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July 28, 2017

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 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
Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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

We are writing in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Consultation Paper"). We strongly support this initiative to reduce undue regulatory burden under Canadian securities legislation associated with the capital raising and continuous disclosure of reporting issuers. In addition to reducing disclosure that is ineffective or unnecessary for investor protection, we believe there are a number of significant process changes that could be modernized to reduce the regulatory burden associated with the capital formation process.

Our comments below address some, but not all, of the potential regulatory initiatives identified in the Consultation Paper. For ease of reference, we have used the same numbering (for headings and questions) used in Part 2 of the Consultation Paper. Our comments are, by necessity, at a high level and incomplete due to the wide-ranging and general nature of these potential initiatives. While we have provided a number of specific examples, these examples are not intended to be exhaustive. We will be in a position to provide more specific and comprehensive feedback as details are provided for the rule proposals associated with these initiatives.

2.1 Extending the application of streamlined rules to smaller reporting issuers

In adopting any changes to the current "venture issuer" model, the CSA should also give consideration to the treatment of debt-only issuers (regardless of their size). Debt-only issuers may currently avail themselves of the abbreviated disclosure obligations, and extended reporting deadlines, that are available to venture issuers by virtue of not having an exchange listing. To the extent "venture issuer" eligibility is amended, we think it is still appropriate to afford reporting accommodations to debt-only issuers, particularly those who initially issued their outstanding debt securities by way of a private placement and/or (following their issuance) became a wholly-owned subsidiary of an ultimate parent (reporting or not) as a result of a going-private transaction[1]. In those circumstances, the type of reporting that a debt security holder should expect is the reporting that the issuer agreed to provide holders by virtue of the reporting covenant in the indenture applicable to the debt security. An issuer should not be compelled to redeem its outstanding debt securities at a premium (or guarantee those securities and provide associated credit supporter type disclosure) merely to avoid additional statutory reporting obligations that were not bargained for in that reporting covenant.

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

(a) Reducing the audited financial statement requirements in an IPO prospectus

Under U.S. securities legislation, certain issuers are permitted to file a registration statement in connection with an IPO offering with only two years of audited financial statements. We think the CSA should consider allowing issuers this same option in their Canadian prospectus when conducting a concurrent initial public offering in Canada.

[1] Notably, in a going-private scenario, holders of debt securities likely had an option to exit their investment pursuant to a mandatory "change of control" offer.

(b) Streamlining other prospectus requirements

Question #10 - Should other prospectus disclosure requirements be removed or modified, and why?

There are a variety of prescribed prospectus disclosures that could be eliminated or modified without adversely affecting investor protection. Some of the unnecessary disclosure stems from the over-inclusive, prescriptive nature of the prospectus forms, requiring disclosure in all circumstances even where the type of disclosure prescribed would not be material for many or most issuers. In this initiative to streamline prospectus disclosure to that which is meaningful to investment decisions, we generally suggest that the CSA take a more principles based approach with certain categories of disclosure in lieu of a 'one size-fits all' approach, thereby requiring disclosure only where the issuer and its underwriters have determined it to be material in the circumstances. In addition, we believe significant efficiencies could be realized (without impairing investor protection) by streamlining the prospectus clearance process and modifying or removing some of the associated filing obligations.

Short Form Prospectus Requirements. We are of the view that efforts to streamline the short form prospectus requirements and process should be given priority over amendments to the long-form requirements. For efficient capital markets, it is critical to minimize the time necessary to prepare and clear a short form prospectus. The disclosure record and seasoning of many reporting issuers that are eligible to use the short form offering process should provide regulators and the financial markets the comfort necessary to afford these issuers a more streamlined short form prospectus regime. For suggestions specific to the short form prospectus requirements, see our response to consultation question #11 below.

Confidential Filings. In the context of a Canadian IPO, we submit that an issuer should be entitled to confidentially pre-file one or more drafts of its preliminary prospectus for non-public review. Earlier this month, the U.S. Securities and Exchange Commission (the "SEC") extended this accommodation for draft registrations statements filed to register U.S. IPOs, as well as initial filings to register follow-on offerings within the following year, without regard to the size or residency of the issuer. A confidential review process should make the Canadian initial public offering process more attractive to all first time issuers as it allows them the flexibility to address comments of the securities regulators outside of public view.

Listing Representations. Prohibitions on listing representations should be modified to allow issuers to state that application will be made to list the offered securities, without having previously made such application or obtaining a prior consent, if the issuer already has a listed class of securities on the relevant exchange. As a timing matter, making a prior application can be impractical and obtaining a prior consent may be equally (or more) impractical and is an unnecessary added expense.

