## Annex A

## List of Commenters

We received comment letters on the Proposed Changes from the following:

| No. | Commenter | Date |
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| 1. | Fasken Martineau DuMoulin LLP | October 7, 2021 |
| 2. | PricewaterhouseCoopers LLP | October 7, 2021 |
| 3. | Torys LLP | October 8, 2021 |
| 4. | Osler, Hoskin & Harcourt LLP | October 11, 2021 |
| 5. | Stikeman Elliott LLP | October 11, 2021 |
| 6. | Goodmans LLP | October 11, 2021 |
| 7. | TMX Group Limited | October 18, 2021 |

## Annex B

## Summary of Comments and CSA Responses

This annex summarizes the comment letters and our responses to these comments.

### Introduction

The CSA acknowledge that some commenters suggested that we consider rule amendments related to the Primary Business Requirements such as revisiting Item 32 in Form 41-101F1. However, considering the consensus reached by the CSA and that the harmonized interpretation of the Primary Business Requirements will bring significant reduction of 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 the interpretation of the Primary Business Requirements.

In this annex, we consolidated and summarized the comments received and our responses by the general themes of the comments. We have included section references to the Proposed Changes for convenience. We thank the commenters for their input.

### Responses to Comments Received on the Proposed Changes

| No. | Subject | Summarized Comment | CSA Response |
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| 1 | General Support | All seven commenters indicated some level of support for the Proposed Changes. | We thank the commenters for their views. |
| 2 | General commentary on changes to guidance and rule amendments | One commenter recommended that the CSA revisit Items 32 and 35 of Form 41-101F1 and the related guidance (and not make changes solely to 41-101CP), with a view to streamlining, consolidating, harmonizing (where appropriate) and clarifying these requirements.<br><br>One commenter suggested that additional guidance should not be subject to significant CSA staff discretion and interpretation which effectively reduces the benefit of any transparency and predictability to market participants. | At this time, considering the consensus reached by the CSA and 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.<br><br>The intention of the Changes is to create and set out in 41-101CP a harmonized interpretation of the Primary Business Requirements across the CSA. We expect the Changes to eliminate any variation in the interpretation of the Primary Business Requirements. |

| No. | Subject | Summarized Comment | CSA Response |
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| | | One commenter proposed the inclusion of a flowchart and certain additional examples to be incorporated into the proposed subsection 5.3(1) of 41-101CP. | We note that the examples in the Changes represent the most common scenarios that staff encounter in prospectus reviews. Therefore, we do not propose to include a flowchart or additional examples at this time. |
| 3 | Align disclosure requirements with the SEC | One commenter encouraged the CSA to consider revising National Instrument 41-101 and Form 41-101F1 to include certain other changes to the disclosure regime for acquired businesses to align with the SEC's recently adopted amendments to the financial disclosure requirements for business acquisitions and dispositions.<br><br>One commenter also encouraged the CSA to reduce the number of audited and interim periods for which historical financial statements must be presented if an acquisition is determined to be significant to a maximum of the two most recent fiscal years, similar to the SEC. | We think that the Changes appropriately address regulatory burden concerns identified relating to the interpretation of the Primary Business Requirements without compromising investor protection.<br><br>The CSA also monitored and conducted a comparative analysis of requirements of Regulation S-X issued by the SEC and the Proposed Changes. We think we have reached the right balance of CSA harmonization on the interpretation of the Primary Business Requirements, which in some cases, resulted in less regulatory burden than Regulation S-X on our reporting issuer population. We will continue to monitor the application of the Changes. |
| 4 | Remove or modify the "exceptional circumstances guidance" in section 5.7 of 41-101CP | Four commenters requested either the removal or the modification of the proposed guidance as to what would constitute an "exceptional circumstance" and require additional disclosure (other than financial statements) and/or a pre-file discussion with CSA staff. | We note that each prospectus filing encompasses unique facts and circumstances, and therefore it is not possible to provide guidance that will address all "exceptional circumstances" that issuers may experience when filing a prospectus. It is our expectation that these circumstances will be rare.<br><br>The guidance provided in the Changes represents certain exceptional circumstances that we have encountered to date. |

