

**CSA Notice and Request for Comment
Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers**

- and -

Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis

May 20, 2021

PART 1 - Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a 120-day comment period

- proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), including the proposed repeal of Form 51-102F1 *Management's Discussion and Analysis* (the **Current MD&A Form**) and Form 51-102F2 *Annual Information Form* (the **Current AIF Form**) and the proposed introduction of Form 51-102F1 *Annual Disclosure Statement* and Form 51-102F2 *Interim Disclosure Statement*,
- proposed changes to Companion Policy 51-102CP *Continuous Disclosure Obligations* (**51-102CP**),
- proposed amendments to existing rules as set out in Annex E,
- proposed changes to existing policies as set out in Annex F, and
- proposed amendments and changes to local securities laws and policies as set out in Annex H.

(collectively, the **Proposed Amendments**).

We are issuing this Notice to solicit your comments on the Proposed Amendments and a proposed framework to allow semi-annual reporting on a limited basis as set out in Annex G.

The public comment period expires on **September 17, 2021**.

The text of the Proposed Amendments is contained in Annexes A through F of this Notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcncb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

PART 2 – Substance and Purpose of the Proposed Amendments

Securities regulators have a role to play in promoting disclosures that yield decision-useful information for investors. However, we also must be mindful of challenges reporting issuers face in preparing their disclosure. Regulatory requirements and the associated compliance costs should be balanced against the significance of the regulatory objectives sought to be realized and the value provided by such regulatory requirements to investors and other stakeholders.

The proposed amendments to NI 51-102 change the annual and interim filing requirements of reporting issuers (other than investment funds)¹. Specifically, they streamline and clarify certain disclosure requirements for the management’s discussion and analysis (**MD&A**) and the annual information form (**AIF**). In addition, they combine the financial statements, MD&A and, where applicable, AIF into one reporting document called the annual disclosure statement for annual reporting purposes, and the interim disclosure statement for interim reporting purposes.

The proposed amendments to NI 51-102 will also result in certain consequential amendments and changes to other rules and policies applicable to reporting issuers. In many cases, the amendments and changes involve adding references to the annual disclosure statement and interim disclosure statement and updating existing references to NI 51-102 to reference the amended NI 51-102 requirements.

In certain instruments, amendments are proposed to align certain prospectus form requirements with the continuous disclosure form requirements. In addition, some housekeeping revisions are proposed to clarify existing requirements or guidance, delete provisions that are no longer applicable or redundant, correct outdated references and reflect the name change of Aequitas NEO Exchange Inc. to “Neo Exchange Inc.”. In these limited cases, the revisions are not consequential to the proposed amendments to NI 51-102. For a list of the existing rules that are proposed to be amended, as well as the amending instruments, please see Annex E. For a list of the existing policies that are proposed to be changed, as well as the change documents, please see Annex F.

We expect the Proposed Amendments will reduce regulatory burden by fostering streamlined reporting and increasing reporting efficiency for reporting issuers. We also believe the Proposed Amendments will increase the quality and usability of the disclosure to be provided to investors. Accordingly, we believe the Proposed Amendments will not compromise investor protection or the efficiency of the capital markets.

PART 3 – Background on Prior Consultation on Reducing Regulatory Burden

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (**Consultation Paper 51-404**) to identify and consider

¹ All references to reporting issuers in this notice refer to non-investment fund reporting issuers.

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. Part 2 of Consultation Paper 51-404 focused on, among other things, options to reduce the regulatory burden associated with the ongoing costs of remaining a reporting issuer.

The Proposed Amendments are informed by the comment letters received in response to Consultation Paper 51-404 and other stakeholder feedback respecting the disclosure requirements in annual and interim filings.²

Comments received reflected a wide range of suggestions. Many stakeholders generally supported examining whether the volume of information in annual and interim filings could be reduced in order to prevent excessive disclosure from obscuring key information or otherwise improve the quality and accessibility of disclosure. Some stakeholders specifically supported eliminating duplicative disclosure among the financial statements, MD&A and other NI 51-102 forms. Other stakeholders supported consolidating two or more of the financial statements, MD&A and AIF into one reporting document.

In light of the feedback received from stakeholders, we conducted a review of disclosure requirements for annual and interim filings, with a view to reducing the burden of disclosure on reporting issuers, while enhancing the usefulness and understandability of the disclosure for investors. The Proposed Amendments are meant to address the feedback noted above.

