Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

July 28, 2017

The Secretary
Ontario Securities Commission
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Me Anne-Marie Beaudoin
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Cc - Canadian Securities Administrators (CSA):
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

Dear Secretary and Me Beaudoin,

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

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on CSA Consultation Paper 51-404 (the Paper), published April 6, 2017. CIRI membership represents over 200 non-investment fund reporting issuers with a combined market capitalization of $1.4 trillion. More information about CIRI is provided in Appendix 1.

General Comments

CIRI appreciates the opportunity to review the Paper and agrees in principle with the objectives of the CSA to reduce the regulatory burden on reporting issuers without compromising protection for investors or impacting the efficiency and transparency of Canada's capital markets. CIRI believes in high quality reporting and feels

that duplicative and unnecessary reporting requirements contribute to lengthy, less meaningful disclosure. The emphasis should be on the quality of reporting, not the quantity, and how good disclosure can contribute to efficient and transparent capital markets. A reduction in reporting requirements, particularly moving from interim reporting to semi-annual reporting, moves markets towards a longer-term view, one that allows management to focus on delivering sustainable value creation for investors over the longer term.

CIRI will address each of the five regulatory options proposed in the Paper but will speak to only those consultation questions where CIRI believes it has expertise and experience. CIRI has surveyed its members on several of the issues raised in the Paper and cites member views in its responses where applicable.

Potential Options to Reduce Regulatory Burden

2.1. "Extending the application of streamlined rules to smaller reporting issuers"

CIRI believes that streamlined rules are appropriate for smaller issuers as they generally have less complex capital structures and operating frameworks. In addition, smaller issuers typically have fewer resources to devote to regulatory compliance and disclosure matters. Smaller issuers listed on non-venture exchanges would benefit from similar reduced regulatory reporting requirements applied to issuers listed on the venture exchange. CIRI survey respondents overwhelmingly agreed (89%) that reduced regulatory requirements should be made available to more small reporting issuers.

Consultation Question 4. *Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing?* **Consultation Question 5(a)**. *If we were to adopt a size-based distinction, what metric or criteria should be used?*

The CSA has introduced recent policy initiatives that include tailoring disclosure and other requirements to alleviate regulatory burden for venture issuers. Given that listing status is not defined by issuer size, it seems reasonable to select one or more alternative size-based metrics to determine what constitutes a smaller reporting issuer, independent of exchange. This could result in a desirable expansion of the number of issuers subject to reduced reporting requirements. This is a valid strategy for reducing regulatory burden across capital markets.

As for metrics by which to determine issuer eligibility for smaller issuer status, over 70% of CIRI survey respondents identified market capitalization as the most appropriate metric, followed by revenue (46%) and assets (33%). CIRI recognizes that market capitalization, especially for smaller issuers, can vary widely from period-to-period, particularly in sectors characterized by high growth or fluctuating product pricing or factors external to their operations. This would impact those issuers' eligibility for reduced regulatory requirements from year-to-year leading to inconsistent reporting to investors. If market capitalization is used, consider whether some mechanism such as a 12-month rolling average could be used to determine the cut-off for a smaller reporting issuer thereby helping to reduce volatility. Alternatively, multiple metrics to determine eligibility could be considered. This option was supported by one-third of respondents to the CIRI survey.

2.2. "Reducing the regulatory burdens associated with the prospectus rules and offering process"

Given the extensive time and resources required of issuers and their advisors with regard to the prospectus process, CIRI supports ways to reduce the regulatory burden associated with existing prospectus rules and the offering process. However, consideration should be given to the difference between prospectus requirements for an initial public offering versus a listed issuer's secondary offering given their pre-existing continuous disclosure record.

Consultation Question 7. *Is it appropriate to extend the eligibility criteria for the provision of two years financial statements to issuers that intend to become non-venture issuers?*

CIRI does not support extending the eligibility criteria allowing non-venture issuers to provide two years of financial statements. The majority of CIRI survey respondents (61%) were not supportive of more issuers being exempt from providing audited financial statements for the second and third most recently completed financial years in the IPO prospectus.