(c) Streamlining public offerings for reporting issuers

(i) Short form prospectus offering system

Question #11 - Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

Potential Disclosure Modifications. There are a variety of disclosures prescribed by Form 44-101F1 that could be eliminated or modified without adversely affecting investor protection. Taken as a whole, we think these changes would result in a significant reduction in the time and expense of preparing a short form prospectus. As noted in the Consultation Paper, price range and trading volume statistics are generally available and should not be mandated prospectus disclosure. Consider whether the mandated prospectus disclosure of credit ratings (Item 7.9 of 44-101F1) should also be eliminated or modified[2]. Rather than mandating this disclosure, it could be left to the issuer and its underwriters to assess whether credit rating disclosure was appropriate or necessary in order to ensure the prospectus provides full disclosure of all material facts. In circumstances where a credit rating is disclosed, Item 7.9 of 44-101F1 could instead require the associated disclosure (in Item 7.9(1)(c) to (g)) *only* to the extent it is not otherwise addressed in the issuer's AIF and is material to an understanding of that credit rating. Consider also whether to scale back the required disclosure in respect of prior sales. Some of the information provided may not be meaningful to prospective purchasers (*e.g.,* shares issued on the exercise of previously granted options) or may be adequately addressed through existing disclosure in the issuer's MD&A or financial statements. Consider whether prior sales information is necessary at all for issuers offering a highly-liquid security.

More significant (from a burden perspective) is the earnings coverage ratio disclosure mandated by Item 6 of 44-101F1. Subject to feedback that you receive from investment dealers, we recommend removing (or at least modifying) the prescribed earnings coverage ratio disclosure. Our understanding is that a typical investor in debt securities would not rely on the prescribed calculations for an investment decision. They would instead calculate coverage using EBITDA or similar non-GAAP measures, and may instead (or in addition) rely on other financial metrics to assess the credit. Further, where there are a number of events requiring pro forma adjustment, the prescribed calculation (and associated disclosure) can be complicated and, ultimately, may not be appropriate. In some circumstances, the pro forma adjustment is not determinable at the time of filing and, as a result, must be the product of estimation or assumptions *(e.g.*, a make-

[2] We understand that there is no equivalent disclosure obligation under U.S. securities legislation (for U.S. prospectuses or annual reports) and credit rating disclosure is not voluntarily included in U.S. prospectuses as this would require a corresponding consent of the relevant rating agency to be filed with the SEC that would expose the agency to potential liability as an 'expert'.

whole redemption that is to be priced on a future treasury yield and applying an assumed currency exchange rate and redemption date). Further, because Item 6 prescribes adjustment only for the issuance or retirement of other financial liabilities to the extent the issuance / retirement was "since the date" of the relevant financial statements, the prescribed measure could be misleading where a significant financial liability was issued or retired within the relevant period (as opposed to after the period end).

We also recommend modifying the underwriting conflict requirements of NI 33-105, and associated disclosure specified in Appendix C, to more clearly align with its policy objective. The absence of a bright line test for relationships that would make an issuer a "connected issuer" has resulted in over-disclosure of the relationships between an issuer and investment dealers without regard for whether those relationships would in fact lead a reasonable prospective purchaser to question their independence. Further, the required disclosure extends beyond what is material for this determination and, in some cases, does not clearly align with its objective. For example, if the "connected issuer" relationship is because of indebtedness, Item 6(e) requires disclosure of the "extent to which the financial position of the issuer or selling securityholder or the value of the security [for the indebtedness] has changed since the indebtedness was incurred." We assume this is intended to identify only changes that are material and adverse and, as a result, bear on the question of the dealer's independence – *i.e.*, the changes may reasonably be expected to impair that dealer's ability to recover on the indebtedness. However, even with such a qualifier, the disclosure obligation could prove impractical in the absence of any current valuation work.

Reduce Associated Filing Burdens. In addition, the CSA should consider removing a number of burdensome filing obligations that are prescribed by Part 4 of NI 44-101. Key among these is the personal information form ("PIF") filing[3]. To the extent PIFs are required after an issuer's IPO, it should be adequate for those PIFs to be cleared in the ordinary course by the stock exchange on which the issuer's securities are listed. It is not necessary that they also be cleared by Canadian securities regulatory authorities. Obtaining and clearing the necessary PIFs and/or obtaining PIF confirmations concurrently with a short form prospectus filing can pose a substantial timing issue. The launch or pricing of that short form offering could be delayed due only to a minor administrative error or omission in a PIF, a common occurrence due to the length of the form and the short window in which it is to be completed. Further, the abbreviated window for a short form prospectus review may provide inadequate time for staff to adequately vet any substantive issues (whether apparent or real) arising in the context of a PIF review. To the extent the CSA feels it necessary that they continue to clear PIFs, issuers should be entitled to clear PIFs in advance and outside of the context of a short form prospectus filing. No purpose is served by requiring those PIFs to be filed (or confirmed for their currency) concurrently with the clearance of a short form prospectus[4]. Further, the requirement to confirm the currency of a PIF

[3] No equivalent filing is required under U.S. securities legislation.

