II s2.2(1)(a) includes the exception for an exempt issuer, as defined in section 3.2, which includes 3.2(b) “has a market capitalization of at least \$100 million. (in calculating market capitalization, multiply the total number of the securities of the same class as the securities offered in the IPO, which are outstanding on completion of the IPO, by the IPO price).”

Part 2.4 Eliminating overlap in regulatory requirements (Consultation Questions 27-30)

The CSE does support efforts to streamline MD&A reporting for all public issuers. There is the potential for considerable overlap and redundancy among the financial reports, Annual Information Forms and the current MD&A requirements. Where possible, these areas of overlap should be identified and eliminated.

Part 2.5 Enhancing electronic delivery of documents (Consultation Questions 31-33)

The CSE supports efforts to reduce the costs of providing shareholders with required information through electronic sources in place of hard copy paper delivery. While shareholders should, for the time being, be able to request the provision of paper materials, we expect that the vast majority of shareholders would prefer to receive these materials in electronic form. Posting a number of these materials in a central place with links provided to shareholders should be sufficient for most, if not all, purposes.

We again thank the CSA for the opportunity to comment on these important issues, and would welcome the opportunity to further discuss these proposals at the convenience of the member regulatory organizations.

Yours truly,

A handwritten signature in blue ink, appearing to read "Richard Carleton".

Richard Carleton
CEO
Canadian Securities Exchange