PART 4 – Summary of the Proposed Amendments

Existing requirements

NI 51-102 sets out the obligations of reporting issuers with respect to financial statements, MD&A, AIF, and other continuous disclosure related matters. It also prescribes the forms for certain required disclosures, including MD&A and AIF.

The Current MD&A Form and the Current AIF Form were introduced in 2004, although most of the prescribed disclosure requirements were derived from pre-existing forms with some enhancements. Since then, the forms have been amended a number of times (for example, as a result of the 2015 amendments to streamline and tailor disclosure by venture issuers).

Proposed Amendments

The Proposed Amendments would

- streamline the disclosure requirements currently set out in the Current MD&A Form and the Current AIF Form,
- combine the financial statements, MD&A and, where applicable, AIF into one reporting document, and
- address current gaps in disclosure.

These three changes are discussed in more detail below.

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*.

1. Streamline the disclosure requirements

The Proposed Amendments streamline the existing disclosure requirements by eliminating, consolidating or clarifying them.

Type of change	Description
<p>Eliminate disclosure requirements</p>	<p><u>Duplication or overlap</u> Where there is duplication or overlap between the current disclosure requirements for the financial statements, MD&A and AIF, the Proposed Amendments eliminate the duplicative requirements. This will reduce burden as a reporting issuer does not have to repeat information that is already disclosed elsewhere, and investors in general will have less disclosure to read and can better focus on the key information.</p> <p>For example, the Proposed Amendments</p> <ul style="list-style-type: none"> • eliminate the current MD&A requirement to disclose information regarding critical accounting estimates, which is required to be included in the financial statements under Canadian GAAP applicable to publicly accountable enterprises, and • eliminate the current AIF requirement to disclose cash dividends or distributions declared, as well as any restrictions on payment of dividends or distributions, which are duplicative of requirements under Canadian GAAP applicable to publicly accountable enterprises. <p><u>Redundant information</u> In addition, the Proposed Amendments eliminate current requirements that are redundant or where the burden on the reporting issuer to provide the disclosure is greater than the benefit that investors obtain from having the disclosure. This will reduce burden as the reporting issuer will have fewer disclosure requirements overall.</p> <p>For example, the Proposed Amendments</p> <ul style="list-style-type: none"> • eliminate the current MD&A requirement to disclose summary information for the 8 most recently completed quarters given that this information can be easily located in previous continuous disclosure filings, and • eliminate the current AIF requirement to disclose security price ranges and volumes traded on a Canadian marketplace given that this information can be easily obtained from the marketplaces.
<p>Consolidate disclosure requirements</p>	<p>Where there is more than one current requirement to disclose similar information in different ways, the Proposed Amendments consolidate the requirements. This will reduce burden as reporting issuers will not be required to prepare repetitive disclosure in response to similar disclosure requirements contained in multiple forms or sections. Investors will also benefit from a shorter and more focused document.</p>

Type of change	Description
	<p>For example, the Proposed Amendments</p> <ul style="list-style-type: none"> • consolidate the current MD&A requirements to discuss liquidity and capital resources of the reporting issuer, and • consolidate the current AIF requirement to disclose research and development elements with the current MD&A requirement to discuss operations.
<p>Clarify disclosure requirements</p>	<p>Where current requirements are vague or otherwise unclear, the Proposed Amendments provide clarification by specifically identifying what we expect from reporting issuers through changes to the requirements or instructions. This will reduce burden as reporting issuers should better understand the disclosure that is required. In addition, this should dissuade reporting issuers from providing unnecessary disclosure to ensure that they are not in default of disclosure requirements.</p> <p>For example, the Proposed Amendments</p> <ul style="list-style-type: none"> • clarify that the discussion of a reporting issuer’s financial condition, financial performance and cash flows in the MD&A must include an analysis of the most recently completed financial year as compared to the prior year, and • clarify that a summary from a technical report can be used to satisfy the AIF requirement applicable to reporting issuers with mineral projects, and the entire technical report is not required to be incorporated by reference into the AIF.

For a discussion of the key changes made to specific disclosure requirements, please see the annotated versions of Form 51-102F1 *Annual Disclosure Statement* and Form 51-102F2 *Interim Disclosure Statement* set out in Annexes B and C.

2. Combine documents

The Proposed Amendments combine the financial statements, MD&A and, where applicable, AIF as follows.

