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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

-and-

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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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 the Canadian Securities Administrators (the "**CSA**") Notice and Request for Comment in respect of CSA Consultation Paper 51-404 - *Considerations for*

Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (the "**Consultation Paper**").

As Partners of Goodmans LLP who practice corporate securities law, we work with numerous reporting issuers and other capital markets participants.

We are pleased to provide our views on certain of the consultation questions referenced in the Consultation Paper. These views are based on our extensive capital markets experience and informal discussions with clients and other capital markets participants. These comments should not, however, be taken as the views of any of our clients or Goodmans LLP.

As a general comment, we strongly support the CSA's initiatives to reduce the costs and regulatory burden associated with both capital raising and continuous disclosure requirements. We have played a leading role in assisting Canadian and non-Canadian companies in accessing the Canadian capital markets for many years and we believe the CSA must take steps to ensure that Canada's public markets remain competitive with those in the United States and with private capital.

Set out below are our comments on certain questions set out in the Consultation Paper (with the numbers corresponding accordingly). We have only addressed those questions in the Consultation Paper upon which we had input.

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

We believe the modifications we discuss below regarding the financial statement disclosure requirements for prospectuses and business acquisition reports ("**BARs**") would meaningfully reduce the regulatory burden for many reporting issuers while preserving investor protection.

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

We believe the CSA should reduce the audited financial statement requirements for an IPO prospectus. At a minimum, the CSA should extend the eligibility criteria for the provision of two years of audited financial statements to issuers that intend to become non-venture issuers to be consistent with the requirements applicable to emerging growth companies under the U.S. *Jumpstart our Business Startups Act* of 2012. In our experience, the oldest year of historical financial disclosure has limited benefit for investors and can impose significant costs on an issuer.

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

We do not believe that auditor review or consent for interim financial statements included in a BAR that is incorporated by reference in a short form prospectus should be required. Eliminating these requirements for the short form prospectus would be consistent with the CSA's approach in Form 51-102F4 – Business Acquisition Report, which does not require auditor review or consent for such statements. In our experience, the time and cost burden on the issuer to obtain a review and consent from the auditor to the acquired business that in most instances has no other relationship with the issuer far outweighs any benefit to investors. We are aware of situations where the timetable and launch date for a public financing were materially delayed by the challenges the issuer and auditor (who had no other relationship) experienced in their efforts to comply with these requirements.

10. Should other prospectus disclosure requirements be removed or modified, and why?

We feel consideration should be given to modifying the requirement under Item 32.2 of Form 41-101F1 that a full three-year historical financial statement history be provided for every business that forms part of the "issuer" at the time of an IPO regardless of its significance. This requirement has created a significant amount of uncertainty for issuers seeking to go public that have completed acquisitions during the three-year period leading up to the IPO if they do not have historical financial statements that meet the requirements under Item 32.2. In many (if not most) cases, we do not believe that these historical financial statements provide meaningful disclosure for investors and the CSA should consider reducing these requirements.

In many cases, obtaining historical financial statements for acquisitions up to three years after the acquisition is not possible or can only be done at significant cost and effort on behalf of the issuer which we feel is disproportionate to any benefit derived from the historical financial disclosure. Further, we believe in many cases where multiple acquisitions have been completed, the inclusion of historical financial statements for each acquisition is confusing for investors. Although in some cases, exemptive relief from certain of these historical financial statements has been granted through a pre-filing process, the process for obtaining relief is cumbersome, costly and creates uncertainty and delay at the commencement of an IPO process. We are aware of a number of situations where IPOs did not proceed due to these requirements.

We would recommend that these requirements be modified to impose clear thresholds where financial statements of businesses acquired within the three years prior to an IPO are required. We recommend that the CSA eliminate the historical financial statement requirements for acquisitions that have been incorporated into the issuer's financial results over one audit cycle or for a period of nine months or more. The CSA should also consider setting a significance threshold that compares the significance of the acquisition based on the assets acquired compared to the issuer's current assets at the time of the IPO. This threshold could be set at a level similar to the current BAR requirements.

We would also suggest that the CSA permit the historical financial statements included in an IPO prospectus to be prepared using U.S. GAAP. Many investors in Canadian public companies also invest in U.S. public companies, and thus are comfortable making investment decisions on the basis of financial statements prepared in U.S. GAAP. We believe that this change would increase the attractiveness of the Canadian capital markets to U.S.-based companies considering going public without compromising investor protection.

Finally, we strongly recommend that the CSA adopt rules similar to those recently adopted by the U.S. Securities and Exchange Commission that allow private companies to confidentially file IPO documents with the securities regulators.

