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Dear Sir/Madam:

Re: CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the "Proposals")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposals. Although our response addresses many of the specific questions put forth by the CSA, we believe it is more useful to focus on areas that our members believe the CSA should target in order to maximize efficiencies and competiveness in the Canadian capital markets.

<u>Potential options to reduce regulatory burden – General consultation questions</u>

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?
(b) Which should be prioritized and why?

Recognizing that the Canadian markets have characteristics which distinguish it from the US, it is important to acknowledge that, given the close proximity and interconnection of the markets, it is important that Canadian regulation not create an anti-competitive environment which would discourage issuers and investors from accessing and investing in Canadian markets. The CSA should closely monitor regulatory developments in the US, (such as the JOBS Act) and work with the industry to understand the impacts, and ensure Canadian regulation does not create an unnecessary impediment to capital formation in Canada and send investment dollars southbound.

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

See question 1(b) above. Canadian regulators should examine circumstances where US regulators have identified areas for specific relief based on the size of the issuer, such as the reduced financial statement requirements for smaller issuers under the JOBS Act, and timely market access for Well Known Seasoned Issuers (WKSIs). Given that the framework for regulation has been tried and tested in the US, adapting these provisions for Canadian use in order to facilitate competition and expedited market access should be possible in the short to medium term.

In addition, adapting the electronic proxy delivery accommodations to the prospectus delivery context would also result in significant time and cost savings, without the need to draft the regulation without precedent. (see question 32 for more detail)

Finally, elimination of the requirement to obtain a receipt for a filed prospectus to begin marketing a transaction or to communicate initial, revised or final terms on a transaction could be implemented through minor amendments in the short term.

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

The current 10 day regulatory review and receipt process for preliminary prospectuses is a significant burden that introduces delays without providing investor protection. This requirement should be eliminated, or the review time significantly shortened. This can be achieved through the implementation of a WKSI shelf registration process, as discussed above.

<u>Extending the application of streamlined rules to smaller reporting issuers</u>

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

The existing categorization of issuers based on exchange listing is a uniquely Canadian market feature that successfully differentiates it from other markets. The TSX Venture Exchange and the CSE provide investors a clear means of distinguishing the types of issuers in which they are investing, while providing those issuers with an environment tailored to their specific needs, and a path to graduation. Creating further categorizations for small issuers would create confusion, and would dilute the benefits of having specific marketplaces serving junior issuers and their investors.

5. If we were to adopt a size-based distinction:

(a) What metric or criteria should be used and why? What threshold would be appropriate and why?

If a size based criteria was adopted, members favoured a market capitalization criteria as appropriate for Canadian issuers, as revenue based tests are not an appropriate metric to reflect the size of resource issuers. A threshold of $100 million was suggested as an appropriate market capitalization. The size based criteria should line up with listing standards on the exchanges serving venture issuers.

(b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

This is the difficulty of implementing a size-based threshold (as opposed to a listing-based test). The significant fluctuation in smaller companies' market capitalizations could have the effect of moving between disclosure regimes, even with the creation of a grace period.

(c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?

(d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

As noted above, in order to retain transparency and avoid confusion, the current exchange based regime should be retained.

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

In regulating non-venture issuers, regulators should not necessarily look to venture standards in determining what might be appropriate. Regulators should examine what investors expect, and the international regulatory environment for issuers of similar size. Certain members expressed concern that lowering standards to venture standards for non-venture issuers may make Canadian issuers less competitive among investors, who may favour issuers with more robust disclosure standards. This could also create confusion in respect of inter-listed issuers where reporting standards may be inconsistent.

<u>Reducing the regulatory burdens associated with the prospectus rules and offering process</u>

<u>(a) Reducing the audited financial statement requirements in an IPO prospectus</u>

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? If so:

(a) How would this amendment assist in efficient capital raising in the public market?
(b) How would having less historical financial information on non-venture issuers impact investors?

(c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?
(d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

In order to compete with US firms operating under the provisions of the JOBS Act, a requirement for two, rather than three years may assist issuers. In appropriate circumstances, issuers may elect to include additional reporting periods to demonstrate particular trends. It may be appropriate to permit but not require non-audited statements with auditor comfort beyond the two year requirement to allow firms to show trends where this is relevant.