Type of filings	Proposed combination of documents
Annual filings	<ul style="list-style-type: none"> • For a reporting issuer that is not a venture issuer - combine in one filing the annual financial statements, MD&A and AIF. • For a venture issuer - combine in one filing the annual financial statements and MD&A. <p>If a venture issuer intends to be short form prospectus eligible under section 2.2 of National Instrument 44-101 <i>Short Form Prospectus Distributions (NI 44-101)</i>, it has the option to file a standalone AIF (in addition to the combined annual financial statements and MD&A) or combine in one filing the annual financial statements, MD&A and AIF.</p>
Interim filings	<ul style="list-style-type: none"> • For all reporting issuers – combine in one filing the interim financial report and MD&A (or where appropriate, quarterly highlights).

We are of the view that the combination of documents will reduce burden by fostering streamlined reporting and increasing reporting efficiency for reporting issuers. Having fewer reporting documents to review or having information combined in one place will improve usability for investors and analysts. A combined document should also be more intuitive for most cross-border investors as they are already familiar with the presentation of the financial statements, MD&A and AIF in one reporting document, such as the Form 10-K, which is required to be filed with the U.S. Securities and Exchange Commission (SEC) under the 1934 Act.

3. Address gaps in disclosure

While the Proposed Amendments will reduce reporting issuers’ regulatory burden overall, they also introduce a small number of new requirements, including

- disclosure requirements for investment entities and non-investment entities recording investments at fair value³, and
- a requirement for venture issuers to provide a description of their business in their MD&A.

While these requirements, on their own, may be viewed as increasing regulatory burden, the Proposed Amendments will achieve overall burden reduction as a result of a greater number of requirements being eliminated, consolidated or clarified. In addition, the new requirements are generally to clarify CSA staff expectations that have been communicated in staff notices or comment letters.

For a discussion of the key changes made to specific disclosure requirements, please see the annotated versions of Form 51-102F1 *Annual Disclosure Statement* and Form 51-102F2 *Interim Disclosure Statement* set out in Annexes B and C.

Transition

Subject to this notice and comment process and required approvals, the final amendments are expected to be published in September 2023 and be effective on December 15, 2023. We propose to include transition provisions in the amending instrument for NI 51-102 that will require an issuer to comply with

³ New disclosure requirements for investment entities and non-investment entities recording investments at fair value are proposed to be introduced to address a number of disclosure concerns as identified and discussed in CSA Multilateral Staff Notice 51-349 *Report on the Review of Investment Entities and Guide for Disclosure Improvements*.

the amended version of NI 51-102 from the date (the **issuer effective date**) the issuer will be required to file an annual disclosure statement for its first financial year ending on or after December 15, 2023, or the issuer will voluntarily file an annual disclosure statement or an interim disclosure statement on or after December 15, 2023. Until the issuer effective date, the issuer must comply with the requirements of NI 51-102 as they read on December 14, 2023.

To further assist reporting issuers and their advisors, and to increase transparency, certain jurisdictions plan to post at the time of or after the publication of final amendments, two different unofficial consolidations of NI 51-102 on their websites:

- the version of NI 51-102 as at December 14, 2023 (including the Current MD&A Form and the Current AIF Form); and
- the amended version of NI 51-102 as at December 15, 2023 (including the annual disclosure statement form and the interim disclosure statement form).

We propose to include similar transition provisions in the amending instruments for certain other amended rules to align with the transition provisions for NI 51-102. Since we do not plan to include transition provisions in any documents that change any companion policy or national policy, a reporting issuer will not be expected to apply the proposed changes to any policy until the issuer effective date and will be able to reference the version of the policy as at December 14, 2023 for guidance. Certain jurisdictions plan to post, at the time of or after the publication of final amendments, two different unofficial consolidations of the rules that will be subject to transition provisions, and the related companion policies, on their websites.

Filing an interim disclosure statement as the first filing after the adoption of the Proposed Amendments

On or after December 15, 2023, a reporting issuer may elect to voluntarily file an interim disclosure statement, prior to filing an annual disclosure statement for its first financial year ending on or after December 15, 2023. This issuer must include in that interim disclosure statement an MD&A in the form of Part 2 of Form 51-102F1 *Annual Disclosure Statement* to ensure that the first filing includes a full MD&A that meets the amended disclosure requirements. The date these issuers voluntarily file the interim disclosure statement becomes their issuer effective date and, thereafter, these issuers must comply with the requirements of the Proposed Amendments.

