

## CSA Notice of Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* Related to Financial Statement Requirements

April 14, 2022

### Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making changes (the **Changes**) to:

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

We are also making a consequential change to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* (**51-102CP**) (the **Consequential Change**).

Provided all necessary ministerial approvals are obtained, the Changes and Consequential Change are effective on **April 14, 2022**.

Details of the Changes and Consequential Change are outlined in Annexes C through E of this notice and will also be available on websites of CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.osc.ca](http://www.osc.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.mbsecurities.ca](http://www.mbsecurities.ca)

### Substance and Purpose

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 financial statements 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 *Information Circular* 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 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 3 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 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*.

The Changes are aimed at reducing the regulatory burden by harmonizing the approach taken by the CSA in assessing the Primary Business Requirements. We expect a reduction in the time, cost, and uncertainty of the many pre-file applications otherwise required in connection with the Primary Business Requirements, while maintaining investor protection.

In considering how best to address regulatory burden concerns related to the Primary Business Requirements without compromising investor protection, we considered a number of approaches to increase harmonization across the CSA, including amending the Primary Business Requirements. We also considered the implementation of a coverage model, whereby a certain percentage of an issuer's business would be required to have audited financial statements included in the issuer's long form prospectus or other disclosure prepared in accordance with

Form 41-101F1. We also monitored and conducted a comparative analysis of the amendments to the financial disclosure requirements of Regulation S-X issued by the U.S. Securities and Exchange Commission (SEC).

Ultimately, through the Changes, the CSA was able to reach a consensus on a harmonized interpretation of the Primary Business Requirements. The Changes provide additional clarification and guidance for both IPO venture and non-venture issuers.

On August 12, 2021, the CSA published a Notice and Request for Comment proposing the Changes and the Consequential Change (the **Proposed Changes**). Based on the 7 comment letters responding to the Proposed Changes, the CSA is not making any material amendments to the Changes.

The CSA acknowledges that some commenters suggested amending the Primary Business Requirements. However, considering the consensus reached by the CSA and the fact that the harmonized interpretation of the Primary Business Requirements will bring a significant reduction in regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements at this time. We will continue to monitor the application and interpretation of the Primary Business Requirements.

### **Summary of Written Comments Received by the CSA**

The comment period for the Proposed Changes ended on October 11, 2021. We considered all the comments received and thank the commenters for their input. The names of the commenters are contained in Annex A along with a summary of the comments received and our responses in Annex B.

The comment letters can be viewed on the website of each of:

- the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com)
- the Autorité des marchés financiers at <https://lautorite.qc.ca/en/>
- the Ontario Securities Commission at [www.osc.ca](http://www.osc.ca)

### **Summary of Changes**

We have revised the Changes to make some non-material changes as further described in Annex B. As these changes are not material, we are not publishing the Changes for a further comment period.

### **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 or changes will publish an Annex E.

## **Contents of Annexes**

This notice includes the following annexes:

- Annex A – List of Commenters
- Annex B – Summary of Comments and CSA Responses
- Annex C – Changes to 41-101CP
- Annex D – Consequential Change to 51-102CP
- Annex E – Local Matters

## **Questions**

Please refer your questions to any of the following:

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