Consultation Question 7(c). *Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required?*

If the CSA deems it appropriate to extend the eligibility criteria for the provision of only two years of audited financial statements to issuers that intend to become non-venture issuers, CIRI believes that a threshold or size-based criteria should be applied. A majority of CIRI survey respondents (60%) agreed that this approach is appropriate. CIRI members suggested that pre-IPO revenues would be an appropriate criteria to use in determining the threshold to be applied for this exemption. In addition, the CSA may also consider debt/equity levels of the issuer or applying the same criteria used to determine if an issuer meets the definition of a "smaller issuer", as discussed above under Consultation Question 4.

2.3(b) "*Reducing disclosure requirements in annual and interim filings*"

CIRI supports reducing the volume of information required in annual and interim filings to focus on key information that the reporting issuer's investors and analysts use and need.

Consultation Question 21. *Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision?*

CIRI is in favour of removing the detailed discussion of prior period results from management's discussion and analysis (MD&A) given that this information is readily available in the MD&A for the prior period. This view is supported by CIRI survey respondents with the majority (67%) indicating that detailed discussion of the prior eight quarters should be eliminated from interim reporting. This may help to focus investor attention on results achieved in the most recent reporting period. CIRI realizes that such discussion would be warranted in the case of a material change.

CIRI and our members believe it can be valuable for a summary of prior quarter results to be included in interim reporting documentation in order to assist readers to readily assess possible longer-term trends, cyclical impacts or the effects of seasonality on issuer results.

2.3(c) "*Permitting semi-annual reporting*"

CIRI believes that allowing issuers the option to report semi-annually should be seriously considered for all issuers. While the effort and resources required to provide accurate and timely financial and operational results varies widely depending on each organization's complexity, all reporting issuers would inevitably save time and costs by reporting semi-annually rather than quarterly. Of course, issuers must still meet the existing requirements for reporting material changes and fully disclosing material information in a timely manner.

Consultation Question 24. *Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?*

CIRI and the majority of survey respondents (74%) agree that reporting semi-annually instead of quarterly should be an option available to all issuers. This would allow management to focus more resources on the business by eliminating the effort and cost involved in preparing quarterly reports. This also allows issuers to focus increasingly on long-term strategy and performance rather than allocating scarce resources to reporting of short-term results.

Short-termism, cited as an issue by Focusing Capital on the Long Term (FCLT) Global among others, found that 61% of executives and directors say that they would cut discretionary spending to avoid risking an earnings miss, and a further 47% would delay starting a new project in such a situation, even if doing so led to a potential sacrifice in value.[1] Moving to semi-annual reporting would free up more issuer resources, time and capital, to deliver sustainable value creation for investors over the longer term.

Semi-annual reporting has existed or been adopted successfully in a number of other jurisdictions such as Australia, Germany and the UK and they should be looked at as examples.

Consultation Question 26. *Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?*

If issuers feel that they need to communicate with investors more frequently than semi-annually, CIRI and the majority of CIRI survey respondents (64%) believe that they should have the option to provide quarterly highlights for Q1 and Q3 rather than a quarterly report complete with financial statements and MD&A. This quarterly highlights document should be somewhat prescriptive in nature in order to ensure consistency from period-to-period. We believe this type of interim disclosure will help investors, analysts and other stakeholders by presenting a more focused view of key metrics and will reduce repetition and redundancy.

For over 25 years, issuers in Australia have reported semi-annually. Issuers in the oil & gas and mining industries are required to issue production reports that are prescriptive in nature in Q1 and Q3 while many other issuers choose to publish trading or market updates that are non-prescriptive in nature in Q1 and Q3. The metrics in these non-prescriptive reports are unaudited.

Since 2014, issuers in the UK are only required to report on the half and full-year. However, many issuers (85%) still choose to use some variant of quarterly reporting, of which 10% still publish interim management statements while 13% have stopped formal quarterly reporting entirely. For those in between, the majority publish trading statements that include unaudited metrics.[2] A trading statement is an announcement that has limited, but sometimes very important, disclosure. The essential part of a trading statement is an update on an issuer's revenues (i.e. sales numbers, sales trends). It is not uncommon for companies to reveal some other performance indicators but it would not be usual to reveal any profit numbers unless a surprise requires that the market be given a profit warning. This allows issuers to report brief yet meaningful updates to their stakeholders without the effort and cost that is involved in preparing interim reports. This approach could be a viable option for the Canadian market.