[4] Notably, an issuer can mitigate the risk of potential delay and reduce the frequency of PIF filings / updates through the use of a shelf prospectus, which (as a practical matter) require that PIFs be confirmed or refreshed, as applicable, only once every 25 months.

within 30 days of filing should be extended to at least 90 days so that it can be efficiently integrated with an issuer's quarterly disclosure controls and procedures. Consideration should also be given to removing other filing obligations that simply add to the prospectus related paperwork[5].

Consents of Qualified Persons. The CSA should consider limiting the requirement to file consents ("QP consents") of authors of technical reports ("Author QPs") in connection with the filing of short form prospectuses and prospectus supplements. The technical report for each material property of an issuer and the names of the QPs who prepared the technical report must be set out in an issuer's annual information form which makes the Author QPs "experts" when an AIF is incorporated into a prospectus. As a result, consents must be obtained from each Author QP in connection with each filing of a short form prospectus or prospectus supplement,[6] even where the prospectus disclosure supported by the portion of the technical report written by an Author QP is not material in the context of the issuer. Obtaining QP consents can be a major impediment to the timely execution of a bought deal or a shelf prospectus take-down, particularly in the context of a multi-mine issuer, where internally prepared technical reports with many contributors may result in a significant number of Author QPs. In these circumstances, unlike where an engineering or geoscientific company employed the Author QP, there is no alternative form of consent permitted if the Author QP is no longer employed by the issuer. Accordingly, an issuer must seek relief from the requirement to file a QP consent where the Author QP cannot be located or no longer cooperates with issuer. A further consequence of requiring QP consents is that it often forces an issuer to disclose the potential for an offering to its Author QPs well prior to public announcement of the transaction. We also question the benefit of a QP consent where the prospectus does not include an extract from the technical report. As a result, we believe that the CSA should consider modifying the QP consent requirement to address these issues. In lieu of requiring a QP consent in connection with the filing of a short form prospectuses of a producing issuer, the CSA should consider whether it is sufficient that one or more qualified persons (a "Disclosure QP") has approved the disclosure in that prospectus as required by NI 43-101[7]. To the extent that the CSA still feels it necessary that a QP consent be provided, we propose that the producing issuer should have the option of providing a consent of a Disclosure QP (which would need to be modified) rather than the consent of Author QPs. Alternatively, the CSA could amend the consent rules to clearly permit

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5 For example, we suggest removing the requirement for manually signed certificate pages (and corresponding Form 6s). Generally speaking, requiring any manually signed documents poses an unnecessary burden.

6 Other than a prospectus supplement filed in the period between filing the base shelf prospectus and the first subsequent annual information form.

7 Currently, section 2.1 of NI 43-101 requires that all disclosure of scientific and technical information made by an issuer concerning a mineral project on a property material to the issuer must be (a) based upon information prepared by or under the supervision of a qualified person, or (b) approved by a qualified person. Section 3.1 of NI 43-101 further requires that written disclosure contain the name and the relationship to the issuer of such qualified person. The approach discussed above would necessitate that, for disclosure of scientific and technical information in a prospectus, a qualified person must approve the disclosure.

an issuer to elect to file QP consents together with its annual information form such that those consents would not be required also at the time of filing any short form prospectus or prospectus supplement.

Narrow Focus of Prospectus Review. The CSA should consider streamlining the short form prospectus review process such that it is focused on disclosure specific to the particular offering and not on the issuer's existing continuous disclosure record (absent manifest error). From a timing, efficiency and policy perspective, any review of an issuer's continuous disclosure should be performed over the course of the year. For the reasons noted in response to Question #13 below, we submit that there is no longer a strong policy rationale for triggering this review merely by virtue of a short form prospectus offering, particularly in the case of seasoned issuers that are well-known in the financial community.[8] On a related note, the CSA should consider circumstances in which a preliminary receipt could be automatic, or would not be required, in order to allow underwriters to immediately proceed with soliciting offers for a marketed public offering.

Question #12 - Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

We do not think it is appropriate to extend the availability of the short form prospectus offering system to reporting issuers that are not currently eligible due to the absence of a current AIF.

(ii) Potential alternative prospectus model

Question #13 - Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

> ***(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?***
>
> ***(b) What types of investor protections should be included under such a model (for example, rights of rescission)?***
>
> ***(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?***

As noted elsewhere in this letter, there are many options available for streamlining the public offering process in Canada that we strongly support. We also believe conditions are right to adopt an alternative prospectus model that recognizes advancements in the quality of Canadian continuous disclosure stemming from regulatory initiatives adopted since the early 2000s to improve the Canadian reporting framework. These initiatives (including requirements around

[8] Notably, an eligible issuer may mitigate the risk of delay from continuous disclosure review at the time of an offering by conducting its prospectus offerings by way of a shelf prospectus.

establishing, evaluating and certifying ICFR and DC&P), when coupled with statutory secondary market liability regimes across Canada, have led to more rigour in Canadian continuous disclosure practices. Improvements in the quality of Canadian continuous disclosure and in technology that allow investors more timely access to that disclosure support an alternative prospectus model premised on prospectus disclosure that is more concise and focused on the particular offering. However, in our view, a public offering in Canada should always be conducted by way of an offering document that (when read together with its incorporated documents) meets the minimum prospectus disclosure standards established by Canadian securities legislation for the protection of Canadian investors.