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.

We believe Canada's short form prospectus system - and in particular the bought deal mechanism - is an attractive and important feature of the Canadian capital markets and we are generally supportive of the current short form prospectus regime.

We do, however, recommend that the CSA revise the disclosure requirements for recently completed and probable acquisitions in Item 10 of NI 44-101F1. This comment is set out in further detail in our response to question 18 below. We would also support the elimination of Item 7A – Prior Sales from Form 44-101F1. We do not believe the disclosure under Item 7A is necessary for investors as this information is readily available from public sources.

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 believe the current qualification criteria are generally appropriate.

We do, however, recommend that the CSA remove the "notice of intention" requirement in Section 2.8 of NI 44-101. We do not believe that the "notice of intention" requirement provides meaningful information for investors as the criteria for qualifying for a short form prospectus are easily satisfied by most issuers listed on an exchange in Canada and advance notice that an issuer is qualified to file a short form prospectus is not necessary.

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an

investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

Our experience is that the BAR rules are among the most onerous provisions of the continuous disclosure regime and generally provide limited relevant information for an investor to make an investment decision. We believe the costs of complying with the current BAR regime outweigh the investor protection benefits.

In our view, the benefits that investors receive by having access to historical and pro forma financial statements 75 days following completion of an acquisition are limited. We have been informed by individuals at several different investment dealers that BARs are not considered relevant information by many members of the investment and research community.

While the benefits of BAR disclosure are limited, the costs can be significant. Certain of these costs can be easily measured. For example, we are aware of one recent example where an issuer paid significantly more in professional fees to comply with the BAR requirements than it did in consideration for the target business. Other costs, such as the pressure on the issuer's resources, may be difficult to compute.

The current competitive environment for acquisitions is much different from when the BAR rules were first introduced. Today, public companies who wish to grow by acquisition compete for acquisition targets with numerous different pools of private capital, which were not as prevalent 10 to 15 years ago. Requiring public companies to comply with the stringent BAR requirements places reporting issuers at a significant disadvantage in competing for acquisitions, when compared to both strategic and financial buyers including private equity funds. We are aware of several recent situations where reporting issuers felt they were significantly prejudiced by these rules in an auction process.

This prejudice can be especially significant where an issuer wishes to announce, concurrently with entering into a purchase agreement, that it is financing the acquisition with proceeds raised in a bought deal and a prospectus (including financial statements required to comply with the BAR rules) must be filed within four business days of the announcement.

In summary, we believe the CSA needs to consider significant changes to the BAR regime and the related short form prospectus disclosure requirements.

20. If the BAR provides relevant and timely information to investors:

(a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

We believe that the "profit or loss" test is not required to ensure that significant acquisitions are captured by the BAR requirements, and have seen numerous examples where the application of this test leads to anomalous results.

For example, where the target business is closely held, the prior owner(s) may have taken certain steps to suppress net income, such as the payment of abnormal management fees or salaries or abnormally high leverage. If the issuer does not intend to replicate these arrangements going forward the significance of the acquisition under the profit or loss test may be understated. Alternatively, if a prior owner operated a business with a minimal cost structure or no leverage (and the issuer intends to implement changes going forward) the significance of the acquisition may be overstated under the profit or loss test.

We have also seen many examples where certain non-cash or non-operating aspects of the profit or loss calculation lead to anomalous results by exaggerating the significance of an acquisition in relation to its economic or operational significance on an objective basis. This can be particularly true in the real estate industry where we have seen net income suppressed due to depreciation expense, or inflated due to IFRS fair market value adjustments (which are based on many inputs and discretionary assumptions, including discount rates, inflation rates, and capitalization rates). While the CSA has granted exemptive relief to address these types of issues in the past, relief is typically granted only where the acquisition is "*de minimus*".

(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

We have considered whether the significance tests should be eliminated and believe there are numerous arguments that could support such elimination. Nevertheless, in light of the important role financial disclosure plays in investor protection, we would instead recommend that the CSA consider revising the BAR rules such that non-venture issuers are subject to significance thresholds at 50% and eliminate the "profit or loss" test.

(c) What alternative tests would be most relevant for a particular industry and why?

As noted above, we recommend eliminating the "profit or loss" test. If the CSA believes that measuring significance based on income is important, we suggest that the CSA consider replacing the "profit or loss" test with financial performance indicators that are more appropriate for the applicable industry sector. For example, "net operating income" might be used in the real estate industry, and EBITDA or similar metrics might be used in certain other sectors.

We believe that this approach would provide a more realistic indication of the significance of an acquisition from an income perspective.

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

Very truly yours,

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