

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

August 20, 2020

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making 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 to National Instrument 41-101 *General Prospectus Requirements* (**Companion Policy 41-101CP**);
- Companion Policy to National Instrument 44-101 *Short Form Prospectus Distributions* (**Companion Policy 44-101CP**);

(the **Amendments**).

Provided all necessary ministerial approvals are obtained, the Amendments are effective on November 18, 2020.

Details of the Amendments are outlined in Annexes C through F of this notice and will also be available on websites of CSA jurisdictions, including:

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

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 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 (the **Two-Trigger Test**); and
- increase the threshold of the significance tests for reporting issuers that are not venture issuers from 20% to 30%.

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

Background

The BAR requirements were introduced in 2004¹ 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 include pro forma financial statements in a BAR. Since adoption, however, the CSA has heard 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.

On September 5, 2019, the CSA published a Notice and Request for Comment (the **Publication for Comment Materials**) proposing the Amendments. The Amendments were developed over the course of an extensive consultation process, including 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*.² In addition, the CSA considered data (including analyzing in each jurisdiction the BARs filed and the exemptive relief from the BAR requirements granted over an approximate three-year period) to assess the impact of the Amendments on a look back basis.

Based on the 16 comment letters responding to the Publication for Comment Materials, the CSA is not making any material changes to the Amendments. We have summarized our responses to the feedback received, which reflect the following:

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

² 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*.

- 13 commenters expressed general support for the Amendments while one commenter opposed.
- 10 commenters specifically expressed support for the Two-Trigger Test while one commenter objected to this amendment.
- Seven commenters specifically supported increasing the significance test threshold to 30% while two commenters objected to this amendment and recommended we maintain the 20% threshold. Three commenters recommended a greater increase in the percentage than what we proposed.

In addition, we considered other options to reduce the regulatory burden associated with 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 also considered international developments, including the final amendments published in May 2020 by the U.S. Securities and Exchange Commission³, but think that the Amendments appropriately address concerns raised by stakeholders in the Canadian market.

Summary of Written Comments Received by the CSA

The Publication for Comment Materials were published on September 5, 2019 and the comment period ended on December 4, 2019. 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 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
- the Autorité des marchés financiers at <https://lautorite.qc.ca/en/>
- the Ontario Securities Commission at www.osc.gov.on.ca

Summary of Changes

We have revised the Amendments and changes proposed in the Publication for Comment Materials to remove an outdated cross reference and to reflect current drafting principles. As these changes are not material, we are not publishing the Amendments for a further comment period.

Consequential Amendments

We are making the following consequential changes:

- revised subsection 5.9(5) of Companion Policy 41-101CP and subsection 4.9(3) of Companion Policy 44-101CP to reflect the application of the Two-Trigger Test;

³ Amendments to Financial Disclosures about Acquired and Disposed Businesses, Release No. 33-10786; 34-88914; IC-33872; File No. S7-05-19.

- added guidance to subsection 8.1(4) of Companion Policy 51-102CP reminding issuers of the differing interpretations of “business” for securities and accounting purposes; and
- removed an outdated reference in paragraph 8.6(4)(b) of Companion Policy 51-102CP.

Local Matters

Annex G to this notice outlines the consequential amendments 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 G.

Contents of Annexes

This notice includes the following annexes:

- Annex A – List of Commenters
- Annex B – Summary of Comments and CSA Responses
- Annex C – Amendments to NI 51-102
- Annex D – Changes to Companion Policy 51-102CP
- Annex E – Changes to Companion Policy 41-101CP
- Annex F – Changes to Companion Policy 44-101CP
- Annex G – Local Matters

Questions

Please refer your questions to any of the following:

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