| No. | Subject | Summarized Comment | CSA Response |
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| | | | Depending on the specific circumstances of a prospectus filing, these "exceptional circumstances" may require further financial information disclosure, other than financial statements, in the prospectus, such as property or business valuation reports, forecasted cash flow information, or additional disclosure about an acquired business. |
| 5 | Align the 100% trigger in section 5.3 of 41-101CP with the two-test Business Acquisition Report (**BAR**) rules | Three commenters recommended that the 100% trigger which is based on whether the acquisition meets *any* of the BAR significance tests[1] at the 100% or greater level, be aligned with the two-test trigger of the BAR rules. | The 100% trigger is meant to identify the primary business of the issuer and therefore we think that the single trigger test is appropriate.<br><br>In the Changes we have clarified that the 100% trigger is based on whether the acquisition meets *any* of the BAR significance tests. |
| 6 | Modify or clarify the predecessor entity guidance in section 5.4 of 41-101CP and/or consider rule amendments related to predecessor entities | One commenter recommended clarifying when a predecessor entity would not be considered material.<br><br>One commenter recommended aligning the predecessor entity rules with the Proposed Changes related to the guidance for primary business.<br><br>One commenter recommended guidance for REITs and other roll-up issuers. | We refer the commenter to the general instructions of Form 41-101F1, which has additional clarity on materiality in the context of a long form prospectus.<br><br>We note that requirements for financial statements of any predecessor entity within a prospectus are outlined in Item 32 of Form 41-101F1 and are not an interpretation of the CSA. Any changes relating to requirements for predecessor entities would require rule amendments and considering the consensus reached by the CSA on the interpretation of the Primary Business Requirements and the significant reduction of regulatory burden for issuers that it will bring, we are not proposing rule amendments at this time. |

[1] As outlined in National Instrument 51-102 *Continuous Disclosure Obligations*.

| No. | Subject | Summarized Comment | CSA Response |
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| | | | We are not proposing guidance related to specific entities and/or industries in the context of the Primary Business Requirements as based on our experience, each prospectus filing encompasses unique facts and circumstances, and therefore it is not possible to provide guidance that will address all specific scenarios. |
| 7 | Modify or clarify the guidance for acquired business(es) in section 5.3 of 41-101CP | One commenter recommended illustrative examples of when historical financial statements of an acquired business would not be required in an IPO prospectus and additional guidance in 41-101CP with respect to the treatment of multiple acquisitions and related businesses.<br><br>One commenter requested clarity that the disclosure requirements in Item 32 of Form 41-101F1 should apply only in respect of a proposed acquisition when it has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.<br><br>One commenter recommended clarification that the July 2015 Ontario Securities Commission (**OSC**) guidance[2] no longer applies (that issuers must include the financial history of acquired businesses that are in the same primary business as the issuer in the three-year financial history included in an IPO prospectus). | An issuer is required to provide historical financial statements under the Primary Business Requirements for a business, or related businesses that a reasonable investor would regard as the primary business of the issuer.<br><br>We note that subsection 5.3(1) of the Changes outlines examples of when a reasonable investor would regard the acquired business or related businesses to be the primary business of the issuer, thereby triggering the application of the Primary Business Requirements. The examples provided are common scenarios that the CSA have encountered on past prospectus reviews. We do not propose to include additional examples at this time.<br><br>The Primary Business Requirements apply to businesses proposed to be acquired "where a reasonable person would believe that the likelihood of the acquisition being completed is high", as determined by the factors outlined in subsection 5.9(3) of 41-101CP. We have revised section 5.3 to refer to the guidance in subsection 5.9(3).<br><br>As a result of the Changes, the OSC will withdraw certain guidance related |

[2] OSC Staff Notice 51-725 *Corporate Finance Branch 2014-2015 Annual Report* (July 14, 2015) at page 13.

| No. | Subject | Summarized Comment | CSA Response |
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| | | | to Primary Business Requirements. Please refer to Annex E – Local Matters. |
| 8 | Provide more guidance as to what is required to satisfy the requirement for full, true and plain disclosure in section 5.3 of 41-101CP | Three commenters requested additional guidance with respect to how issuers may satisfy the requirement that a long form prospectus contain full, true and plain disclosure to reduce the instances in which an issuer will have to incur costs associated with a pre-filing application. | We note that subsection 5.3(1) of the Changes sets out the key examples where a reasonable investor would regard the acquired business or related businesses to be the primary business of the issuer. We expect scenarios requiring a pre-file application will be rare and, therefore, we have removed references in section 5.3 to utilizing the pre-filing procedures in National Policy 11-202 -*Process for Prospectus Reviews in Multiple Jurisdictions* (**National Policy 11-202**).<br><br>We also note that we have not made any changes to the interpretation of what constitutes "full, true, and plain disclosure" within securities legislation. |
| 9 | Provide more guidance as to what would constitute a *change* in the primary business of the issuer in section 5.3 of 41-101CP | Three commenters requested additional clarity on what would constitute a change in the primary business of an issuer. Commenters recommended that this guidance should only apply to a fundamental change, size, or other factors to determine whether primary business disclosure is warranted.<br><br>One commenter requested additional clarity that, when an acquisition does not change the issuer's historic business, the acquired business would not be considered the "primary business" unless the acquisition triggered the 100% significance test. | In the Changes we have clarified that this guidance only applies to a "fundamental" change of the issuer's primary business, as further referenced within subsection 5.6(3) of 41-101CP.<br><br>We confirm that when an acquisition does not change the issuer's historic business, the acquired business would not be considered the "primary business" unless the acquisition triggered any of the other factors identified in section 5.3 of the Changes.<br><br>We also confirm that if an issuer already has a variety of businesses, an acquisition will not be considered a "primary business" if it becomes one of many businesses owned by the issuer |