Automatic Shelf Alternative. The CSA should consider adopting an 'automatic' shelf procedures similar to the 'automatic' shelf registration procedure available under U.S. securities legislation. Under the U.S. procedure, "well-known seasoned issuers" are entitled to qualify (without prior SEC review or any other delay) unspecified amounts of different types of securities by way of an 'automatic' shelf, paying filing fees on a 'pay-as-you-go' basis at the time of each takedown. In contrast with a traditional Canadian shelf, an automatic shelf need not specify the total amount of securities that are qualified[9]. While eligible Canadian issuers can (and often do) take advantage of the current Canadian shelf procedure in order to de-risk the potential for a delay at the time of an offering, an 'automatic' shelf procedure should be more attractive as, among other things, it mitigates adverse pricing pressure from the market overhang associated with a traditional, unallocated shelf. The 'well-known' and 'seasoned' nature of eligible issuers and their reporting record should provide comfort that the Canadian 'automatic' shelf option will not meaningfully diminish the investor protection that would otherwise be afforded by a traditional shelf[10]. For this purpose, issuer eligibility could be premised on a minimum reporting history coupled with a minimum public float or prior history of public offerings (meeting a minimum aggregate size) and the absence of an ongoing or potential issue with the issuer's disclosure record[11]. Separately, we propose that the time for which any shelf (whether traditional or 'automatic') is effective be extended from the current maximum of 25 months.

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[9] While an unspecified amount of securities is a feature unique to an 'automatic' shelf prospectus, the CSA should consider whether to take this same approach generally with respect to any shelf prospectus. This approach could streamline the Canadian prospectus offering process for Canadian issuers who are reluctant to avail themselves of the efficiencies afforded by conducting offerings pursuant to a traditional shelf prospectus due to the associated market overhang.

[10] Consistent with the view taken by the SEC in their securities offering reform in December 2015, we think it is appropriate to afford a subset of reporting issuers that are 'well-known' and 'seasoned' (in contrast with smaller, less seasoned issuers) this offering related flexibility as there should be a sufficient level of confidence in their continuous reporting resulting from their track record and the wide following (and associated scrutiny) of their reporting by the financial community.

[11] For example, an issuer might be ineligible for an automatic shelf if it is in default of its continuous disclosure obligations or currently under review or, during a prescribed prior period, was the subject of a cease trade order due to a misrepresentation or another material breach of disclosure requirements under securities legislation.

(iii) Facilitating at-the-market (ATM) offerings

We are supportive of codifying in securities legislation the exemptive relief typically granted for Canadian ATM offerings. In the context of cross-border ATM offerings, consideration should also be given to additional relief that might be afforded to Canadian ATM offerings in order to better align with the requirements and conditions applicable to a concurrent U.S. ATM offering.

(d) Other potential areas

Question #16 - Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

In order to foster confidence in, and improve the efficiency of, Canadian capital markets, it is important to not view Canada in isolation. Capital raising that would have otherwise occurred in Canada may be driven to the larger markets in the U.S. and elsewhere to the extent Canadian rules governing public offering disclosure and process are significantly less flexible or more burdensome than the equivalent rules in the U.S. and other foreign jurisdictions. To avoid this result, and better streamline the process for cross-border prospectus offerings, we submit that the CSA should aim to minimize the friction between the Canadian, U.S. and other relevant regimes to the extent it will not compromise the protection of Canadian investors or otherwise be inconsistent with the objectives of Canadian securities legislation. Likewise, in altering Canadian disclosure requirements, the CSA should remain mindful of certain fundamental disclosures that are core to the prospectus and continuous disclosure requirements under U.S. securities legislation. Significant departures from those fundamental disclosures could adversely affect trading in Canadian issuers' securities and, more generally, the competitiveness and credibility of Canadian capital markets.

Adopt a Harmonized, Modern Regulatory Framework for Offshore Offerings. We urge the CSA to adopt a modern and harmonized approach to the regulation of the initial offering and resale of securities outside of Canada[12]. A comprehensive, national framework for offshore offerings that is modelled on Proposed OSC Rule 72-503 *Distributions Outside of Canada* would make Canada's capital markets more efficient and competitive and bring Canada's approach in line with more modern approaches applied in other jurisdictions. As a general principle, trades of securities outside of a Canadian province or territory should not be subject to that jurisdiction's prospectus requirement unless there is a reasonable likelihood that the offered securities will flow back into that jurisdiction without first 'coming to rest' outside of the jurisdiction. Ultimately, the prospectus requirement of a Canadian jurisdiction should be for the protection of