Other proposed noteworthy changes

Other proposed noteworthy changes include the following.

- Materiality qualifiers – In reviewing the Current MD&A Form and the Current AIF Form, we noted that each form instructs issuers to focus on material information, but then certain provisions separately reference a type of materiality qualifier such as “material”, “significant”, “critical”, “major” and “fundamental”. We propose to generally remove these materiality qualifiers and have all disclosure requirements subject to the qualification that issuers are to focus on material information as set out in general instructions to Form 51-102F1 *Annual Disclosure Statement* and Form 51-102F2 *Interim Disclosure Statement* (subject to the limited exceptions explicitly noted in the forms). We propose to retain materiality qualifiers where the materiality qualifier is part of a defined term (such as significant acquisition) or reflect a term used in our prospectus rules.

- Delivery requirements – The Proposed Amendments modify the delivery requirement such that a reporting issuer is required to deliver the annual disclosure statement to its investors. As a result, the requirement to deliver would apply to an AIF that is prepared as part of an annual disclosure statement. We propose these changes in light of the “access equals delivery” model outlined in CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* that is currently under consideration by the CSA. Under the proposed “access equals delivery” model, providing electronic “access” to an annual disclosure statement and publishing a related notice that the annual disclosure statement is available would constitute delivery.
- Relocation of certain sections from NI 51-102 to Form 51-102F1 Annual Disclosure Statement – The Proposed Amendments relocate sections 5.3 *Additional Disclosure for Venture Issuers Without Significant Revenue* and 5.4 *Disclosure of Outstanding Share Data* of NI 51-102 to Form 51-102F1 *Annual Disclosure Statement*. We propose the relocations so that all MD&A and AIF disclosure requirements can be found in one form. No change in substance is intended from the proposed relocations.
- Existing exemptions – We propose to modify the existing exemption provision in NI 51-102 to allow reporting issuers to rely on exemptions, waivers or approvals that relate to the requirements to prepare, file or deliver annual or interim filings, and that were granted by a securities regulatory authority prior to the effective date of the Proposed Amendments. As a result, any reporting issuer that is exempted from preparing, filing or delivering annual or interim filings will also be exempted from preparing, filing or delivering an annual disclosure statement or an interim disclosure statement, as applicable.

PART 5 – Proposed Text

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 Annotated Form 51-102F1 *Annual Disclosure Statement*
- Annex C – Proposed Annotated Form 51-102F2 *Interim Disclosure Statement*
- Annex D – Proposed Changes to 51-102CP
- Annex E – Proposed Amendments to Existing Rules
- Annex F – Proposed Changes to Existing Policies
- Where applicable, Annex H – Local Matters (including any local amendments)

PART 6 – Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis

While we are not proposing amendments to introduce semi-annual reporting at this time, we seek feedback on a proposed framework to allow semi-annual reporting on a limited basis (the **Proposed Semi-Annual Reporting Framework**).

How does the Proposed Semi-Annual Reporting Framework differ from previous proposals⁴?

In Consultation Paper 51-404 referred to in Part 3 above, we explored whether a semi-annual reporting option should be offered to reporting issuers and, if so, under what circumstances. We also specifically asked whether, if pursued, semi-annual reporting should be limited to smaller reporting issuers.

We received a range of feedback:

- 9 commenters supported semi-annual reporting for all reporting issuers,
- 17 commenters expressed support for semi-annual reporting in certain circumstances (e.g. for issuers with no significant revenue or for MD&A but not financial statements), and
- 16 commenters did not support semi-annual reporting.

In Consultation Paper 51-404, we did not present a specific framework but rather solicited general feedback in response to broad questions. Now, we propose a specific framework that includes the following key attributes.

- Limited to venture issuers that are not SEC issuers – The Proposed Semi-Annual Reporting Framework would be limited to reporting issuers that are subject to the provisions of NI 51-102 applicable to non-SEC venture issuers
- Semi-annual reporting would be voluntary – The Proposed Semi-annual Reporting Framework would be optional, not mandatory. This would allow venture issuers to report at a frequency that reflects their situation and investor expectations.
- Alternative disclosure would be provided – Alternative disclosure would be required for interim periods where financial statements and MD&A would not be filed.

How will the market receive adequate ongoing disclosure under the Proposed Semi-Annual Reporting Framework?

