

CSA Notice and Request for Comment
Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* Related to Financial Statement Requirements

August 12, 2021

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a 60-day comment period proposed changes (the **Proposed Changes**) to:

- Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* (**41-101CP**)

We are also proposing consequential changes to Companion Policy 51-102CP *Continuous Disclosure Obligations* (the **Consequential Change**).

We are issuing this Notice to solicit your comments on the Proposed Changes and on the Consequential Change.

The public comment period expires on **October 11, 2021**.

The text of the Proposed Changes and Consequential Change is published with this notice in the following annexes:

- Annex A – Proposed Changes to 41-101CP
- Annex B – Consequential Change to Companion Policy 51-102CP
- Annex C – Local Matters

The Notice will also be available 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

Substance and Purpose of the Proposed Changes

Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) requires an issuer that is not an investment fund to include certain financial statements in its long form prospectus. These required inclusions include the financial statements of the issuer and any business or businesses acquired, or proposed to be acquired, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired (collectively, the **Primary Business Requirements**).

The purpose of the Primary Business Requirements is to provide investors with financial history of the business of the issuer even if this financial history spanned multiple legal entities over the relevant time period.

The Primary Business Requirements also apply to instances where securities legislation and exchange requirements refer to disclosure prepared in accordance with Form 41-101F1. An example of this would be the requirement in Form 51-102F5 for an information circular relating to a restructuring transaction to contain prospectus-level disclosure.

In practice, when acquisitions are involved, issuers and their advisors often consult with CSA staff to consider what financial statements must be included in the prospectus and to confirm whether one or more businesses comprised part of the primary business of the issuer. Sometimes these discussions result in inconsistent interpretation that adds time, cost and uncertainty for issuers.

The Proposed Changes aim to reduce the regulatory burden resulting from uncertainty about the interpretation of the Primary Business Requirements, without compromising investor protection.

Background

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the **Consultation Paper**) to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. While not specifically identified as an option in the Consultation Paper, commenters suggested that CSA staff revisit the interpretation of Item 32 in Form 41-101F1. These comments reflected a range of suggestions, including revisiting the requirements for an issuer to include three years of historical financial statements for each entity considered the primary business. Commenters also noted that inconsistent interpretation of these requirements across the CSA can lead to additional regulatory burden.

The Proposed Changes are informed by the comment letters received in response to the Consultation Paper and other stakeholder feedback. 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*.

In considering the Proposed Changes, we monitored amendments to the financial disclosure requirements of Regulation S-X issued by the U.S. Securities and Exchange Commission on May 21, 2020. We also considered our experiences with pre-file discussions and applications.

Based on our work, we have determined that investors and issuers would benefit from a harmonized approach to the interpretation of the Primary Business Requirements among CSA jurisdictions and from additional clarity regarding historical financial information required in an initial public offering (IPO) prospectus. We think that the Proposed Changes will reduce regulatory burden without compromising investor protection by eliminating the time and cost of many pre-file discussions and applications required in connection with the Primary Business Requirements.

Summary of the Proposed Changes and Consequential Change

The Proposed Changes provide additional explanation in 41-101CP for both IPO venture and non-venture issuers regarding:

- the interpretation of primary business and predecessor entity;
- clarification on when an issuer can use an optional test to calculate the significance of an acquisition;
- guidance as to when and for what time periods financial statements would be required in certain circumstances;
- guidance on the circumstances when we may require additional information to meet the requirement for full, true and plain disclosure and the nature of that information;
- clarification of when we would not consider an acquisition of mining assets to be a business.

The Proposed Changes include various examples that illustrate different scenarios of when a reasonable investor would consider certain acquisitions to be the primary business of an issuer and the financial statements required by Item 32 of Form 41-101F1 in those scenarios.

The Proposed Changes further align with consultation feedback to revisit the interpretation of the Primary Business Requirements and seek to reduce inconsistent interpretation of requirements. We also expect that the number of pre-file applications will decrease significantly if the proposed changes are implemented.

The Consequential Change adds clarification of when we would not consider an acquisition of mining assets to be a business requiring a business acquisition report.

Local Matters

An annex to this notice outlines the consequential changes to local securities legislation and includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments will publish an annex C.

Request for Comments

We welcome your comments on the Proposed Changes and on the Consequential Change.

Please submit your comments in writing on or before **October 11, 2021**.

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
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

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
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Fax: 514 864-6381
consultation-en-cours@lautorite.qc.ca

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.

Questions

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

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