[12] A comprehensive framework should also confirm that marketing activities outside of Canada would not be considered in furtherance of trade and, therefore, would not be subject to Canadian prospectus requirements or the associated marketing regime. Uncertainty as to the application of the marketing rules to offshore marketing can arise in cross-border offerings by issuers located in Alberta, British Columbia and Québec, where applicable securities legislation may treat the offering as being a distribution "from" that province despite the securities being offered and sold exclusively outside the province.

investors in that Canadian jurisdiction only, not foreign investors. Even if a Canadian prospectus requirement could be applied extra-territorially, we do not believe that it is the appropriate regulatory tool for enforcement against offshore activities of local boiler rooms and bad actors. Canadian securities regulators can still properly and adequately address these concerns and the purposes of Canadian securities laws through registration requirements, prohibitions on insider trading, fraud and misrepresentation and the regulators' public interest authority. In our view, there are significant costs and regulatory burdens associated with applying a Canadian prospectus requirement to *bona fide* offshore trades, with no corresponding benefit to Canadian investors. While we believe proposed OSC Rule 72-503 could be improved, in our view it is the best starting point for meeting the above objective.

Better Align Canadian Prospectus Requirements to Facilitate MJDS Offerings. As you know, public U.S. offerings by Canadian issuers are most commonly effected by way of the Canada-U.S. multi-jurisdictional disclosure system ("MJDS"). MJDS is by far the most efficient way for eligible Canadian issuers to access the public U.S. capital markets. However, since the adoption of MJDS, there have been intervening developments (in regulation, technology and the capital markets in general) that have led to some misalignment in the respective offering processes and practices in the United States and Canada. In addition, because the rules establishing MJDS are not exhaustive, there are (and have always been) certain ambiguities that would benefit from clarification. We urge the CSA to consider an initiative specific to streamlining Canadian prospectus disclosure requirements and processes that may conflict with corresponding U.S. requirements or otherwise be burdensome in the context of 'southbound' MJDS offerings. In connection with any such initiative, we would be pleased to provide more specific and comprehensive feedback.

Expand and Clarify Cross-Border Exemption. The exceptions for U.S. cross-border offerings in sections 13.11 and 13.12 of NI 41-101 (the "cross-border exception") are difficult to apply in practice. Among other things, clause 13.12(2)(a) of NI 41-101 should be amended to provide a threshold that is clear and practical. The threshold of an offering being sold "primarily" in the United States[13] is too vague to be useful and, depending on its meaning, may be too high a threshold given the purpose to be served by this condition. Because of this condition, issuers and underwriters have been reluctant to use the cross-border exception in circumstances where, as a principled matter (and in hindsight), it would have been appropriate. To the extent the CSA intends to maintain a "primarily" threshold for this condition, we suggest replacing the term with a definitive numerical threshold of 50.1%. More generally, the CSA should consider whether an alternate threshold could be applied that is not premised on the "reasonable expectations" of the underwriters. It is often impractical for underwriters to estimate approximately how much of a cross-border offering will be "sold" in or outside of Canada at the time at which a determination must be made as to the availability of the cross-border exemption. At this stage, the underwriters could verify that they have a *bona fide* intention to sell the offering primarily outside of Canada; however, without prior marketing, it is often impractical for an underwriter to confirm it is a

[13] Separately, given the objective of this condition, we submit that this test should refer to securities sold "outside of Canada" rather than "in the United States".

reasonable expectation. One possible alternative to the "reasonable expectation" condition of the cross-border exemption is a condition satisfied by reference to the intention (as opposed to the reasonable expectation) of the underwriters, with a subsequent requirement to file the template version of the marketing materials if it is ultimately determined that the offering was not sold primarily outside of Canada. Finally, the definition of "U.S. cross-border initial public offering" should be modified to include a U.S. initial public offering by an existing Canadian reporting issuer.

Expressly Exempt Bona Fide Offshore Marketing Activities. On a more general note, we think it would be helpful to clarify that written communications made outside of Canada, and not directed at Canadian residents, are not deemed a violation of Canadian requirements simply because they are accessible by Canadian residents (over the internet, as a press release, or otherwise). In our view, no purpose is served in requiring that these communications be filed and incorporated in a Canadian prospectus as Canadian investors are not harmed by the absence of their filing and incorporation - these communications are not directed at Canadians and the Canadian prospectus, in any event, must include full, true and plain disclosure of all material facts relating to the securities offered. This issue could be addressed through 41-101CP. However, it would be clearer to instead carve-out all such bona fide, 'offshore' marketing communications from the filing and incorporation requirements for marketing materials.

