

November 27, 2019

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
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
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Me Philippe Lebel
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Dear Sir/Madam:

Re: *CSA Notice and Request for Comment – Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Changes to Certain Policies Related to the Business Acquisition Report Requirements*

We have reviewed the above referenced CSA Notice and Request for Comment with respect to Changes the Business Acquisition Report (BAR) requirements (the Staff Notice) and we thank the Canadian Securities Administrators (CSA) for the opportunity to provide you with our comments.

CCGG's members are Canadian institutional investors that together manage almost \$4 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

CCGG supports the CSA's goal of reducing undue regulatory burden on issuers while ensuring that investor protection is not compromised. CCGG's focus is on ensuring that institutional investors have the information they need to make good investment decisions and to monitor those investments.

THE PROPOSAL TO ADOPT A “TWO TRIGGER” TEST FOR SIGNIFICANCE

With respect to the proposed changes to the BAR filing requirements, CCGG is supportive of the proposal to adopt the two trigger test for significance. The CSA has indicated that the rationale for embracing a two trigger test is to respond to feedback indicating that the criteria to file the BAR produced anomalous results arising from the profit and loss test in contrast to the results arising from the asset test or investment test. To the extent that the purpose of the proposed amendment is to address anomalies and create a more predictable and consistent flow of relevant information into the market, CCGG members are satisfied that this is a reasonable measure.

THE PROPOSAL TO INCREASE THE SIGNIFICANCE TEST THRESHOLD FOR REPORTING ISSUERS THAT ARE NOT VENTURE ISSUERS FROM 20% TO 30%.

Historically, CCGG has not been supportive of increasing thresholds that reduce the amount of information available to investors with respect to significant acquisitions (see for example our [August 2014](#) submission to the CSA on increasing the BAR significance threshold from 40%-100%). With respect to the proposal in the non-venture issuer context to increase the significance test from 20%-30%, prima facie we are of the view that acquisitions with a significance of 20% are by nature significant for purposes of requiring disclosure, for example, the take-over bid threshold under the *Securities Act (Ontario)*, as defined in National Instrument 62-104, is 20% and is in our view a relevant comparator. Furthermore, while different and not aligned on all fours with the Canadian approach, the SEC requires filings of one year of financial statements for a significant acquired business on a sliding scale where significance exceeds 20% up to 40%. In a recent consultation on this issue, the SEC did not propose changes to this portion of its sliding scale. Alignment with the US, albeit at a high level, is typically considered advantageous.

The CSA Staff Notice indicates that, based on historical analysis of past transactions, it expects the proposed changes to reduce the number of BARs that would be filed annually from 56 to 32. The annual number of exemption applications would be expected to decrease from 9 to 4. These numbers assume that both the two trigger test and the increase in the significance threshold to 30% are both implemented resulting in a steep reduction in the number of BAR filings. CCGG members are concerned about the extent of the reduction of information available to investors that will result from this change.

It would be helpful to CCGG members to understand the relative importance, as between the two proposed amendments, with respect to the anticipated impact on the number of expected filings. For example, what would be the expected reduction in reporting levels if only the two trigger test were implemented but the significance threshold remained at 20%? If the number of expected filings is approximately the same (e.g. 32), members could infer that the two trigger test is the primary driver, catching those transactions that are more significant while weeding out those that are

anomalous. Whereas if there is a significant increase in the number of filings that could be expected (e.g. closer to 56) from application of the two trigger test with a significance threshold of 20%, the importance of the change in the threshold from 20% to 30% to the determination of significance becomes clearer and fewer transactions that investors otherwise consider significant would be reportable under a 30% threshold. This result would raise concerns for investors because they use this information and it can be material in making investment decisions. Accordingly, removing it reduces transparency and could impact the cost of capital.

CONCLUSION

In summary, we continue to believe that reduction of regulatory requirements must not be at the expense of information useful to investors. While the shift to a two trigger test for BAR filing requirements appears reasonable and supports more consistent reporting derived from fewer anomalies in determining whether or not a transaction is significant, CCGG is more concerned about the relative importance of the shift to a 30% threshold. CCGG members would like additional information from the CSA on this point, in order to determine whether the proposed threshold increase is reasonable in the circumstances, and to assess its impact on the amount of BAR disclosure that would be available to investors, if implemented.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall, at 416-868-3582 or cmccall@ccgg.ca or, our Director of Policy Development, Sarah Neville at 416-847-0523 or sneville@ccgg.ca.

Yours very truly,



Marcia Moffat
Chair of the Board of Directors
Canadian Coalition for Good Governance

CCGG Members

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Franklin Templeton Canada Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)

- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Pier 21 Asset Management Inc.
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- Scotia Global Asset Management
- Sionna Investment Managers Inc
- State Street Global Advisors, Ltd. (SSgA)
- Sun Life Institutional Investments (Canada) Inc.
- TD Asset Management Inc.
- TD Greystone
- Teachers' Retirement Allowances Fund
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund