CSA ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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

September 5, 2019

PART 1 – Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a 90-day comment period, proposed amendments and changes to:

- National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**)*;*
- Companion Policy 51-102CP *Continuous Disclosure Obligations* (**Companion Policy 51-102CP**);
- Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* (**Companion Policy 41-101CP**);
- Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions* (**Companion Policy 44-101CP**);

(the **Proposed Amendments**).

We are issuing this Notice to solicit your comments on the Proposed Amendments.

The public comment period expires on December 4, 2019.

The text of the Proposed Amendments is published with this notice in the following annexes:

- Annex A – Proposed Amendments to NI 51-102
- Annex B – Proposed Changes to Companion Policy 51-102CP
- Annex C – Proposed Changes to Companion Policy 41-101CP
- Annex D – Proposed Changes to Companion Policy 44-101CP
- Annex E – Local Matters

This Notice is also available, as applicable, on the following websites of CSA jurisdictions:

www.lautorite.qc.ca
www.bcsc.bc.ca
www.albertasecurities.com
www.osc.gov.on.ca
nssc.novascotia.ca
www.fcaa.gov.sk.ca

www.fcnb.ca
www.mbsecurities.ca

PART 2 – Substance and Purpose

A reporting issuer that is not an investment fund is required to file a business acquisition report (**BAR**) after completing a significant acquisition. Part 8 of NI 51-102 sets out three significance tests: the asset test, the investment test and the profit or loss test. An acquisition of a business or related businesses is a significant acquisition that requires the filing of a BAR under Part 8 of NI 51-102:

- for a reporting issuer that is not a venture issuer, if the result from any one of the three significance tests exceeds 20%;
- for a venture issuer, if the result of either the asset test or investment test exceeds 100%

(collectively, the **BAR requirements**).

The BAR requirements were introduced in 2004[1] to provide investors with relatively timely access to historical financial information on a significant acquisition. They also require a reporting issuer that is not a venture issuer to prepare and file pro forma financial statements.

We have received feedback that in some cases the significance tests may produce anomalous results, that preparation of a BAR entails significant time and cost, and that the information necessary to comply with the BAR requirements may, in some instances, be difficult to obtain. In addition, some reporting issuers have applied for, and in appropriate circumstances were granted, exemptive relief from certain of the BAR requirements.

The Proposed Amendments are aimed at reducing the regulatory burden imposed by the BAR requirements in certain instances, without compromising investor protection.

PART 3 – Background

The Proposed Amendments are informed by comment letters and other stakeholder feedback received respecting the BAR requirements in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*. The comment letters were summarized in CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

[1] Certain aspects of these requirements were subsequently amended in 2015 as they apply to venture issuers.

Comments received reflected a wide range of suggestions, such as eliminating the BAR requirements entirely, reconsidering certain aspects of the significance tests (definitional and thresholds) and the relevance of pro forma financial statements. Many commenters supported increasing the significance test threshold for reporting issuers that are not venture issuers for reasons including that BAR disclosure is of limited value to investors particularly given its lack of timeliness, the cost of preparation and the fact that it can impede the completion of a transaction. Specific criticism was expressed relating to the profit or loss test for reasons including that the test often produces anomalous results when compared to the asset test or investment test.

Other commenters indicated that the BAR contains relevant information that may not be provided elsewhere. Commenters noted that not all historical financial information, pertaining to the acquired business that is provided in a BAR, is available in the issuer's other disclosure documents. In addition, the identifiable assets acquired and the liabilities assumed are initially recognized at their acquisition-date fair values in the reporting issuer's financial statements.

Based on the feedback noted above and the number of applications for exemptive relief from the BAR requirements considered by CSA staff, it appears that the current BAR requirements may in certain instances impose burden on reporting issuers without providing investors with the associated benefit of relevant information for their decision-making purposes. The Proposed Amendments are also meant to address this issue.

PART 4 – Summary of the Proposed Amendments

The Proposed Amendments:

- alter the determination of significance for reporting issuers that are not venture issuers such that an acquisition of a business or related businesses is a significant acquisition only if at least two of the existing significance tests are triggered; and
- increase the significance test threshold for reporting issuers that are not venture issuers from 20 % to 30%.

The proposed two-trigger test aligns with the consultation feedback to modify the criteria to file a BAR. Our proposal to move towards a two-trigger test was informed by considering the feedback from the consultation and by considering data (including analyzing in each jurisdiction the BARs filed and the BAR relief granted over an approximate three-year period) to assess the impact of this change on a look back basis. Many commenters supported removing the profit or loss test for reasons including that the test often produces anomalous results when compared to the asset test or the investment test. Our analysis of the data indicates that the two-trigger test is more effective in dealing with the anomalous results than most of the other suggestions, such as removing the profit or loss test, introducing a revenue test etc., and captures significant acquisitions.

Additionally, the Proposed Amendments increase the significance test threshold that applies to a reporting issuer that is not a venture issuer. The increase in the significance test threshold from 20% to 30% is consistent with the feedback we received in the consultation to increase the significance thresholds as a way to reduce regulatory burden.

In addition to the Proposed Amendments, we considered other options to alter the BAR requirements, but determined that they either did not align with our policy objectives or that the reduction in burden did not justify a potential significant loss of information to investors.

We are not, at this time, proposing any further changes to the BAR requirements as they relate to venture issuers. The CSA already reduced regulatory burden for venture issuers in 2015 by increasing the significance test threshold from 40% to 100% and by removing the requirement that BARs filed by venture issuers contain pro forma financial statements.

We will continue to monitor international developments, including the recent proposal by the U.S. Securities and Exchange Commission,[2] to further inform our approach to reducing regulatory burden for reporting issuers that are not venture issuers without compromising investor protection.

PART 5 – Request for Comments

We welcome comments on the Proposed Amendments.

Please submit your comments in writing on or before December 4, 2019.

Address your submission to all of the CSA as follows:

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

[2] Amendments to Financial Disclosures about Acquired and Disposed Businesses, Release No. 33-10635; 34-85765; IC-33465; File No. S7-05-19.

Deliver your comments only to the addresses listed below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
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Fax: 416-593-2318
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Comments Received will be Publicly Available

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

PART 6 – Questions

If you have any questions, please contact any of the CSA staff listed below.

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ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. ***National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.***

2. ***Subsection 8.3(1) is amended by replacing "***subsection (3) and subsections 8.10(1) and 8.10(2)***" with "***subsection (5) and subsections 8.10(1) and (2)***".***

3. ***Paragraph 8.3(1)(a) is amended by replacing "***any of the three***" with "***two or more of the***".***

4. ***In the following provisions, "***20***" is replaced with "***30***":***

(a) paragraph (b) of subsection 8.3(1);

(b) paragraphs (a), (b) and (c) of subsection 8.3(2);

(c) paragraph (b) of subsection 8.3(3);

(d) paragraphs (a), (b) and (c) of subsection 8.3(4).

5. ***Subsection 8.3(5) is replaced with the following:***

"(5) Despite subsection (1) and for the purposes of subsection (3), an acquisition of a business or related businesses is not a significant acquisition,

(a) for a reporting issuer that is not a venture issuer, if the acquisition does not satisfy at least two of the optional significance tests under subsection (4); or

(b) for a venture issuer, if the acquisition does not satisfy the optional significance tests set out in paragraphs (4) (a) and (b) if "30 percent" is read as "100 percent".***"***

6. This Instrument comes into force on ●.

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.

2. Subsection 8.1(4) is changed by adding the following at the end of the subsection:

“Reporting issuers are reminded that an acquisition may constitute the acquisition of a business for securities legislation purposes, even if the acquired set of activities or assets does not meet the definition of a “business” for accounting purposes.**”.**

3. Subsection 8.2(1) is replaced by the following:

“8.2 Significance Tests

(1) **Application of Significance Tests –** Subsection 8.3(2) of the Instrument sets out the required significance tests for determining whether an acquisition of a business by a reporting issuer is a “significant acquisition”. The application of the significance tests depends on the status of the reporting issuer such that if the reporting issuer is:

(a) not a venture issuer, then an acquisition is significant if it satisfies two or more of the significance tests at a 30% threshold; or

(b) a venture issuer, then an acquisition is significant if it satisfies either of the asset or investment test at a 100% threshold.

The test must be applied as at the acquisition date using the most recent audited annual financial statements of the reporting issuer and the business.**”.**

4. These changes become effective on ●.

ANNEX C

PROPOSED CHANGES TO COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS

1. ***Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements is changed by this Document.***

2. ***Subsection 5.9(5) is changed by replacing the text of the first bullet with:***

"if the indirect acquisition would be considered a significant acquisition under subsection 35.1(4) of Form 41-101F1 if the issuer applies those provisions to its proportionate interest in the indirect acquisition of the business;***".***

3. This change becomes effective on ●.

ANNEX D

PROPOSED CHANGES TO COMPANION POLICY 44-101CP *TO NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. ***Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions is changed by this Document.***

2. ***Subsection 4.9(3) is changed by replacing the text of the first bullet with:***

"if the indirect acquisition would be considered a significant acquisition under Part 8 of NI 51-102 if the issuer applies those provisions to its proportionate interest in the indirect acquisition of the business;**".**

3. This change becomes effective on ●.

ANNEX E

LOCAL MATTERS

There are no local matters in Alberta to consider at this time.