The switch to semi-annual reporting has been well received by the investment community in the UK. In fact, The Investment Association's "members widely referred to quarterly reporting as a distraction that shifted company resources away from long-term strategic considerations. In particular, members expressed concern at the potential for the practice to promote myopic behaviour by senior management by channeling its focus on short-term fluctuations in performance, resulting in the risk of it managing the market, rather than managing

[1] *Finally, Evidence That Managing for the Long Term Pays Off*, Dominic Barton, James Manyika and Sarah Keohane Williamson
[2] *Interim Management Statements*, The Investor Relations Society

the business."[3] Their "members prefer that companies adopt longer term horizons in reporting to shareholders" and they call "on companies to stop issuing quarterly reports and quarterly earnings guidance in favour of greater attention being given to longer-term performance and strategic issues."[4]

In 2015, modifications were made to securities law in Germany to allow all issuers to report semi-annually. Under exchange rules of the Deutsche Bourse, issuers in the Prime Standard were required to issue brief reports for Q1 and Q3. These reports are more contextual in nature and, if metrics are provided, they are unaudited.

Based on research of four indexes conducted by Deutscher Investor Relations Verband (DIRK), 43% of issuers adopted the brief report format. Over half (55%) of investors and analysts indicated that they found the change in reporting either positive or neutral while almost all (90%) indicated that they were not missing any information as a result of the change in reporting.[5] The experience in the UK and Germany provide strong support for the CSA to consider revising the mandated timeframes for reporting.

2.4. "*Eliminating overlap in regulatory requirements"*

CIRI has been a strong advocate of reducing regulatory overlap and continues to believe that a review of areas of overlap is worthwhile. CIRI, therefore, supports removing overlapping requirements without compromising the level of disclosure deemed necessary by the issuer's investors and other stakeholders. Overlapping regulatory requirements can lead to inconsistent disclosure and possible confusion among the users of such disclosure.

Consultation Question 29. *Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document?*

CIRI survey respondents strongly agreed (91%) that the MD&A, AIF and financial statements should be consolidated into one reporting document. Such a consolidation would eliminate a great deal of the redundancy that exists under current reporting requirements. In addition, it would eliminate duplication of effort at the issuer where multiple teams often gather the information required in these overlapping documents. The resulting document would be a concise, cohesive information source for the issuers' stakeholders, making it easier to find desired information.

In addition to eliminating such duplication, perhaps a more thorough review by the CSA would help to assess the value of some of the information currently requested in the AIF; information that investors and stakeholders may not find to be truly helpful with regard to their investment decisions.

2.5. "*Enhancing electronic delivery of documents*"

CIRI continues to support the concept of improved electronic delivery of documents. Issuers can achieve considerable cost savings if they can significantly reduce the volume of printed and mailed documents. The use of notice-and-access has been welcomed by reporting issuers who have been able to employ this method. The recently proposed changes to business corporations' legislation to minimize the restrictions on the use of notice-and-access for specific classes of reporting issuers (i.e. CBCA companies) will, if enacted, allow more issuers to be able to take advantage of it.

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[3] *Public Position Statement: Quarterly Reporting and Quarterly Earnings Guidance*, The Investment Association
[4] *The Investment Association Long Term Reporting Guidance*, The Investment Association, May 2017
[5] *Die Quartalsmitteilung der Zukunft*, Deutscher Investor Relations Verband (DIRK), 2016

Consultation Question 32(a). *Since the adoption of the "notice-and–access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?*

A substantial majority (72%) of CIRI survey respondents indicated that they continue to incur significant costs (both direct and indirect) associated with printing and mailing under current securities regulations and legislation. The recently proposed changes under Bill C-25 will, if enacted, assist those CBCA companies that previously were unable to implement notice-and-access. We urge regulators and government to modify existing regulations as required in order to provide all issuers the ability to utilize notice-and-access thereby ensuring consistency across all jurisdictions and recognizing today's reality of electronic communication.

Consultation Question 32(b). *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery?*

CIRI survey respondents were divided on whether issuers should be allowed to deliver disclosure documents electronically to investors without prior notice and consent. However, CIRI survey respondents very strongly (89%) indicated that under notice-and-access, investors should be required to opt in for the delivery of paper documents as opposed to having to opt in for delivery of electronic documents.

Enhancing Share Ownership Disclosure

Establishing rules and regulations that allow issuers to focus on the long-term has long been advocated for by FCLT Global among others. The organization believes that asset managers should engage with issuers in order to create value over the long term. For this to be efficient and effective, it would be beneficial for there to be greater transparency of share ownership information so that issuers can proactively identify and engage with investors.

CIRI continues to seek ways to work with regulators to enhance issuer-shareholder engagement through improved disclosure of shareholder identification and ownership of shares of reporting issuers. CIRI believes that this issue is key to establishing a credible marketplace and is important to maintain and improve a fair and efficient Canadian capital market while protecting investors by fostering increased transparency. The value for investors that can be created through the reduction in the regulatory burden can only be enhanced by increased transparency of share ownership that generates increased communication and understanding between reporting issuers and their ultimate owners.

CIRI takes the position that good governance practices can be developed through open dialogue between reporting issuers and their shareholders. Such dialogue is essential in order for issuers to hear and understand investor issues and concerns and to address such concerns. This two-way communication can only be fully effective if a mechanism exists for issuers to identify their shareholders.

The importance of share ownership transparency through disclosure has been recognized in other global jurisdictions such as the United Kingdom and Australia. Shareholders in both these countries, which have capital markets not dissimilar to Canada, are required to make their shareholder positions known, to the benefit of all shareholders. In the UK, under corporate law, an issuer has the legal right to request disclosure of the identity of any person with an interest in their shares, which allows the issuer to identify their beneficial owners. Disclosure requests by issuers can be made at any time and are subject to penalties for non-compliance.

In Australia, an issuer has the legal right under corporate law to obtain disclosure of their beneficial owners through the share register, which is also available for public review. If shares are held as a nominee by an intermediary on behalf of one or more beneficial owners, the issuer can request the nominee disclose the relevant interest of the underlying investors. Persons who contravene disclosure rules are liable to compensate a person for any loss or damage the person suffers because of the contravention, unless they can prove inadvertence or mistake or that they were not aware of a relevant fact or occurrence. Issuers are required to maintain a register of the resulting disclosed interests, which is open for public inspection.

CIRI is aware that capital markets are increasingly international in nature and that the global interconnectedness of markets continues to evolve and increase. The increasing mobility of capital has created a parallel need for improved harmonization and global coordination of financial market regulation. CIRI believes that such harmonization should extend to the improved disclosure of share ownership positions among Canadian shareholders and that the CSA may wish to consider what regulatory initiatives may be appropriate considering the situation in other global markets such as the UK and Australia.

The reality is, share ownership information is so important to issuers that they pay service providers to identify their shareholders. However, as a result of our disclosure rules in Canada, the data is largely flawed, always outdated and costly to procure. For some issuers, this cost is too much to bear and so there is inequality among issuers' ability to identify their shareholders.

In addition, CIRI believes that there is inequality or at best an inconsistency regarding shareholder disclosure requirements that also represents a lack of transparency in capital markets. Specifically, shareholders in Canada are not required to disclose their ownership positions until they have accumulated more than 10% of a reporting issuer's issued and outstanding shares. However, shareholders, either singly or as a group holding 5% of shares have the right to requisition a meeting of shareholders while the reporting issuer does not have the right to know the identity of these requisitioning shareholders. This seems to CIRI to represent a fundamental disconnect.

CIRI has been pleased to provide the CSA with its comments regarding its proposed options to reduce regulatory burdens in the public marketplace. Should you wish to discuss this submission further, please let me know.

Yours truly,

Yvette Lokker
President & CEO

Canadian Investor Relations Institute
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APPENDIX A

The Canadian Investor Relations Institute

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined

Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include: Human Resource and Corporate Governance; Audit; Membership; and Issues.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in over 200 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of investors and shareholders in capital markets outside of North America. The President and CEO of CIRI has been a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.