Ensuring adequate and timely disclosure is central to the Proposed Semi-Annual Reporting Framework. The Proposed Semi-Annual Reporting Framework would add a new requirement that an issuer files alternative disclosure within 60 days of the end of the issuer's interim period for which financial statements and MD&A would not be filed. Further details regarding these disclosure requirements are outlined in Annex G.

What are the potential benefits?

The Proposed Semi-Annual Reporting Framework offers the following benefits.

- Lower financial reporting costs - The quarterly reporting regime imposes a proportionately greater regulatory burden on smaller issuers having more limited resources. Eliminating two quarterly reporting periods could meaningfully reduce burden for the approximately 2,500

⁴ We consulted under Consultation Paper 51-404, under proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (published in 2011 and republished in 2012), and under proposed CSA Multilateral Consultation Paper 51-403 *Tailoring Venture Issuer Regulation* (published in 2010).

venture issuers listed on the TSX Venture Exchange (**TSXV**) and the Canadian Securities Exchange (**CSE**), allowing these issuers to reallocate resources from reporting to operational matters.

- Provides streamlined disclosure for Q1 and Q3 periods - Investors of issuers reporting semi-annually would receive alternative disclosure regarding the issuer that would provide an update for interim periods where financial statements and MD&A would not be filed.
- Provides choice - It would provide participating venture issuers with the choice of semi-annual or quarterly reporting, based on their available resources and the expectations of their investors.

What are the potential risks?

The Proposed Semi-Annual Reporting Framework poses the following risks:

- Less timely interim financial statements for participating venture issuers — Investors may have concerns about losing information contained in the Q1 and Q3 financial statements. Semi-annual reporting under a different structure has worked successfully in some foreign jurisdictions (Australia, the United Kingdom, and certain European Union countries)⁵, although with the voluntary nature of those regimes, some companies have decided to report quarterly to meet the expectations of their investors. Semi-annual reporting has not been implemented in the United States, although it continues to be discussed.
- Option available to larger venture issuers — The Proposed Semi-Annual Reporting Framework would be available to all venture issuers that are not SEC issuers, regardless of size. While the market capitalization of most venture issuers is relatively low, a small number of venture issuers, predominantly in the cannabis sector, have market capitalizations exceeding \$100 million. Some investors may have concerns with permitting issuers of this size to report on a semi-annual basis. Australia, the United Kingdom, and certain European Union countries permit semi-annual reporting by all issuers.
- Selective disclosure — The possibility of selective disclosure could increase under a semi-annual reporting model. Alternative disclosure for interim periods where financial statements and MD&A would not be filed would be required. Existing prohibitions regarding selective disclosure and insider trading would apply, but participating venture issuers may have to be more diligent in administering their insider trading policies.

What are the material details of the Proposed Semi-Annual Reporting Framework?

Annex G outlines the material details of the Proposed Semi-Annual Reporting Framework including additional disclosure requirements, interaction with offering requirements and transition.

⁵ Certain foreign jurisdictions require semi-annual financial statements to be reviewed by external auditors.

PART 7 – Alternatives Considered

No alternatives to rule-making were considered.

We think that it is important to propose changes rather than maintain the status quo. As noted in Part 3, we received comments in response to Consultation Paper 51-404 as well as other stakeholder feedback respecting the disclosure requirements in annual and interim filings. As many stakeholders generally supported reducing the volume of information in annual and interim filings and improving the quality and accessibility of disclosure, we are of the view that it is important to take steps aimed at reducing the burden of disclosure while enhancing the usefulness and understandability of the disclosure.

In preparing the Proposed Amendments, we reviewed the annual and interim reporting obligations in the U.S., the United Kingdom and Australia. We also reviewed amendments and proposed amendments published by the SEC to modernize Regulation S-K and the reporting regime in the United States.⁶ We will continue to monitor international developments to further inform our approach to reducing regulatory burden for reporting issuers without compromising investor protection.

An alternative to the Proposed Amendments would be not to consolidate the AIF and MD&A into the annual disclosure statement. While this would have provided some benefits by eliminating duplication, it would not have provided the long-term benefits of consolidation. Moreover, it would not have addressed an important recommendation made by some stakeholders in response to Consultation Paper 51-404.

PART 8 – Local Matters

Where applicable, Annex H is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

PART 9 – Request for Comments

We welcome your comments on the Proposed Amendments and also invite comments on the following specific questions.