January 6, 2020

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Me Phillippe Lebel
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consultation-en-cours@lautorite.qc.ca

Dear Sirs and Madams:

Re: 6.1.1 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 - Together "Proposed Amendments".

We are strongly opposed to the Proposed Amendments. In our view, the criteria used to support the amendments are incomplete and the resulting reduction of Business Acquisition Reports (BARs) being filed could significantly reduce the amount of appropriate and relevant information for purposes of making investment decisions following a significant acquisition.

We also understand that the U.S. Securities and Exchange Commission issued a proposed amendment for comment in May 2019 designed to improve disclosures relating to acquisitions and dispositions of businesses. Although a formal conclusion to the SEC proposal has not yet been released, we are concerned that the CSA's Proposed Amendments in their current form may result in laxer requirements for Canadian filers. We would encourage the CSA and associated provincial securities regulators to carefully monitor the SEC's deliberations before concluding.

Based on our review of the Request for Comments, the Staff estimate that over 40% of the BARs published over the last three years would have not been filed (24 of 56), resulting in a total average annual cost savings to issuers of approximately $1.6 million. In our view, however, the cost savings of ~$66K per BAR not filed are likely to be trivial in the context of the total value of the related acquisitions. The total costs should be weighed against the beneficial information provided on each acquisition, by each BAR, which public investors rely on to inform their investment decisions and hold companies to account.

By way of background, Veritas Investment Research Corporation is a Canadian independent equity research firm founded in 2000 that prides itself in using a unique forensic-based approach to analysis. Veritas is an active advocate for investor rights in both securities regulation and accounting standard setting. Its Chief Executive Officer has served as a member of the OSC's Continuous Disclosure Committee since 2006.

History has shown that acquisitions can be a breeding ground for corporate financial reporting problems, ranging from accounting misrepresentations to outright frauds. While it is true that only a small fraction of acquisitions are problematic, BARs give investors insight into the acquired company's historical financial information and accounting policies, allowing users to better analyze adjustments made by the acquiror to integrate the target's accounting with its own. In this way, investors are able to track accounting changes, measure post-acquisition performance and evaluate management's strategy.

At the time of the acquisition, GAAP requires that acquirors fair value the assets and labilities of the acquired entity. Given that calculated fair values are estimates that are based on assumptions regarding the future, such values are inherently subjective. A key benefit of BARs is that they further the investor's ability to evaluate the underlying assumption(s) used by a company in its fair value calculations.

During the consolidation process, the acquiror will assess the acquiree's accounting policies and make any changes the acquiror deems necessary to align the target's reporting with its own. The BAR provides details of: the underlying fair value assumptions; the fair value adjustments recorded; and the accounting policies originally used by the acquiree as well as any changes to those accounting policies made by the acquiror.

Based on Veritas' work over the past twenty years, BARs are a vital input in assessing the quality of company earnings, organic growth rates, and growth-by-acquisition strategies. Measures of organic growth – whether based on revenues, earnings or alternative metrics – are greatly affected by the fair values assigned to the acquiree's assets and liabilities. Equally important and perhaps less well understood, changes by the acquiror in post-acquisition accounting polices can have material effects on reported future earnings and cash flows subsequent to the acquisition.

The aforementioned issues are exacerbated when the acquired entity is private or the subsidiary of a public entity, given that the information contained in the BAR is unlikely to have been public prior to the transaction.

Given the SEC's outstanding proposed amendments to the financial disclosure requirements in Rules 3-05, 3-14, and Article 11 of Regulation S-X related to business acquisition disclosures, we would encourage the CSA to ensure that the final Proposed Amendments are not laxer than those currently in existence and are consistent with those that are ultimately approved by the S.E.C.

Inconsistent securities regulations could be perceived to lessen the quality of Canadian financial reporting. Given that Canada is a market that depends heavily on foreign investment, material weaknesses in our financial reporting and regulatory system are likely to increase the cost of capital for all Canadian issuers, not just those filing BARs.

Even where BARs are not widely read or used by investors, we think there are many intangible benefits to these disclosures. There are numerous studies showing that financial executives are likely to engage in some form of financial accounting management – without the BAR requirement, there would be far less information available for investors to evaluate how acquisitions may have been treated. Public disclosure requirements for acquisitions are likely to act as a deterrent for management teams that might be tempted to manage earnings using an acquiree's financial results.

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INVESTMENT
RESEARCH

Paraphrasing, the mission statement of Canadian regulators is:

- To provide protection to investors from fraudulent, manipulative or misleading practices, to foster fair, efficient and transparent capital markets as well as confidence in capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk.

As currently constituted, we think BARs offer a cost-effective means of reducing information asymmetries, deterring negative reporting practices and strengthening confidence in capital markets. These are public goods whose benefits are paid for by public filers but broadly enjoyed by all market participants.

In contrast, the justifications advanced for the Proposed Amendments appear to focus heavily on cost savings to filers, in the form of associated audit and legal fees, as well as management's time. The Staff estimated that the total average cost per BAR is roughly \$66,000 and that the resulting reduced number of BARs filed over the last three years would equate to an annual aggregate costs savings of approximately \$1.6 million.

In our view, the true "costs" of weak or misleading financial information are borne by investors when a company's earnings management eventually catches up with its underlying fundamentals. These costs to investors tend to occur infrequently and in concentrated cases, but can be dramatic. We are not far removed from high profile growth-by-acquisition scandals, such as Valiant Pharmaceuticals and Concordia Pharmaceuticals, among others. In these cases, Veritas' work has relied extensively on BARs to better inform investors of accounting and disclosure risks in advance of later problems.

In our view, the "costs" of preparing BARs are likely to be miniscule relative to the total dollar value of individual acquisitions, as well as other transactional and due diligence costs borne by the acquiror in completing each purchase. What's more, the independent audits provided in generating BARs are likely to be invaluable to company directors and management teams as they work through differences in accounting between acquiror and acquiree, and make decisions on how to integrate their financial reporting on a go-forward basis.

Any changes to the BAR requirements should be contemplated on a full cost-benefit basis, including an analysis of how information removed by relaxing BAR filings might affect the disclosures available to investors, the effectiveness of overall financial reporting, and whether the aims of the CSA's mandate are likely to be furthered.

In our view, the analysis so far is incomplete. We suspect that, had the BAR rules been relaxed, the BARs that would have remained 'unfiled' offered a significantly higher level of disclosure on individual acquisitions and related accounting than could otherwise be obtained by investors. Combined with the many intangible benefits we have suggested, we think a true cost-benefit analysis of these BARs is likely to be significantly positive for capital market participants and likely to far outweigh the suggested \$66K average savings.

We welcome the opportunity to discuss our submission further. Submitted in good faith.

Sincerely,

Anthony Scilipoti
President & CEO

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VIA E-MAIL

December 2, 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

c/o:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Québec, QC G1V 5C1
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Dear Sirs/Mesdames:

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

Magna International Inc. ("Magna") appreciates the opportunity to offer input on the changes to Business Acquisition Report ("BAR") requirements contained in the Proposed Amendments and is submitting this letter in response to the request for comments by the CSA.

Background of Magna

Magna is a mobility technology company with more than 166,000 entrepreneurial-minded employees and 346 manufacturing operations and 92 product development, engineering and sales centres in 28 countries. We have complete vehicle and contract manufacturing expertise, as well as product capabilities which include body, chassis, exterior, seating, powertrain, active driver assistance, electronics, mechatronics, mirrors, lighting and roof systems. We also have electronic and software capabilities across many of these areas. Our common shares trade on the Toronto Stock Exchange (MG) and the New York Stock Exchange (MGA).

Magna's Submission

As a general matter, Magna supports the CSA's larger efforts to reduce unnecessary or overly burdensome regulatory requirements. With respect to BAR requirements, we previously commented in response to CSA Consultation Paper 51-404[1] that we believe BAR disclosure, and in particular the prior period and pro forma information requirements, may be of only modest relevance to investors who generally assess acquisitions based on the short – to medium-term future impact on an acquiror's cash flows, earnings and other financial metrics.

While the Proposed Amendments do not address the above concern with the BAR requirements, we welcome regulatory change that narrows the circumstances in which the BAR requirement would be triggered. The introduction of a double-trigger significance test, as well as the increase in the significance test threshold from 20% to 30% are positive developments in achieving this goal. Moreover, the proposed 30% significance threshold would also align with the threshold for determining a "material subsidiary" for insider reporting purposes in NI 55-104. We believe this provides further clarity for issuers and will lead to enhanced consistency of disclosures for investors.

* * *

We respectfully submit the comments in this letter for your consideration and would welcome an opportunity to discuss them with you.