Other Potential Cross-Border Improvements. Consideration should be given to whether there are avenues to further streamline the reporting of Canadian reporting issuers that choose to satisfy their Canadian reporting obligations using their U.S. reporting. While Canadian securities legislation largely accommodates cross-border issuer's use of U.S. compliant reporting to satisfy Canadian reporting obligations, there is room for further improvement. For example, the CSA should codify the relief that is routinely given to exempt SEC issuers from filing the exhibits to their annual report on Form 10-K (to the extent an equivalent filing of those exhibits would not be required were the issuer to have instead complied with Canadian continuous disclosure obligations) or incorporating any of their 10-K exhibits in their Canadian short form prospectuses (as none of the exhibits would be required disclosure for a Canadian prospectus). Requiring relief applications in these circumstances is time consuming and wasteful. Further, exempting the inclusion of these exhibits in a prospectus also saves an issuer from obtaining relief from translation requirements that might otherwise apply.

In addition, Section 6.4 of NI 44-102 should be clarified to require the filing of a prospectus supplement in a local jurisdiction *only* if the offering pursuant to that supplement is made in the local jurisdiction. While not express in NI 44-102, this is clearly the case in 'southbound-only' MJDS offerings where there is no Canadian distribution. However, it can be less clear in circumstances where, although the offering is made only in the U.S., it could be considered a 'distribution out' of any of Alberta, British Columbia and Québec. In addition to our general disagreement with the 'distribution out' concept, we do not see any specific benefit (from an investor protection standpoint) in requiring that a Canadian prospectus supplement be filed to qualify an offshore offering as there are no Canadian purchasers to whom that Canadian

prospectus would be delivered. In those circumstances, the issuer should be entitled to prepare and file only the U.S. version of the prospectus supplement that is filed with the SEC[14]. In addition to saving the time in preparing a Canadian version of the prospectus supplement that is not used by or delivered to anyone (as there are no Canadian purchasers), this will clearly avoid any question (without further work on the part of the issuer's counsel) that local filing fees and, where applicable, translation requirements are not applicable in the context of any such prospectus supplement. Further clarification on this point would also be helpful in Part 4 of 71-101CP.

Question #17 - As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

Modify the "All-information Disclosure Requirement". The requirement of the 2013 amendments (the "2013 Amendments") that all information in a standard term sheet or marketing materials be disclosed in, or derived from information disclosed in, the applicable prospectus (the "all-information disclosure requirement"), other than contact information for the investment dealer or any comparables (in the case of marketing materials), is too narrow. The CSA should give further consideration to additional information that might properly be carved-out from this disclosure requirement without impairing the investor protection it is designed to achieve. For example, certain information that is (or should be) permitted in a standard term sheet but is not necessary disclosure in a prospectus for investor protection purposes.[15] Also consider applying a more general materiality threshold to the all-information disclosure requirement such that immaterial information need not be derived from a filed version of the prospectus or ultimately included in the subsequently filed version of the prospectus[16]. There is no benefit to the additional time and expense associated with having the issuer and underwriter and their respective advisors review marketing materials to ensure even immaterial information is in (or derived from) the prospectus.[17]

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[14] To the extent the CSA believes it would be helpful that any such prospectus supplement nonetheless be on file (on SEDAR) to avoid any confusion on the public record, the requirement in Section 6.4 could clarify that the filed supplement may be the U.S. version and that it may filed under an "Other" category such that it does not attract Canadian filing fees.

[15] For debt securities, consider permitting disclosure of their spread to the comparable treasury yield and credit ratings. Notably, where included in marketing materials, the spread is excepted from the all-information disclosure requirement as "comparables" are excepted.

[16] It may also be appropriate to carve-out other market information that is not material information specific to the issuer and is derived and available from other publicly available sources.

[17] Notably, under applicable U.S. rules, a "free writing prospectus" may contain information that is additional to the registration statement in respect of the securities offering; it simply must not conflict with the information in that registration statement or the issuer's continuous disclosure record.

Expand Permitted Content of Standard Term Sheet. The permitted content for a standard term sheet listed in subsection 13.5(3) of NI 41-101 is too limited for its purpose. In almost every securities offering (other than straightforward common equity offerings) issuers are forced to file term sheets as "marketing materials" despite their being standard (from a policy perspective). This is due to the overly narrow content limitations in subsection 13.5(3). As a result of these limitations, in most cases, issuers cannot avail themselves of the accommodations that regulators intended for standard term sheets and are forced to file (and translate, where applicable) each and every basic term sheet despite there being no utility in each such filing being made. In addition to causing unnecessary (albeit minor) administrative burden, these overly narrow limitations can pose a significant problem for soft-sounding in the context of a potential debt offering by a shelf issuer as they may cause a very standard term sheet (without material non-public information) to be "marketing materials" that must be filed not later than the first day they are provided to investor, potentially defeating the purpose of the soft-sounding. The permitted content for "standard term sheets" should be expanded to address this. Among other things, the list of permitted content is missing additional market or other offering specific information such as, in the case of equity securities, details of any standstill or black-out in connection with the offering. In the case of debt securities, a basic term sheet would also typically include their yield, their spread to the comparable treasury yield, their credit ratings and their CUSIP/ISIN. Reference might also be made to any concurrent financing. Accordingly, in connection with its initiative to improve the marketing regime, we urge the CSA to confer with dealers to obtain a comprehensive list of the information typically included in term sheets and associated marketing communication. Further, it is unclear why there is a three line limit (in subsection 13.5(4) of NI 41-101) for any description of the securities, the use of proceeds or any guarantee or alternative credit support provided. With the exception of straight-forward offerings of common shares, it is often impractical to limit the description of the securities and the use of proceeds to no more than three lines of text. We suggest that the rule be revised such that the three line limit in subsection 13.5(4) apply only to any description of the business.