8. How important is the ability to perform a three year trend analysis?

This depends on the type of issuer. As noted above, it may be helpful to permit a non-audited third year statement where appropriate.

(b) Streamlining other prospectus requirements

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

This is an appropriate requirement. If it were removed, there is a concern that liability would shift to other parties that are not qualified to undertake the appropriate due diligence in this regard. It was suggested that the requirements and liability associated with interim statements in a prospectus be consistent with continuous disclosure statements.

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

The requirements for French translation and physical printing for prospectus offerings represent two very significant burdens that do not enhance investor protection, and could be removed with minimal impact on investors, and result in significant cost savings to issuers. In its 2005 Securities Offering Reform, the SEC implemented the policy of "Access Equals Delivery" for prospectus offerings. In the adoption of that policy, the SEC commended that "we believe that Internet usage has increased sufficiently to allow us to adopt a final prospectus delivery model for issuers and their intermediaries that relies on timely access to filed information and documents." Given that almost 12 years have passed since the implementation of the Access Equals Delivery policy in the US, we believe that there is significant merit in Canada implementing a similar policy.

In addition, disclosure that is repeated among different documents should be removed from prospectus disclosure requirements.

In terms of other disclosure requirements, it is important to maintain a balance, as what may be cheaper for issuers may be less attractive for investors.

(c) Streamlining public offerings for reporting issuers

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.

Members indicated that the current short form prospectus requirements are not particularly onerous, and that the increasing disclosure in this document reflects a view among those preparing the document that additional disclosure may be helpful, or required by regulators reviewing the document.

It was suggested that the rules relating to marketing materials be amended to permit more information to be included.

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.

The criteria to file a short form prospectus is currently not onerous, and it is not necessary to extend it to more reporting issuers.

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?

Any new system should address the current 10 day regulatory review process and the required receipt for a preliminary prospectus. This should be eliminated or significantly shortened. The implementation of the WKSI shelf registration process (see the answers to questions 2 and 16) could be helpful in expediting access to capital markets for companies that are well-known to the capital markets.

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

The ATM rules currently are significantly more burdensome than those in the US, and as such, encourage issuers to undertake such offerings in the US. This area is complex and a separate consultation may be appropriate.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

See response to Question 14

(d) Other potential areas

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?

The MJDS system generally works quite well, except in circumstances where issuers have not filed a shelf prospectus, in which case, it is quite burdensome. In the US, an issuer can use a shelf prospectus immediately without signaling to the market. If issuers could file a shelf prospectus without a review, this would allow issues to finance immediately without waiting for a receipt.

In general, we recommend that the receipting process for preliminary prospectuses be eliminated, as it does not provide additional investor protection, and delays the offering process. This is consistent with practice in the US markets.

Alternatively, if an AIF can be considered a shelf prospectus, this would streamline the process significantly without compromising investor protection.

We also recommend that the US Well-Known Seasoned Issuers (WKSI) program be explored. This system permits issuers of a certain size, and meeting specific criteria to file an automatic shelf registration statement on Form S-3.

A Form S-3 filed by a WKSI is automatically effective and, consequently, not subject to the SEC review process. Post-effective amendments to the Form S-3, such as to add a type of security or a related issuer, are also automatically effective.

Unlike non-WKSI filers, the registration statement and any amendments are automatically effective regardless of whether there are any outstanding SEC comments. This feature provides extraordinary flexibility to WKSIs because it eliminates any potential delay resulting from SEC staff review and/or comments.

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the premarketing/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?

Although the 2013 amendments resulted in some improvement to the former regulatory provisions, certain problems remain. For instance, under the current rules, it is cumbersome to amend the terms of a marketed offering (such as a change in the price range of the securities) due to the refiling & receipt process. As noted above, the current 10-day regulatory review process for preliminary prospectuses is a significant burden that introduces delays without providing investor protection. The requirement for a prospectus receipt prior to distributing a term sheet on deal launch, amendment of terms, or pricing should be eliminated. It should be noted that in the US, this step is not required, and a term sheet may be sent out with a press release, streamlining the process and making it much more efficient.

Reducing ongoing disclosure requirements

(a) Removing or modifying the criteria to file a BAR

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?

While BAR-level disclosure (either in a prospectus for an acquisition financing or the BAR filing itself) is informative, it is not essential to the marketing of an equity offering. As most Canadian follow-on equity offerings are sold on a bought basis, investors will typically not receive the information until the filing of the preliminary prospectus, up to 4 days after the launch of a transaction. Key information required for the distribution of an equity offering is communicated through the term sheet and, in most cases, a management presentation – both of which are filed on SEDAR.

19. Are there certain BAR requirements that are more onerous or problematic than others?

The requirement that an acquisition financing include pro forma financial statements also lengthens the process and creates additional complexity. In the event that pro forma financial statements are unavailable, issuers are forced to finance in the private placement market, which has the consequence of reducing the size of the investors available to participate in a transaction.

We recommend that the timing of the BAR filing on an acquisition financed by a prospectus be consistent with an acquisition financed by a private placement. Where a transaction is financed by a private placement, issuers have 75 days from the closing of the transaction to file a BAR, contrasted with the requirement to have the BAR disclosure included in the prospectus. This compression of the time required to prepare the disclosure makes it unattractive to undertake a public offering to support the transaction.

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?
(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?
(c) What alternative tests would be most relevant for a particular industry and why?
(d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

The BAR threshold for non-venture issuers is currently too low, and can be triggered by a transaction that does not justify the significant time and expense of drafting a BAR. We recommend that the threshold for non-venture issuers be set at 40%, consistent with the former venture requirements.

In respect of disclosure, we are of the view that the requirement for pro-forma statements can be misleading and not particularly helpful for investors. We recommend that the requirement for pro-forma statements be removed, and the regulation should provide more flexibility in respect of the historical statements of the target company.

(b) Reducing disclosure requirements in annual and interim filings

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? Why or why not?

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

(c) Permitting semi-annual reporting

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

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?

While we acknowledge the time required for issuers to report on a quarterly basis, any change to a less frequent reporting cycle would be a departure from best practices in the capital markets. Such a change could make the Canadian capital markets less attractive to global investors that are used to quarterly reporting that is typical in North America.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

Issuers benefit from the structured and frequent communication with investors that comes with the quarterly reporting cycle. In particular, many of these investors are fiduciaries, responsible for managing capital on behalf of their clients. Moving to a less frequent reporting cycle would have the effect of reducing the amount of information that market participants have to make an investing decision.

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

One of the benefits of quarterly reporting is that it provides investors with a high level of information on a frequent basis. The burdens relate to the cost and time required to prepare such documents.

Quarterly MD&A requirements should be reduced by eliminating redundant information including specific items already included in the quarterly financial statements (financial instruments, commitments, etc.).

<u>**Eliminating overlap in regulatory requirements**</u>

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

The MD&A and the financial statements are meant to be reviewed in tandem. The relationship between these two documents makes it redundant to include items such as contractual obligations, outstanding share capital, accounting policies, etc.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

Financial and other instruments, related parties, critical accounting estimates and judgements, and future accounting pronouncements should not be included in the MD&A in additional to the items noted in question 27.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

<u>**Enhancing electronic delivery of documents**</u>

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(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?

(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? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?

(c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?

(d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

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

In our members' experience, many investors do not wish to receive paper delivery of proxy materials, financial statements and MD&A, prospectuses or other disclosure documents. Many of the investors do not read these documents, and even those that do have expressed their preference to be able to receive or retrieve these documents electronically so that they can access them at any time and place. In addition, some investors have concerns about the environmental impact of the volume of paper waste generated to provide this disclosure. Given the near universal adoption of electronic communication and internet access in Canada, requiring paper distribution of documents that could easily be e-mailed or accessed electronically is an unnecessary and costly procedural anachronism.

Ideally, the requirement for paper documentation should be removed, however, at a minimum, it should be limited to distribution on specific request by the investor.

Thank you for considering our comments. If you have any questions, please don't hesitate to contact me.

Yours sincerely,

Susan Copland