Regards,

Bassem A. Shakeel
Vice-President and Corporate Secretary

Giuseppe N. Cosentino
Senior Legal Counsel

[1] See Magna Comment Letter dated July 28, 2017.

cenovus ENERGY

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December 3, 2019

SENT BY ELECTRONIC MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Authorité 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

To the Attention of:

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Dear Sir/Mesdames:

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 are pleased to provide our comments on the above proposed amendments.

We strongly support the CSA's efforts to reduce the cost and regulatory burden of continuous disclosure requirements. We support the amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

("NI 51-102"), which will: (i) require any acquisition to be significant by triggering two threshold tests as opposed to the current rules, which trigger the filing of a business acquisition report ("BAR") if only one significance test is triggered, and (ii) increase the significance test threshold from 20% to 30%.

While we appreciate that requiring the triggering of two significance tests and increasing the thresholds for the tests is likely to reduce the number of BARs filed and thereby generally lower the burden of regulation, we believe the CSA should go further to reduce costs and the regulatory burden by eliminating the requirement to file a BAR altogether.

The requirement to file a BAR carries significant costs associated with financial statement preparation, including the preparation and filing of pro forma financial statements. These costs can be especially burdensome when acquisitions are for a business that is other than an entire entity. The necessary carve-out financial statements when this occurs are time consuming and expensive.

The filing of a BAR up to seventy-five days after the acquisition date results in information being conveyed to the market that is no longer current at the time of filing and therefore is of limited value. As such, it is our assertion that the BAR does not provide timely information to market participants and does not assist investors with making an investment decision. Fundamentally, if a costly and time-consuming disclosure requirement fails to provide useful information to investors, the disclosure requirement should be eliminated. We respectfully submit that the CSA would be doing a service to both investors and issuers by concentrating its efforts on ensuring that all required disclosure is timely and useful to market participants.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely,

Blaine Young
Senior Legal Counsel

Building a better
working world

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4 December 2019

British Columbia Securities Commission
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Superintendent of Securities, Nunavut

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

Dear the Secretary of the Ontario Securities Commission and Me Philippe Lebel,

Ernst & Young LLP is pleased to provide comments to the CSA's Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") and Changes to Certain Policies Related to the Business Acquisition Report ("BAR") Requirements (collectively, the "Proposed Amendments").

We support the CSA's objective to improve these disclosures for investors, facilitate more timely access to historical financial information on significant acquisitions, and reduce the regulatory burden imposed by the BAR requirements without compromising investor protection. We believe that the proposed changes are an improvement that is consistent with the CSA's objectives, and accordingly, we support the Proposed Amendments. In our experience, the Proposed Amendments should address many of the anomalous results that we observe in practice in application of the existing significance tests in NI 51-102.

However, we recommend that the CSA continue to monitor the final amendments to financial disclosures about acquired and disposed businesses adopted by the Securities and Exchange Commission ("SEC"). When the SEC amendments are finalized, we also recommend that the CSA revisit harmonizing the CSA's rules with those rules as adopted by the SEC.

We appreciate the opportunity to comment on the Proposed Amendments. Please contact Laney Doyle (Professional Practice Director) if you wish to discuss our comments.

Yours sincerely,

Ernst + Young LLP

Chartered Professional Accountants
Licensed Public Accountants

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December 4, 2019

c/o

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Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

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 (BAR) Requirements

Chartered Professional Accountants of Canada (CPA Canada) appreciates the opportunity to respond to the Canadian Securities Administrators (CSA) on Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations and Changes to Certain Policies Related to the Business Acquisition Report Requirements* (BAR proposed amendments).

We support the CSA's efforts to revisit the BAR significance tests and thresholds. As noted in our comment letter regarding CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*[1], we heard from stakeholders that BAR disclosures

[1] https://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20170727_51-404_cpa-canada.pdf

provide relevant information in connection with acquisitions, however, there is an opportunity to increase the thresholds established in the size tests. We are pleased that the CSA has made progress on this issue so quickly and believe the BAR proposed amendments are a positive development in efforts to alleviate regulatory burden and maintain investor protection.

We appreciate the opportunity to respond to these important consultations. If we can be of any further assistance in the CSA's examination of the relevance and usefulness of continuous disclosure requirements, please do not hesitate to contact Rosemary McGuire, Director, Research, Guidance and Support (rmcguire@cpacanada.ca).

Yours truly,

Gordon Beal, CPA, CA, M.Ed.
Vice President, Research, Guidance and Support
Chartered Professional Accountants of Canada

December 4, 2019

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

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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

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding 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 (the **Consultation** or the **Proposed Amendments**).

PMAC represents over 275 investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, most of our members are also registered as investment fund managers and/or exempt market dealers. PMAC's members encompass both large and small firms managing total assets in excess of $2.7 trillion for institutional and private client portfolios.

KEY RECOMMENDATIONS

PMAC supports burden reduction efforts that that do not compromise investor protection.
PMAC acknowledges that business acquisition reports (**BARs**), which are required to be completed by reporting issuers (other than investment fund issuers) in certain circumstances, represent an important source of information for portfolio managers that assist them in making informed investment decisions on behalf of their clients, in that regard, PMAC:

1) **Supports** the Proposed Amendment to alter the determination of significance for reporting issuers that are not venture issuers, such that an acquisition of a business is considered a significant acquisition if the result from any two of the three significance tests exceeds 20% (modified from a single test); and

2) **Does not support** the Proposed Amendment to increase the significance test threshold for reporting issuers that are not venture issuers from 20% to 30%.

Our rationale is set out further below.

FEEDBACK

Regulatory Burden Reduction

PMAC is generally supportive of measures that reduce regulatory burden and we applaud the various workstreams currently being undertaken by the Canadian Securities Administrators (**CSA**) to assess regulatory requirements with the goal of burden reduction while maintaining market integrity and investor protection.

PMAC recognizes that reporting issuers have identified that they incur meaningful time and cost in preparing BARs after completion of a significant transaction, as a result of the current requirements under Part 8 of National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**).

Notwithstanding the foregoing, PMAC believes that BARs assist portfolio managers in making informed investment decisions on behalf of Canadian investors. Since the particulars contained in BARs are informative and not disclosed elsewhere, PMAC is concerned that the Proposed Amendments could negatively impact access to meaningful information, to the detriment of investors.

Portfolio Managers use BARs to make investment decisions

The BAR requirement was implemented to provide timely information regarding significant acquisitions to the market, including advising representatives at portfolio management firms (**PMs**). PMs rely on BARs to make investment decisions on behalf of Canadians.

With respect to reporting issuers that are not venture issuers, PMs are concerned that the Proposed Amendments go too far in increasing the significant test threshold from 20% to 30%. An acquisition that meets the current 20% requirement is significant and increasing the threshold to 30% will limit the information provided to the market.

It would be helpful if the CSA explained the rationale behind the proposed increase from 20 to 30%, as the Consultation only refers to this higher threshold as "being consistent with feedback received by the CSA".

In the alternative, the CSA may wish to consider increasing the significance requirement from 20-30% for *only* the profit and loss test. In light of the way that profits and losses can be accounted for using Generally Accepted Accounting Principles and the nature of certain transactions, we have received member feedback that the profit and loss test may, in certain circumstances, be met too readily and trigger the filing of a BAR that may not be truly significant. Assessing the data as to whether increasing only the profit and loss test threshold to 30% may present an opportunity to reduce the number of unnecessary BARs filed while still ensuring that material information is provided to the market.

CONCLUSION

For these reasons, PMAC is supportive of the CSA's proposal to trigger a BAR filing if two of the existing significance tests are triggered. Absent additional information regarding the rationale in support of a higher significance threshold that PMs can evaluate and respond to, we have concerns about increasing the significance threshold to 30%. We believe reducing the information available with respect to significant acquisitions may have a negative impact on investors.

If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Melissa Ghislanzoni at (416) 504-1118.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

Katie Walmsley
President

Margaret Gunawan
Director
Chair of Industry, Regulation & Tax Committee,

Managing Director – Head of Canada Legal & Compliance
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December 4, 2019

Without Prejudice
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
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Dear Sirs/Mesdames:

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

A. INTRODUCTION

We submit the following comments in response to the Notice and Request for Comment (the "**Notice**") published by the Canadian Securities Administrators (the "**CSA**") on September 5, 2019 with respect to proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**") and changes to certain policies related to the business acquisition report ("**BAR**") requirements. Collectively, the proposed amendments to NI 51-102 and the proposed amendments to policies related to BAR requirements are referred to herein as the "**Proposed Amendments**").

Thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of our Securities Practice Group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

We have organized our comments below with reference to specific sections of the Proposed Amendments. All references to parts and sections are to the relevant parts or sections of the applicable Proposed Amendments.

B. COMMENTS

a. Two-Trigger Significance Test

We are supportive of relaxing the tests to determine significance of business acquisitions for non-venture reporting issuers such that an acquisition of a business or related businesses is a significant acquisition only if two of the three significance thresholds are surpassed.

We respectfully submit that triggering of only one of the significance tests may not, in many cases, represent a correlation with the actual significance of an acquisition from a commercial, business or financial perspective. Based on our experience, where an acquisition triggers only one of the three existing significance tests in NI 51-102, the result is often anomalous rather than indicative of significance. In these examples the issuer generally does not consider the acquisition to be "significant" or material. In addition, it is often the case that the result of two of the tests is significantly below the 20% threshold as compared to the third test which is above the 20% threshold. The result of the current single-trigger requirement is that the issuer is either required to comply with the BAR requirements, or where viable, expend significant time and resources to pursue exemptive relief. Each of these options can be costly to the issuer, without providing additional meaningful benefit to investors. In our view, moving to a two-trigger significance test would reduce the number of anomalous results and therefore significantly reduce the burden for issuers undertaking acquisitions that should not otherwise be treated as significant.

The Notice states that specific criticism was expressed regarding the profit or loss test for reasons including that it produces anomalous results. We agree, and further suggest that the CSA should consider whether there may be a suitable replacement to the profit or lost test, or provide for alternatives that may be acceptable in the appropriate circumstances, such as EBITDA. Pursuant to subsection 8.1(14) of NI 51-102, the significance of an acquisition is permitted, rightfully, to be calculated using unaudited financial statements. As such, given that unaudited profit or loss can be relied upon for the purposes of testing significance, in our view, it would be appropriate to permit calculation based on EBITDA or other similar and standardized measures. Profit or loss in many contexts, including acquisitions of private enterprises that do not produce audited financial statements, is often not the relevant measure of the historical performance of a business, nor the relevant measure relied upon when making acquisition determinations.

With respect to acquisitions of related businesses, we suggest that subsection 8.3(12) of NI 51-102 be amended to clarify the specific time-frame that applies to consider acquisitions of related businesses on a combined basis. Subsection 8.3(12), in our view, lacks clarity in contrast to subsection 8.3(11) of NI 51-102, which specifically applies to acquisitions made "during the same financial year." We further suggest that subsection (a) of the definition of "acquisition of a related business" is overly broad in that acquisitions of different businesses that are not otherwise connected should not be required to be considered on a combined basis in all circumstances, solely due to having been under common control or management at some prior point in time. Examples include distinct and separate real estate asset portfolios or resource assets, that may have no other connection other than common control or management with a previously acquired portfolio or asset.

b. Increased Significance Threshold

We are supportive of the increased significance threshold of 30% in the Proposed Amendments. Referring again to the instances where there have been anomalous results, we note than in many examples the one test that is triggered results in a significance percentage of between 20% to 30%. Increasing the significance threshold would not only reduce the regulatory burden on issuers but also allow for greater flexibility to pursue growth strategies and financing. The additional delay required to prepare audited financial statements for business acquisitions adds a great deal of uncertainty and market risk where the issuer must also pursue acquisition financing in connection with an investment. The requirement also puts reporting issuers at a competitive disadvantage when competing for viable acquisition targets, particularly in the context of auctions or other similar circumstances where target businesses may not have any incentive and/or ability to produce or assist in the production of audited financial statements. These requirements also create challenges in the context of foreign acquisitions, acquisitions in specific industries, or of discrete assets or parts of businesses, where appropriate records required to prepare audited financial statements may not be readily available or accessible

c. Subsection 8.1(4) of Companion Policy 51-102CP *Continuous Disclosure Obligations*

We urge the CSA to consider whether it is necessary or helpful to add the proposed guidance to Companion Policy 51-102CP *Continuous Disclosure Obligations* ("**51-102CP**") with respect to an acquisition constituting an acquisition of a business for securities law purposes even where such an acquisition would not meet the definition of a "business" for accounting purposes. . If a proposed acquisition was not historically reported as a standalone business under IFRS nor historically considered a business for accounting purposes, we suggest the CSA should consider whether it is appropriate in all cases to require an issuer to have to prepare such financial statements for these purposes.

International Financial Reporting Standard 3, "Business Combinations" ("**IFRS 3**") provides guidance that defines a business as an "integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs or other economic benefits directly to investors or other owners, members or participants." Paragraph B8 of IFRS 3 states that "to be capable of being conducted and managed for the purpose identified in the definition of a business, an integrated set of activities and assets requires two essential elements – inputs and process applied to those inputs".

Paragraph B8 of IFRS 3 provides that "to be considered a business, an integrated set of activities and assets must include, at a minimum, an output and a substantive process that together significantly contribute to the ability to create output." Under paragraph B12B, it states: "If a set of activities and assets does not have outputs at the acquisition date, an acquired process (or group of processes) shall be considered substantive only if: (a) it is critical to the ability to develop or convert an acquired input or inputs into outputs; and (b) the inputs acquired include both an organized workforce that has the necessary skills, knowledge, or experience to perform that process (or group of processes) and other inputs that the organized workforce could develop or convert into outputs. Those other inputs could include: (i) intellectual property that could be used to develop a good or service; (ii) other economic resources that could be developed to create outputs; or (iii) rights to obtain access to necessary materials or rights that enable the creation of future outputs. Examples of the inputs mentioned in subparagraphs (b)(i) - (iii) include technology, in-process research and development projects, real estate and mineral interests." We believe that the foregoing and other guidance provided in IFRS 3 can be relevant in applicable circumstance to determine whether or not an acquisition of assets or rights, etc., should be considered a business. As such, we believe the proposed 51-102CP amendments will add ambiguity for issuers in determining whether or not an acquisition would be considered a business.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

“*Laura Levine*”

“*Ramandeep K. Grewal*”

December 4, 2019

VIA E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
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Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
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Superintendent of Securities, Yukon Territory
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Dear Sirs/Mesdames:

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

TSX Inc. and TSX Venture Exchange Inc. (collectively, the "**Exchanges**" or "**we**") welcome the opportunity to comment on the notice and request for comment published by the Canadian Securities Administrators ("**CSA**") entitled 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 ("**Request for Comments**").

The Exchanges

The Exchanges are part of TMX Group Limited, a company that is strongly focused on supporting and promoting innovation, capital formation, innovation, good governance and financial markets in Canada and globally through its exchanges, including the Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSXV**") for equities, and the Montreal Exchange for financial derivatives. TSX is a globally recognized, robust stock exchange that lists growth-oriented companies with strong performance track records and is a top-ranked destination for global capital. TSXV is Canada's leading global capital formation platform for growth stage companies looking to access public venture capital to facilitate their growth, and is an important part of Canada's vibrant and unique capital markets continuum.

Reducing Regulatory Burden

It is vital to our clients and to all investors that the capital markets in Canada remain fair, efficient and competitive. Our businesses rely on our customers' continued confidence and participation in Canada's capital markets. We believe that achieving the right balance between investor protection and regulatory burden is essential to creating an environment where companies and the Canadian economy can grow and successfully and sustainably compete on an international level. The Exchanges are very supportive of regulatory initiatives to reduce the regulatory burden on all market participants without impeding the ability of the CSA to fulfill its regulatory responsibility to protect investors. We therefore applaud the CSA for continuing to consider options to reduce the regulatory burden for all market participants.

Our recommendation below is given bearing in mind the importance of balancing the need to reduce regulatory burden with the equally important mandate to safeguard the public interest and protect investors.

Eliminating the Requirement to file a Business Acquisition Report

Corporate mergers and acquisitions are a commonplace element of the modern economy, and reducing unnecessary burden associated with this activity is an important pursuit. While the Exchanges support the CSA's efforts to reduce the regulatory burden associated with filing a business acquisition report ("**BAR**") with its proposed amendments included in the Request for Comments, the Exchanges believe that the requirement for an issuer to file a BAR should be eliminated for all issuers (venture and non-venture issuers).

The Exchanges have canvassed representatives of both issuers and representatives for feedback on the BAR requirements. Many stakeholders indicated that the BAR serves no useful purpose, particularly due to the lapse of time before the information in the BAR is made available to the public. While certain stakeholders indicated that the financial statements of the acquired business and the pro forma financial statements included in a BAR may be useful to investors when making investment decisions, especially where no historical information exists, since the BAR can be filed up to 75 days after the completion of an acquisition the information included in the BAR is stale or irrelevant. Moreover, in many cases the issuer prepares a prospectus in connection with the acquisition, making the BAR completely irrelevant as it provides no new information that is not already provided in the prospectus. There are several scenarios in which the need to file a BAR is an unnecessary regulatory burden on businesses. In those cases, if not entirely, the BAR requirement should be eliminated for all issuers.

The Exchanges appreciate the opportunity to provide comments. Please do not hesitate to contact us if you have any questions regarding our comments.

Respectfully submitted,

Loui Anastasopoulos
President Capital Formation and TSX Trust

Brady Fletcher
Managing Director & Head of TSX Venture Exchange

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Le 4 décembre 2019,

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Superintendent of Securities, Terre-Neuve-et-Labrador
Surintendant des valeurs mobilières, Territoires du Nord-Ouest
Surintendant des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Nunavut

Me Philippe Lebel
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Objet : Lettre en réponse à la consultation 51-102 des ACVM - Projets de Règlement modifiant le Règlement 51-102 sur les obligations d'information continue et de modification de certaines instructions générales concernant les obligations relatives à la déclaration d'acquisition d'entreprise.

Bonjour,

Québec Bourse remercie les autorités canadiennes en valeurs mobilières (les « ACVM ») d'avoir pris la décision de consulter à nouveau les émetteurs et participants de marché sur une question très importante dans une optique de réduction du fardeau réglementaire.

Nous comprenons que les propositions de modifications aux obligations relatives à la déclaration d'acquisition d'entreprise (« DAE »), émanent de la prise en considération des commentaires reçus dans le cadre de la consultation 51-404.Les ACVM proposent d'intervenir sur deux niveaux : i) que l'acquisition d'une entreprise ou d'entreprises reliées sera considérée comme une acquisition significative uniquement s'il est satisfait au moins à deux des critères de significativité existants; et ii) rehausser le seuil des critères de significativité de 20 % à 30 % dans le cas des émetteurs assujettis qui ne sont pas des émetteurs émergents.

Bien que nous sommes heureux de constater la volonté des ACVM d'alléger le fardeau réglementaire, nous sommes dans l'obligation de constater que les propositions d'allègement des obligations relatives à l'exigence de DAE, des ACVM, sont beaucoup trop timides.

Les obligations relatives à la DAE constituent un exemple tangible de duplication d'information et de déséquilibre entre bénéfice pour l'investisseur et coût pour l'émetteur.

Nous recommandons de remplacer l'exigence de la DAE, par un communiqué de presse détaillé.

Divulgation publique :

L'entreprise qui réalise une acquisition importante est déjà tenue de se conformer aux obligations d'information continue. L'acquisition doit donc faire l'objet de l'émission d'un communiqué de presse et du dépôt d'un avis de changement important.

L'information essentielle est donc diffusée en temps opportun, dès l'occurrence, du fait important.

Pour une majorité d'émetteurs non émergents, l'émetteur tient une conférence d'analystes lors de laquelle la direction de la société présente l'acquisition et les éléments reliés à celle-ci.

États financiers et états financiers pro-forma :

Les premiers états financiers à être déposés sur SEDAR après la transaction sont déjà tenus de fournir l'information sur une base consolidée avec de l'information pro-forma sur des indicateurs clés tels qu'exigé par les IFRS (voir IFRS 3.59 et IFRS 3.B64-B66). Dans la plupart des cas, cette information est divulguée dans les états financiers intermédiaires ou annuels avant le délai de 75 jour prévu pour la production de la DAE.

La valeur des informations financières contenues dans les états financiers pro-forma est mise en doute. Principalement parce qu'elles ne tiennent pas compte des restructurations et synergies prévues suite à l'acquisition et ne permettent donc pas au lecteur d'anticiper l'impact réel de l'acquisition sur la société émettrice. De plus, les états financiers combinent de l'information financière couvrant souvent des périodes différentes et nécessitent l'utilisation de plusieurs hypothèses sur lesquelles aucune opinion indépendante n'est fournie.

L'exigence relative à la DAE ne justifie pas les coûts et obligations imposés à l'émetteur. Puisque la DAE doit être produite dans les 75 jours suivant la clôture de la transaction, la nature et la pertinence de l'information contenue dans une DAE est à tout le moins mise en doute compte-tenu que l'information date déjà de plusieurs mois et n'est pas diffusée en temps opportun.

Au mieux, certain diront que la DAE est intéressante à consulter mais n'est certainement pas essentielle. Dans un tel contexte, il nous apparaît important pour les ACVM de reconnaitre cette réalité et de prendre une approche alternative. En lieu et remplacement de l'obligation de produire une DAE, nous recommandons le recours au communiqué de presse.

Nous recommandons de remplacer l'obligation de produire une DAE par celle de diffuser un communiqué de presse détaillé. L'obligation relative à la divulgation d'information importante par voie de communiqué de presse pourrait permettre de satisfaire la préoccupation des ACVM. Il serait possible de prévoir des éléments d'informations spécifiques à présenter.

Nous reconnaissons que le remplacement de l'obligation de produire une DAE par un communiqué de presse détaillé, requiert de l'audace des ACVM et malgré le bien fondée de cette proposition, pourrait rencontrer des réticences importantes chez certaines des ACVM.

Dans l'éventualité où notre recommandation n'est pas retenue, nous croyons qu'au minimum les modifications suivantes devraient être apportées:

Le seuil de significativité majoré à 50%.

Notre recommandation repose sur le profil des émetteurs qui ne sont pas des émetteurs émergents. Si un seuil de 30% peut sembler approprié pour les entreprises de très grandes tailles, la population de sociétés inscrites au TSX compte un grand nombre de sociétés de plus petites tailles. Selon les données disponibles (au 30 septembre 2019) sur le site internet du TSX, 41% (soit 325) des 793 sociétés inscrites (autres que les fonds négociés en bourse) avaient une capitalisation boursière inférieure à 200 millions de dollars.

Le seuil de 30% proposé est donc susceptible de couvrir indûment un trop grand nombre d'opérations. Nous vous rappelons que lors de la consultation 51-404, Québec Bourse proposait que le statut d'émetteur émergent soit déterminé par le profil de la société plutôt que la bourse où la société est inscrite. Malheureusement notre recommandation n'a pas été retenue. La décision des ACVM de maintenir le statuquo en ce qui concerne la définition d'un émetteur émergent, a comme conséquence d'assujettir à la DAE, des émetteurs inscrits sur le TSX qui devraient bénéficier d'un régime plus conciliant.

Il est utile de rappeler que le seuil de significativité déclenchant le dépôt d'une DAC pour un émetteur émergent est de 100%.

Le traitement différentiel imposé entre les émetteurs qui ne sont pas des émetteurs émergents et les émetteurs émergents de petite et moyenne taille, est disproportionné et pénalise indûment les émetteurs qui ne sont pas des émetteurs émergents.

Élimination de l'obligation de produire des états financiers pro-forma.

Pour les raisons énoncées plus haut, l'obligation ne justifie pas en termes de bénéfices pour l'investisseur, les contraintes et coûts qu'elle représente pour l'émetteur.

L'élimination de l'obligation de produire des états financiers pro-forma contribuerait concrètement à rendre l'environnement des marchés publics plus concurrentiel.

En conclusion :

Le remplacement de l'obligation de produire une DAE par l'émission d'un communiqué de presse détaillé représente une opportunité pour les ACVM, de démontrer une volonté claire de réduire le fardeau réglementaire et d'éliminer la duplication d'information.

Si l'obligation relative au DAE demeure, il est essentiel que les ACVM reconnaissent qu'en matière de DAE, le traitement imposé aux émetteurs émergents est beaucoup plus efficace dans la recherche d'un équilibre entre le fardeau réglementaire et la protection des épargnants. Il est donc essentiel pour les ACVM d'adopter un seuil de significativité offrant au moins aux émetteurs non émergent, un cadre réglementaire mieux adapté.

Nous vous remercions à l'avance pour l'attention que vos porterez à la présente, et demeurons disponible pour discuter de nos commentaires.

Veuillez accepter l'expression de nos sentiments les meilleurs.

Louis Doyle
Directeur général
Québec Bourse Inc

CCGG Canadian Coalition for Good Governance
THE VOICE OF THE SHAREHOLDER

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
Corporate Secretary and Executive Director, Legal Affairs
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Dear Sir/Madam:

Re: <u>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</u>

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 asses 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 dépot 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

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December 4, 2019

Delivered By Email: comment@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

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

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, ON M5H 3S8

Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640 boulevard Laurier, bureau 400
Québec, QC G1V 5C1

Dear Sirs and Mesdames:

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 are pleased to provide comments in response to the Proposed Amendments outlined in the CSA Notice and Request for Comment published on September 5, 2019 (the "**Notice**") concerning amendments to NI 51-102 and certain policies related to the BAR requirements.

Capitalized terms used in this letter that are not otherwise defined herein have the meanings given to them in the Notice. In this letter we also refer to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* published on April 6, 2017 ("**Consultation Paper 51-404**") and CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* published on March 27, 2018 ("**Staff Notice 51-353**").

This letter is submitted on behalf of and contains comments of certain members of our Capital Markets Practice Group. Our comments are submitted without prejudice to any position that has been or may be taken by our Firm, whether on behalf of any of client of our Firm or otherwise.

<u>Comments on the Proposed Amendments</u>

We welcome the Proposed Amendments and applaud the CSA for undertaking this initiative to reduce some of the regulatory burden facing non-investment fund reporting issuers. We note in particular that Annex E to the Notice sets out estimated cost savings resulting from establishing a two-trigger test with a significance test threshold of 30% in relation to (1) applications for relief from the BAR requirements, where on average 5 of 9 relief applications would no longer be required, and (2) filings of BARs that would no longer be required, where on average 24 of 56 BARs would no longer be required, in each case on an annual basis. This is a commendable outcome.

<u>Opportunities to Further Refine the BAR Requirements</u>

Notwithstanding the anticipated benefits of the Proposed Amendments, we note that the Proposed Amendments do not address a range of comments that were submitted by various stakeholders in response to Consultation Paper 51-404 and that were summarized in Staff Notice 51-353. Consequently, we would like to take this opportunity to express our support for certain comments and to suggest that there are further opportunities to refine the BAR requirements beyond the scope of the Proposed Amendments.

In our experience, there are numerous additional challenges relating to the BAR requirements that are not addressed by the Proposed Amendments, including:

- The lack of alignment between the BAR requirements and the prospectus-level disclosure required under item 14.2 of Form 51-102F5 *Information Circular* (the "**Information Circular Significant Acquisition Requirements**"). We note that the CSA raised and acknowledged comments on this issue in Consultation Paper 51-404 and Staff Notice 51-353. We echo the comments which supported aligning these regimes, as the lack of alignment creates instances where the financial statements to be disclosed in an information circular are subject to more onerous requirements than those required in a BAR. We do not believe there is a clear policy justification for this distinction and would suggest that aligning the Information Circular Significant Acquisition Requirements with the BAR requirements would be consistent with the objectives set out in Consultation Paper 51-404 of reducing regulatory burden without comprising investor protection.

- The inappropriateness of the significance tests to reporting issuers operating in certain industries, particularly issuers that operate in the commercial real estate investment industry. We note the comment letter submitted by the Real Property Association of Canada in response to Consultation Paper 51-404, which in our experience generally highlights the challenges that real estate investment trusts ("**REITs**") face when navigating the BAR requirements. In particular, we are familiar with concerns relating to:

  - Financial and business metrics commonly used by REITs not being available to determine significance under the BAR requirements, and the metrics required under the significance tests being of limited relevance to REITs and their investors. This disconnect between the BAR requirements and the practical realities of the REIT industry leads to situations where issuers are regularly required to seek relief from the BAR requirements and to use alternative disclosure. Although we support the Proposed Amendments, issuers and investors in, for example, the real estate industry, would benefit either from the BAR requirements containing industry-specific rules or from greater clarity as to the circumstances in which exemptive relief can be obtained or as to what constitutes acceptable alternative disclosure.

  - The ability of an issuer to file a BAR varying as a function of the size and sophistication of the target of an acquisition and the length of time for which the target has owned the applicable assets. This can create unintended distinctions between potential transactions, potentially with unfavourable consequences for sellers of certain assets.

- We note that some of the comments provided to the CSA on Consultation Paper 51-404 and summarized in Staff Notice 51-353 highlighted the challenges related to the Profit or Loss Test. We appreciate and acknowledge that the new two-trigger test included in the Proposed Amendments may help alleviate certain concerns regarding this test, but we would expect the interpretation and application of the test to remain challenging and potentially problematic notwithstanding the Proposed Amendments.

We acknowledge that the Proposed Amendments address these concerns, among others, indirectly; the thresholds which are required to be met are both higher (given the threshold change from 20% to 30% in each of the Asset, Investment and Profit or Loss tests) and less numerous (given the two-trigger test) under the Proposed Amendments. However, we are of the view that certain underlying challenges relating to the BAR requirements, including those highlighted in previous comment letters and summarized in Staff Notice 51-353, will persist despite the Proposed Amendments until they are addressed directly in substantive amendments. We believe that there are additional opportunities to modernize the BAR requirements to further reduce regulatory burden without materially compromising the protection of investors in Canadian capital markets.

For example, we note that the Proposed Amendments apply a double-trigger standard to the Required Significance Tests and the Optional Significance Tests, such that an acquisition which is significant under any two of the Required Significance Tests and under any two of the Optional Significance Tests would be a significant acquisition. This structure requires issuers to determine significance under each of the Required and Optional Significance Tests in respect of multiple time periods. We query whether the CSA has considered, or would in the future consider, treating the Required Significance Tests as a filtering mechanism for the Optional Significance Tests, such that if an acquisition satisfied two of the three Required Significance Tests, then the issuer would be obliged to determine whether the acquisition satisfied only the two Optional Significance Tests that correspond to the Required Significance Tests which were initially satisfied. This would allow issuers to disregard one of the Optional Significance Tests and potentially create an opportunity for the CSA to consider further streamline the BAR requirements by not requiring a BAR if the acquisition satisfied only one of the two remaining optional tests.

In addition, we are aware of recent reforms proposed in the United States by the Securities and Exchange Commission (the "**SEC**"). We understand that the framework in effect in the United States generally requires greater levels of disclosure for acquisitions that are relatively more significant, and less disclosure for acquisitions that are relatively less significant. This approach contrasts with the BAR requirements and the Proposed Amendments, which, when triggered, apply as a whole irrespective of the degree of significance of an acquisition. We also understand that the changes proposed by the SEC include:

- Provisions intended to reduce the burdens of disclosure for even the most significant acquisitions by shortening the period in respect of which audited financial statements of the acquired business must be provided.

- Amendments to address anomalies that resulted from the investment and income tests used by the SEC to determine significance.

We acknowledge and appreciate that the SEC is responsible for a distinct regulatory environment and that cross-border comparisons can be misleading and unhelpful. We believe that Canada's existing securities legislation, coupled with the ongoing efforts of the CSA to streamline regulation, generally succeed in balancing the overarching policy considerations of investor protection and market efficiency. That being said, it is our view that the complex and onerous nature of the BAR requirements should continue to be examined and refined in ways which reduce undue burden on Canadian reporting issuers while still protecting investors. We would therefore encourage the CSA to continue to engage in meaningful dialogue with investors and stakeholders, and, in addition to the approach taken with the Proposed Amendments, which adjust the circumstances in which disclosure is required, to consider alternative approaches which address concerns related to the substance of the significance tests, industry specific concerns, and the circumstances in which prospectus-level disclosure is required and when less disclosure might be more appropriate.

* * * * * * * * *

Thank you for the opportunity to comment on the Proposed Amendments. We would be happy to discuss any of the above with you further. If you have any questions, please do not hesitate to contact the undersigned at the contact information above or either of Andrew Parker (T: 416-601-7939; E: aparker@mccarthy.ca) or Patrick Boucher (T: 514-397-4237; E: pboucher@mccarthy.ca).

Yours truly,

McCarthy Tétrault LLP

Per:

(Signed) "Michael Eldridge" *(Signed) "Mark McEwan"*

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The Secretary
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November 26, 2019

Submitted via electronic email

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

Dear Ontario Securities Commission,

Thank you for the opportunity to comment on the *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*.

The Real Property Association of Canada ("REALPAC") is Canada's senior-most voice for Canada's commercial investment real estate industry. Our members include the largest publicly traded real estate companies (including real estate operating companies, or "REOCs" and real estate investment trusts, or "REITs") – collectively "real estate entities" – in Canada.

REALPAC and its members are very supportive of the CSA's initiative to ease the regulatory burden imposed by business acquisition report (BAR) requirements. In particular, we support:

1. Increasing the significance test for filing a BAR to 50% or higher; and
2. Reducing the threshold for filing a BAR from meeting 3 tests, to only having to meet 2 of the 3 tests

In addition, we encourage the CSA to consider further amendments, including:

- Reducing regulatory burdens associated with the prospectus rules and offering process; and
- Providing an option to permit semi-annual reporting

Our specific comments on the proposed amendments follow.

1. Increasing the significance test threshold for reporting issuers that are not venture issuers:

Ideally, the threshold of 20% should be increased to 50% or 75%. Using a low threshold of 30% still results in most acquisitions for smaller, growing entities being subject to filing a BAR. As the costs associated with meeting the BAR requirements are very significant, they act as a hindrance to raising capital.

As acknowledged in the Request for Comments, the cost of filing a BAR (as well as the BAR cross-over rules relating to a Short Form Prospectus) are very high.

This is due to the fact that:

- audited financial statements are required for one year of the financial statements prepared;
- the property being acquired normally does not have historical separate financial statements available, thus requiring that the statements be carved out from the vendor's financial statements (i.e. start from scratch to create);
- there is no legal obligation for vendors to supply 3 years of information, and for real estate, it is customary practice to sell "as is, where is";
- it requires cooperation from the vendor and typically from the vendor's auditor/accountant who generally will extract some "premium" fee for getting the work done, if they agree at all;
- there is the additional cost of the real estate entity's auditors who would normally be engaged to review the pro forma statements prepared for the BAR; and,
- there are duplicate costs for audits and reviews that arise when the BAR information must be incorporated in a prospectus initially and then updated when the acquisition actually closes.

While it is important to provide investors with appropriate information when a significant transaction takes place, increasing the threshold above 50% will arguably provide investors with better information as it will only highlight transactions that are actually significant to real estate entities, rather than focusing on every single time a smaller, growing real estate entity is simply adding a property to its portfolio. It distracts the management team from building a stronger operating base.

Aside from increasing the significance threshold, consideration should be given to providing a time frame threshold for newly formed reporting issuers. During the earlier months after the initial public offering (IPO) process, there is typically a ramp up phase where entities continue to acquire assets to grow the business. Requiring a newly formed reporting issuer to continually file BAR reports for each asset they acquire is very onerous and can impede the ability of the entity to grow at the pace required to be competitive. Allowing a time frame of 36 months, for example, would not deny investors key information, given the extensive information that was already included in the recently filed prospectus and the continuous disclosures included in quarterly reports.