Accommodate Wall-Crossed Offerings Under Shelf Prospectuses. Requirements within the 2013 Amendments can pose practical issues for conducting 'wall-crossed' offerings[18] in Canada. In particular, the requirement that "marketing materials" must be filed not later than the first day they are provided to a potential investor. This requirement would defeat the purpose of the wall-crossing if it required a public filing, prior to a determination to proceed with an offering, of written communications that were confidentially provided to wall-crossed investors. NI 44-102 should be amended to clearly accommodate wall-crossed offerings by allowing investment dealers to provide written communications to wall-crossed investors after a receipt for a final base shelf prospectus in a confidential manner such that those communications could remain confidential until after announcement of the offering, if any, despite ultimately being marketing materials for purposes of the announced offering.

18 'Wall-crossing' is a technique regularly employed by U.S. investment dealers for confidentially gauging interest before proceeding with a potential U.S. public offering by way of a shelf takedown.

Additional Clarifications. 41-101CP would benefit from a general statement that the marketing prohibitions are not intended to preclude an issuer from disclosing material changes or material facts with respect to an offering where the intent of that disclosure is to satisfy the issuer's reporting obligations under applicable securities legislation or the rules of the exchange on which the issuer's securities are listed.[19] These types of disclosure (whether by press release or another manner designed to broadly disseminate the relevant information) should not, in and of themselves, be considered a communication in contravention of the prospectus requirement (and therefore need not comply with the restrictions on marketing and pre-marketing) as they are not intended to be in furtherance of a trade and are not "intended for potential investors regarding a distribution of securities" (so do not constitute "marketing materials" or "standard term sheets"). As a result, these disclosures need not be made by way of a "preliminary prospectus notice" or "final prospectus notice"; nor could they be according to 6.5(3) of 41-101CP, which advises that a prospectus notice may not include a summary of the commercial features of an offered security.

The marketing material amendment provisions[20] should be clarified such that a blackline comparing the indicative and final marketing materials (and the corresponding required prospectus disclosure) is not required merely to reflect the inclusion of pricing or other bulleted / blank information in the final prospectus or prospectus supplement. The intention of the marketing material amendment provisions is to highlight changes to material facts in previously provided marketing materials upon which an investor may have relied. It is not necessary for investor protection to indicate the inclusion of pricing information, or the completion of other previously bulleted / blank information, as this should be expected and obvious and does not in fact modify a prior statement of a material fact. However, due to the absence of clarity on this point in the marketing material amendment provisions, many issuers prepare a blackline of their marketing materials showing the addition of pricing information and including corresponding disclosure in respect of this 'amendment' in the final prospectus or prospectus supplement.

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[19] While subsection 6.9(3) of 41-101CP deals with this in part, its focus is too narrow as it refers only to material changes (as opposed to material facts) and "pre-marketing" restrictions (as opposed to the applicable restrictions on pre-marketing and marketing, which apply before, during and after the waiting period). Further, subsection 6.9(3) is too narrow in its advice that "the commercial features of the issue" not be disclosed in a news release or material change report. Commercial features should be permitted disclosure in a press release to the extent those features constitute a material fact (or their omission may result in a misrepresentation). An issuer may disclose these features in a news release to comply with its securities law and stock exchange obligations to generally disclose material facts and address selective disclosure concerns. Their publication in a filed prospectus would not, by itself, be likely to satisfy this general disclosure requirement.

[20] In subsections 7.6(7) of NI 44-101 and 9A.3(7)(b) of NI 44-102 and equivalent provisions in NI 41-101

2.4 Eliminating overlap in regulatory requirements

We support removing duplicative information among the required reports. Each of the MD&A disclosure items identified can be adequately addressed through the equivalent note disclosure in an issuer's financial statements. Cross-references to the appropriate financial statement note(s) could be used to the extent relevant to provide context to discussion in an issuer's MD&A. There is considerable overlap in a number of the disclosures prescribed for an AIF and MD&A. There is also duplication between the AIF and proxy circular disclosure requirements with respect to directors and governance matters.