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| | | One commenter requested additional clarity that if an issuer already has a variety of businesses, it can be comfortable concluding that an acquisition will not be considered a "primary business" if it becomes one of many businesses owned by the issuer and does not trip the significance test at the 100% level. | and does not trigger any of the 100% significance tests unless the acquisition triggered any of the other factors identified in section 5.3 of the Changes. |
| 10 | Broaden the use of the optional tests | Two commenters suggested that issuers should be allowed to *not* apply subsection 8.3(6) of National Instrument 51-102 - *Continuous Disclosure Obligations* (which requires that the business acquired must remain substantially intact) when calculating the significance of an acquisition under the optional tests. | At this time, we are not proposing any changes to how any of the significance tests, including optional tests, are applied in connection with the interpretation of the Primary Business Requirements. It is our view that the business(es) acquired must be substantially intact in order to apply the optional tests. |
| 11 | Broaden the mining assets guidance in section 5.11 of 41-101CP and expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors | One commenter recommended not limiting an issuer's ability to utilize this guidance by allowing assets and liabilities directly related to the mining assets to be acquired.<br><br>One commenter suggested the deletion of paragraph 5.11(a) of the Proposed Changes and questioned the relevance of whether the party from whom mining assets were acquired was non-arm's length to the issuer. The commenter is of the view that the key driver is whether the acquired mining assets had ongoing activities during the relevant period, and not based on whether those assets were acquired in an | In scenarios where assets and liabilities directly relate to mining assets that are acquired, we are of the view that audited financial statements contain useful and relevant information to investors in making investment decisions.<br><br>Furthermore, we are of the view that paragraph 5.11(a) of the Changes is necessary, and we expect that the issuer would have access through the related party to the information necessary to prepare and audit financial statements for the mining assets.<br><br>We are of the view that paragraph 5.11(b) of the Changes is necessary for the acquisition of mining assets. For example, a mining claim may have had no exploration, development or |

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| | | arm's length transaction or from a related party.<br><br>One commenter suggested that paragraph 5.11(b) is an unnecessary condition in situations where there has been no recent exploration, development or activity on the mining assets acquired.<br><br>Another commenter recommended applying the mining assets guidance to the acquisition of oil and gas assets and to consider whether it would be possible to expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors. | production activity in the last three years; however, it may have a significant asset retirement obligation outstanding. We think this is relevant information to investors in making investment decisions.<br><br>We are not expanding the guidance in 41-101CP regarding the determination of what constitutes a business within the oil and gas industry, as section 1.3 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) already includes these properties within the definition of "business".<br><br>Staff refer you to the guidance contained in section 8.1(4) of 51-102CP regarding the determination of what constitutes the acquisition of a business. |
| 12 | Clarify the guidance on the pre-filings procedure | One commenter requested clarity on the type of information that would be expected to be included in a pre-filing, in the event that a pre-filing is necessary. | We note that each prospectus encompasses unique facts and circumstances, and therefore we cannot provide guidance on the type of information that would be expected to be included in connection with a pre-filing beyond what is set out in Part 8 of National Policy 11-202. |
| 13 | Clarify the meaning of certain terminology | One commenter recommended we consider whether additional guidance would be useful regarding the meaning of the terms "other liabilities", "business" or "primary business" as applicable to NI 41-101 and Form 41-101F1.<br><br>One commenter recommended we consider whether additional guidance would be useful | For additional clarity on the term "primary business", we refer to Item 32 of Form 41-101F1, as well as section 5.3 of the Changes.<br><br>For additional clarity on the interpretation of what constitutes an acquired "business", we refer to subsection 8.1(4) of 51-102CP. |

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| | | regarding the meaning of the term "immaterial". | Furthermore, for additional clarity on the term "materiality", we refer to the general instructions of Form 41-101F1. |
| 14 | Remove or modify the MD&A requirements | One commenter recommended that the CSA reconsider the requirements in Item 8.2 of Form 41-101F1 that MD&A be provided in respect of any acquired business whose financial statements the issuer is required to include in the prospectus under Item 32. | At this time, we are not proposing any changes to the MD&A requirements outlined in Item 8.2 of Form 41-101F1 because we are of the view that the MD&A enhances a readers' understanding of the financial performance and financial condition of an acquisition that constitutes the issuer's primary business. |
| 15 | Permit further use of foreign GAAP/GAAS | Two commenters suggested that foreign GAAP/ GAAS should be permitted in financial statements that are provided for primary business acquisitions. | At this time, we are not proposing amendments to any requirements in National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards*, because it would be beyond the scope of this project. |