2. **Alter the determination of significance for reporting issuers that are not venture issuers, such that an acquisition of a business or related business is a significant acquisition only if at least two of the existing significance tests are triggered**

The proposed amendment to allow the use of only two of the significance tests is a noticeable improvement, as it will allow real estate entities to focus on the investment and asset tests rather than the profit and loss test.

As noted in previous comment letters to the CSA and OSC, the most significant issue with the existing BAR rules for real estate entities is the profit and loss test due to various amounts that are included in the calculation of net income under IFRS that are not reflective of a real estate entity's operating performance and are subject to significant fluctuations and inconsistencies among similar entities.

Net income of a real estate entity has traditionally been and continues to be an irrelevant operating metric. For this reason, the real estate industry created non-GAAP/non-IFRS measures to assess the operating performance of a real estate entity nearly forty years ago. Globally, the industry has widely adopted operating measures such as net operating income ("NOI"), Funds From Operations ("FFO") and Adjusted Funds From Operations ("AFFO") as appropriate and relevant operating metrics.

In real estate, NOI is a profit or loss measure commonly used and widely-accepted across the industry. NOI is reported by virtually all real estate entities and is also a key component in driving a property acquisition's value and price. For example, when analyzing a potential purchase, NOI is used by capitalizing it at the property's capitalization rate to arrive at the property's value; thus, NOI is highly relevant to real estate entities. Further, by referencing NOI, it excludes any financing impact relating to debt the seller may have placed on the sold property, which in most cases will not be assumed by the acquiring entity nor reflect the acquiring entity's cost of borrowing.

Additionally, in most cases, the significance of an acquisition measured using NOI for the profit and loss test tracks virtually in the same proportion as the significance of an acquisition using the asset test or investment test. That is, if an acquisition represents 20% of a real estate entity's assets, the NOI of the property will represent approximately 20% of the real estate entity's NOI. As such, when using the appropriate income test for real estate entities, the resulting impact on a threshold is essentially the same as per an asset test. Therefore, completing both the income test and the asset test is redundant when related to applying a threshold test.

3. Additional comments

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

The BAR rules that cross-over to the rules relating to Short Form Prospectuses per National Instrument 44-101 ("NI 44-101") are onerous. The rules of NI 44-101 (specifically Section 10.2 of Form 44-101F1) state that the reporting issuer must include in the prospectus information about significant acquisitions that have either been completed or are highly likely to be completed. In order to satisfy this requirement, the financial statements or financial information provided in the prospectus must include the information that will be required for a BAR filed under Part 8 of NI 51-102.

Therefore, if a BAR has already been filed, then the BAR may simply be incorporated by reference in the prospectus. However, if no BAR has been filed, as may be the case if a reporting issuer is raising capital before an acquisition is completed, the BAR information must be created to be placed within the body of the prospectus. This creates a significant amount of work and cost and significantly complicates the process of raising capital.

Most smaller and growth-oriented real estate entities need to raise capital in order to finance proposed acquisitions. The prospectus requires that detailed information be provided on proposed acquisitions. This also means that the BAR requirements are included in the prospectus. Therefore, in order to meet the requirements of the BAR, the real estate entity must obtain the necessary audited financial statements from the vendor before the prospectus can be filed. This can take weeks to complete and could delay the real estate entity's plans to raise capital when markets are favourable. It leads to uncertainty of market execution which affects every "bought deal" financing as investment banks need assurance that no regulatory obstacle will impact the execution of an offering. Several REITs have noted instances where deals have been delayed or abandoned as a result of the onerous requirements of filing a BAR.

In many circumstances, in respect of the acquired business, financial statements are not readily available, in particular where the acquired business has been held by private entities. Financial statements of the business acquired, as well as pro forma financial statements are not reflective of the combined business afterwards. This is simply a historical mathematical exercise that does not accurately represent the future state of the combined business.

Providing an option to permit semi-annual reporting

While we applaud proposing amendments to reduce regulatory burden, we encourage the changes to go further. In Canada, reporting issuers are still burdened with significant reporting requirements as a result of the requirements for quarterly reporting. In our consultations with investors, we heard strong support for less frequent reporting from real estate entities. Many noted that information included in quarterly reports was of little use because of how little changes in a 3-month period. Some argue that companies are choosing the private market over public markets when faced with the prospect of producing onerous quarterly reports.

Further, as a result of on-going disclosure obligations required by securities regulation, issuers will report any transactions or events deemed material to their business, thus keeping investors and other stakeholders apprised in the interim time between reporting periods.

We support further initiatives to reduce the frequency of extensive reporting requirements that encourages reporting issuers and the users of these reports to focus too heavily on short-term financial results.

We thank the OSC for the opportunity to provide our input on the *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*. If you would like to discuss our comments, please contact Nancy Anderson, REALPAC's Vice President Financial Reporting and Chief Financial Officer, at 416-642-2700 x226.

Respectfully submitted,

Nancy Anderson, Vice President, Financial Reporting and Chief Financial Officer
REALPAC

December 19, 2019

Addressed to:
British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
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
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Email: *consultation-en-cours@lautorite.qc.ca*

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 appreciate the opportunity to share our views and provide input on the areas included in the Canadian Securities Administrators (CSA) *Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Changes to Certain Policies Related to the Business Acquisition Report Requirements*.

We commend the CSA for re-examining the business acquisition report (BAR) requirements as part of continued efforts to reduce the regulatory burden faced by non-investment fund reporting issuers. Our

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specific observations and recommendations are based on our experiences in working with Canadian regulatory reporting requirements as independent auditors.

We support the proposals to increase the significance test threshold for reporting issuers that are not venture issuers from 20% to 30%, and amending the significance test requirements to require two tests to be met for the acquisition to be considered significant. We have observed that the current tests require a BAR filing for a number of acquisitions that are not significant to a reporting issuer's operations, but that are caught by the current significance tests due to anomalous facts and circumstances, for example, when net income of the acquirer is impacted by significant swings in fair value movements that are not representative of the underlying operations of the entity. We see this occurring in real estate entities and in issuers where the significant investments are carried at fair value. We believe that these changes will reduce the regulatory burden of either filing a BAR or applying for exemptive relief in these circumstances.

We have also observed with interest the recent proposals issued by the Securities and Exchange Commission (the "SEC") relating to their proposed *Amendments to Financial Disclosures about Acquired and Disposed Businesses,* and noted the SEC's proposal to add a revenue component to the Income Test. We view revenue as an important indicator of the operations of a business and may have less variability than net income, therefore potentially providing a more reliable measure of significance. We believe the addition of an optional revenue component (in addition to the test based on net income) may be useful for assessing significance, particularly when the net income test is not a faithful representation of the acquiree's operations and overall significance to the reporting issuer.

Other matters

We believe that generally pro forma financial information provides useful information for investors in evaluating the impact of recent or probable acquisition(s) in a prospectus, particularly when combined with other capital transactions such as a refinancing or capital financing that is the primary reason for the prospectus filing. However, we believe that the pro forma financial information required by National instrument 51-102 is of very limited use for investment entities that, under IFRS, are required to measure all their investments in subsidiaries at fair value, even when a prospectus or other offering document is being filed. We encourage the CSA to consider whether exempting investments entities from the requirement to provide pro forma financial statements would be a way to reduce the regulatory burden for such reporting issuers in a manner that does not diminish the utility of information available to investors.

Additionally, in our view, pro forma information required only for BAR purposes has significantly less value as the acquisition may already have been reported in the next set of financial statements by the time the BAR is filed or would be reported shortly thereafter. Under IFRS 3, financial statements include disclosure of the acquisition date fair value of consideration as well as the amounts recognized for each major class of assets acquired and liabilities assumed. In addition, disclosure of the amount of revenue and profit or loss of the acquiree since the acquisition date, and the revenue and profit or loss of the combined entity for the entire current period as if the acquisition had been at the beginning of the annual period, is also required. This provides investors with information about the impact of the acquisition on a timely basis, and in the context of the financial statements (and associated level of assurance) of the issuer.

We also encourage the CSA to monitor the progress of the IASB project on Goodwill and Impairment. As part of this project, the IASB is considering better disclosures for business combinations that would be included in financial statements prepared under IFRS. We believe that if the IASB further enhances the required disclosures regarding the performance of an acquisition in the post-acquisition period in the financial statements, this will further diminish the informational value of pro forma financial information in a BAR.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the CSA staff of the Commissions may have. Please do not hesitate to contact Lucy Durocher (lucy.durocher@pwc.com or 416-869-2311) or Michael Walke (michael.walke@pwc.com or 416-815-5011) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

Chartered Professional Accountants

Susan Copland, LLB, BComm
Managing Director
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November 28, 2019

The Secretary
Ontario Securities Commission
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorite des marches financiers
Consultation-en-cours@lautorite.qc.ca

Dear Sir/Madam:

Re: Proposed Amendments to NI 51-102 *Continuous Disclosure Obligations* – Related to the Business Acquisition Report Requirements (the "Proposed Amendments")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposed Amendments.