Generally speaking, we see the benefit of consolidating an issuer's annual MD&A, AIF and financials into a single annual report and consolidating interim reporting (MD&A and financials) into a single report for each quarter. In addition to reducing the reporting burden of producing multiple reports (with significant overlap in the required information), a single report has the benefit of providing all the necessary disclosure in one place. However, we do not think the consolidation of an issuer's AIF with its annual MD&A and financials into a single annual report should be mandatory. We think this consolidation should be at the issuer's option. Reporting issuers often choose to file their AIF on a later date than their financial statements and MD&A, as this affords them additional time to prepare and vet the associated disclosures and provide the annual CEO and CFO certifications. Requiring a single annual report would force these issuers to accelerate that work or delay their current timetable for reporting their annual results and filing their annual financial statements and MD&A.

2.5 Enhancing electronic delivery of documents

Question #33 - Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

Implement an Access Equals Delivery Model. In addition to updating NP 11-201 and implementing changes to securities legislation to allow for more practical ways to achieve electronic delivery, consideration should be given as to circumstances in which access to a filed prospectus (and its incorporated documents) on SEDAR should be sufficient to be deemed to constitute delivery of the prospectus for purposes of prospectus delivery obligations under applicable securities legislation without actual delivery of the prospectus (in printed or electronic form). In our view, access alone should be sufficient in the context of a short form prospectus. Requiring actual delivery of a short form prospectus (despite substantially all of the critical issuer information being contained in documents that are incorporated by reference and not actually delivered) seems an arbitrary requirement and an unnecessary burden given the high level of Internet access in Canada. Current rules suggest the CSA is comfortable that investors participating in short form prospectus offerings have the ability to access any prospectus incorporated documents filed on SEDAR. The CSA has further demonstrated its comfort with a deemed prospectus delivery concept through the relief routinely accorded to reporting issuers with ATM programs. In our view, relying on antiquated prospectus delivery requirements that are premised on delivery by mail as opposed to electronic access (and deem receipt "in the

ordinary course of the mail") is inefficient and inappropriate for a modern capital markets regime.

In lieu of requiring actual delivery of a final short form prospectus, we propose that a purchaser or its broker instead receive notice (which may be delivered electronically) as to the availability of the final prospectus. This notice could be provided as part of the trade matching confirmation or by some other means reasonably designed to put the purchaser or the purchaser's broker on notice that the prospectus is or will be accessible on SEDAR. While we do not think it is necessary in the circumstances (notwithstanding 3.3(6) of NP 11-201), the notice could also provide a URL to a page on the issuer's or a third party's website where the final prospectus and the incorporated documents may be accessed (in PDF or other appropriate electronic formats) for a prescribed minimum period of time. The prospectus would be deemed to be delivered upon the later of the deemed receipt of this notice (by the purchaser or the purchaser's broker) and the filing of the prospectus on SEDAR. Investors that do not have regular Internet access[21] could opt to instead get physical delivery of the final prospectus by informing their broker. For efficiency, this option to 'opt-in' to physical delivery of a final prospectus could be made part of brokers' on-boarding processes. Where an investors has opted for physical delivery, it would be satisfied by the purchaser's broker, not the underwriters; however, the formal prospectus delivery obligation will have already been deemed satisfied by virtue of that broker's electronic access to the final prospectus.[22] Further, with respect to preliminary prospectuses, we propose that any delivery obligation (including a dealer's obligation to "forward" or "provide" a copy in connection with any solicitation or providing marketing materials) should be satisfied by access to the preliminary prospectus on SEDAR alone without regard to whether the investor has opted for physical delivery of the final prospectus.

Requiring actual delivery of a preliminary prospectus ignores the realities of modern offering processes; the only timely way for an investor to receive the information included in (or incorporated into) a preliminary prospectus for a short form offering is through electronic access. In contrast with the "notice-and-assess" model applicable to proxy materials (which is premised on the need to push information to investors so they are aware it is available and, accordingly, may be better engaged in the proxy process), prospectus delivery can be effective based on access alone because the prospective purchaser to whom the prospectus should be delivered is already on notice as to the availability of the relevant prospectus, usually by virtue of the notice to this effect currently required in any standard term sheet or marketing materials by which the prospective purchaser was solicited. No further notice should be required to engage the prospective purchaser in the offering process and make them aware of the availability and importance of reading the prospectus. To the extent the CSA determines that additional notice is necessary for deemed delivery of a preliminary prospectus, we submit this could be addressed by providing a URL in the term sheet / marketing materials for the offering or any other written

[21] Investors that use discount brokerages via Internet access should not have an equivalent 'opt-in' option as those investors can be presumed to have Internet access.

[22] In Ontario, the receipt by the purchaser's broker of the final prospectus constitutes receipt by the purchaser as of the date on which that broker receives the prospectus.

communication (which may be delivered electronically) reasonably designed to put the prospective purchaser or its broker on notice as to the availability of the prospectus.

In the context above, the CSA should also consider reducing the time available for purchasers to exercise their statutory withdrawal right given the potential in the future for quicker settlement of initial trades on prospectus offerings and the ability of modern investors in prospectus offerings to process and make quicker investment decisions based on information being accessible electronically.

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If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned at 416.863.5517.

Sincerely,

(signed) David Wilson

David Wilson