The IIAC is generally supportive of the Proposed Amendments, which would, for non-venture issuers, deem the acquisition of a business or related businesses to be a significant acquisition for the purposes of requiring a Business Acquisition Report ("BAR") only if at least two of the existing Asset, Investment or Income Tests of significance are triggered, and increase the threshold of these significance tests from 20% to 30%.

The Proposed Amendments will reduce the number of acquisitions which are not, in substance, significant acquisitions in the context of the issuer's circumstances, that trigger the BAR threshold. The increase in the threshold from 20% to 30% appropriately recognizes the relatively smaller size of Canadian issuers, and the burden of preparing a BAR for smaller transactions.

We believe, however, that to more accurately reflect the fair value of an acquired business in relation to the issuer, the CSA should consider an element of the recent amendments proposed by the SEC in respect of U.S. requirements for financial disclosures relating to acquired businesses.[1] Although we are of the view that the proposed 30% Canadian threshold is appropriate in the Canadian context given the differences in the profile of Canadian vs US issuers, we believe there is a component of the proposed US version of the Investment Test that is appropriate to incorporate into the Canadian version of the Investment Test. Specifically, the SEC's proposal to revise the Investment Test so that the issuer's investment in an acquired business would be compared to the aggregate worldwide market value of the issuer's voting and non-voting common equity[2]. In our view, the Canadian Investment Test should be similarly revised to more accurately demonstrate the economic significance of the acquisition to the issuer.

As noted in the SEC's proposed amendments , while the purchase price of an acquisition should generally be consistent with the fair value of the acquired business at the time of acquisition, the consolidated assets of the issuer may not fully reflect the issuer's current fair value. For example, in the case of high growth issuers, market value can be significantly higher than their book value. Using aggregate worldwide market value provides a much better proxy of the issuer's current fair value and, as such, is better (from an investment perspective) for assessing the acquisition's relative importance to the issuer.

In order to further refine the Canadian version of the Investment Test, we recommend that rather than ascertaining aggregate worldwide market value based on the last business day of the most recently completed fiscal year, as proposed by the SEC, the aggregate worldwide market value should instead be determined as of a date that is in close proximity to the fair value measurement date of the acquired business (such as when the purchase price was agreed to). This would allow the issuer's fair value determination to be reflective of all current developments in the relevant business and industry and markets in general.

Consideration should also be given to using a volume weighted average price over a number of trading days immediately preceding the applicable date, rather than just using a single day, to address the potential for an anomalous result due to light trading or volatility in an issuer's stock.

We are pleased that the CSA is undertaking action to improve the capital markets, and that recent proposals, including the At-the-Market consultation and this BAR proposal, have reflected industry input.

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[1] SEC Release Nos. 33-10635; 34-85765 - Amendments to Financial Disclosures about Acquired and Disposed Businesses

[2] Consistent with the Canadian version, the US version of the Investment Test currently compares this investment to the carrying value of the issuer's total assets. Under the revised Investment Test, if the issuer does not have an aggregate worldwide market value, the existing Investment Test (i.e., using the value of the assets of the issuer) would continue to apply.

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

Yours sincerely,

Susan Copland

CFA Societies Canada

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October 18, 2019

BY EMAIL

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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, Corporate Secretary and
Executive Director, Legal Affairs
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Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Changes to Certain Policies Related to the Business Acquisition Report Requirements (the "Proposed Amendments")

The Canadian Advocacy Council of CFA Societies Canada [1] (the CAC) appreciates the opportunity to provide the following general comments on the Proposed Amendments.

We understand the purpose of the Proposed Amendments is to reduce the regulatory burden imposed on issuers by the business acquisition report ("BAR")

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.
CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 165,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 156 local member societies. For more information, visit www.cfainstitute.org.

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requirements, without threatening investor protection. In general, we are very supportive of the principles behind this and the various CSA burden reduction initiatives.

The Proposed Amendments will require non-venture issuers to file a BAR upon the acquisition of a business or related business only if at least two, and not just one, of the existing significance tests are triggered. In addition, the significance threshold for these reporting issuers would be increased to 30% from the existing 20% threshold.

As stated in our comment letter dated July 28, 2017 to the CSA[2], we support efforts that result in high quality information flowing to the investing public, in a manner that reflects today's technological realities. We agree that the Proposed Amendments may not have a negative impact on the ability of investors to review relevant information in their decision-making process, although we note the estimated drop in the number of BARs filed is substantial. However, if the purchased asset(s) are viewed as material by market participants, the acquisition will in our view most likely trigger two (if not all three) of the tests.

The increased threshold appears reasonable given the large number of smaller reporting issuers. In addition, if an acquisition is for a particular asset or assets rather than an entire business with a full set of audited financial statements, it is often difficult for the issuer to compile the required statements, particularly for more than the most recent 12-month period.

The Proposed Amendments will reduce regulatory burden, as evidenced by the data set out in Table 4 of Annex E of the notice describing the Proposed Amendments. As indicated, the number of reports would be reduced from an average per year of 56 to 24 reports, representing a 43% reduction and thus potentially a significant reduction in the aggregate financial information available to investors in future on these issuers/transactions.

Given the expected reduction in BAR filings, as with other burden reduction initiatives, the CSA should focus on improving the quality of other disclosure obligations. If an acquisition is not described in a BAR because it does not meet the significance thresholds, then the information provided in the next MD&A disclosure should be supplemented with additional descriptive information about the acquisition in plain language to assist investors.

We agree that no further changes are required to the BAR requirements as they relate to venture issuers at this time.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to

[2] Comment on CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-investment Fund Reporting Issuers*

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consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of*
CFA Societies Canada

The Canadian Advocacy Council of
CFA Societies Canada

Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

December 4, 2019

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CC: Canadian Securities Administrators (CSA)
British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
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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

Dear Secretary and Me Lebel,

Re: Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Changes to Certain Policies Related to the Business Acquisition Report (BAR) Requirements

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on the above referenced CSA Notice and Request for Comment, issued September 5, 2019. CIRI membership represents over 230 non-investment fund reporting issuers with a combined market capitalization of $1.9 trillion. More information about CIRI is provided in Appendix 1.

General Comment

CIRI is generally supportive of the efforts being made by the CSA to reduce the regulatory burden on participants in the Canadian capital markets. While a relatively small number of non-venture issuers are required to file a Business Acquisition Report (BAR) each year, as indicated in the Notice and Request for Comment, CIRI believes that the proposed Amendments to NI 51-102 are a step in the right direction to further reduce regulatory burden.

Issuers have indicated that preparation of a BAR can entail significant time and cost. The proposed revisions would reduce such costs while still providing the capital markets with appropriate disclosure in support of investment decisions, particularly in the case of significant acquisitions.

Incorporation of a "Two-trigger" Test Regime

CIRI believes that the proposed amendment to modify the criteria ("triggers") for filing a BAR such that two significance tests must exceed the threshold rather than just one of the three current significance tests is an improved approach. The CSA analysis of the potential impact of this proposed change appears to reduce the number of BARs required to be filed by approximately 50%, which will have a significant positive impact on the issuer community while still providing appropriate disclosure to investors.

That said, CIRI does note that several previous commenters have questioned whether the current significance tests are appropriate and even whether BAR disclosure itself is actually of value to investors. Such comments reference a lack of timeliness, the cost and time associated with the preparation of a BAR, particularly for resource-constrained smaller issuers, and in certain instances the process that may negatively impact the completion of a transaction. While the proposed amendments will undoubtedly reduce the number of BAR filings, CIRI believes that they do not specifically address such concerns for those reporting issuers that will still be required to file a BAR under this two-trigger regime.

Threshold for Significance Tests

CIRI agrees with the CSA that the proposed amendment to increase the threshold for significance tests from 20% to 30% will result in a reduced regulatory burden for a number of those issuers involved in a business acquisition transaction.

However, it is not clear why the threshold increase was set at 30%. In CSA Staff Notice 51-353 (*Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers)* it was reported that 14 commenters supported increasing the significance test thresholds for non-venture issuers, with 50% being the most commonly recommended threshold. CIRI believes that 50% is a reasonable threshold level for non-venture reporting issuers, particularly given that the CSA has previously reduced regulatory burden for venture issuers in 2015 by increasing the significance test threshold substantially from 40% to 100%.

CIRI is pleased to provide the CSA with its comments regarding the proposed amendments to National Instrument 51-102 associated with the criteria for filing a Business Acquisition Report and looks forward to further proposals contributing to the ongoing initiative to reduce the regulatory burden for capital market participants, particularly reporting issuers. Should you wish to discuss this submission further, please let me know.

Sincerely yours,

Yvette Lokker
President and Chief Executive Officer
Canadian Investor Relations Institute

Appendix 1

The Canadian Investor Relations Institute

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

Investor Relations Defined

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

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

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

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in over 230 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

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