Question relating to additional disclosure for venture issuers without significant revenue

We have kept the current disclosure requirement in section 5.3 of NI 51-102 (as proposed section 8 of Form 51-102F1 *Annual Disclosure Statement*) to apply only to venture issuers that have not had significant revenue from operations in either of their last two financial years. However, for non-venture issuers that have significant projects not yet generating revenue, an itemized breakdown of material components of the following may help investors understand how the reporting issuer performed during the period covered by the MD&A:

⁶ We are proposing certain amendments to the MD&A and AIF requirements based on our review of the SEC's *FAST Act Modernization and Simplification of Regulation S-K, Request for Comment on Earnings Releases and Quarterly Reports, Modernization of Regulation S-K Items 101, 103, and 105* and the SEC's *Amendments to Regulation S-K: Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, which were adopted on November 19, 2020.

- exploration and evaluation assets or expenditures;
- general and administrative expenses; and
- other material costs.

1. Do you think this requirement should apply more broadly or more narrowly? For example, should we extend this disclosure requirement to non-venture issuers that have significant projects not yet generating revenue as well? Why or why not?

Questions relating to risk factors

We have retained instruction (i) to section 5.2 of the Current AIF Form (as proposed section 16 of Form 51-102F1 *Annual Disclosure Statement*) which requires a reporting issuer to disclose risks in order of seriousness from the most serious to least serious. Proposed instruction (3) to the same section suggests that “seriousness” refers to impact/probability assessment.

2. Would it be beneficial for reporting issuers if we provided further clarity on what “seriousness” means and how to determine the “seriousness” of a risk?

SEC’s *Modernization of Regulation S-K Items 101, 103, and 105* adopts amendments which require the following:

- grouping similar risks together;
 - disclosing generic risks under the heading “general risks”; and
 - requiring a summary of risk factor disclosure if the risk factor disclosure exceeds 15 pages.
3. If we adopted similar requirements to the SEC’s amendments, what would be the benefits and costs for investors and reporting issuers?

Questions relating to the requirement to name authors of technical reports

Subsection 5.4(1) of the Current AIF Form requires reporting issuers to cite the date and title of the current technical report for each material mineral project and name the author(s) of the report. The Current AIF Form also contains disclosure requirements for mineral projects which may be satisfied, at the option of the reporting issuer, by incorporating by reference into the AIF some or all of the information in the current technical reports. There is no requirement to incorporate by reference technical reports, as a whole, into the AIF.

The short form prospectus requirements for expert consents in paragraph 4.2(a)(vii) of NI 44-101 and subsection 10.1(1.1) of National Instrument 41-101 *General Prospectus Requirements (NI 41-101)* require technical report authors who are named in the AIF to file expert consents for a short form prospectus filing. This is the case even if the technical report is not incorporated by reference and the mineral project disclosure in the prospectus is prepared or approved by another qualified person (QP). The impact of providing an expert consent is that the consenting QP assumes personal liability for the disclosure for which they provide a consent.

4. What challenges, if any, do reporting issuers face in obtaining technical report author consents for short form prospectus offerings?

5. If the requirement to name the technical report authors in the AIF (and as a result, provide consents for short form prospectus offerings) were removed, would reporting issuers continue to obtain approval of prospectus disclosure from technical report authors or would they rely more on internal or external non-author QPs?
6. If reporting issuers were to rely on internal or external non-author QPs for purposes of providing consents for short form prospectus offerings, in your view, would investor protection be impacted? Would relying on an internal QP for consent purposes (where an external QP authored the original report) raise potential conflict of interest concerns?

Question relating to impact of refiling on auditor's report

7. Considering that the annual disclosure statement will include annual financial statements, MD&A and, where applicable, AIF, do you think there will be an impact, including on auditing requirements, if a reporting issuer amends or re-files only one of these documents, or re-files the annual disclosure statement in its entirety?

Question relating to proposed amendments to Form 41-101F1 Information Required in a Prospectus and Form 44-101F1 Short Form Prospectus

8. To align the continuous disclosure and prospectus regimes, we are proposing to remove certain prospectus disclosure requirements. Are there any concerns with the removal of this information from a prospectus? Please explain.

Questions relating to semi-annual reporting for certain venture issuers on a voluntary basis

9. Should we pursue the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers? Please explain.
10. Are there specific types of venture issuers for which semi-annual reporting would not be appropriate? For instance, should semi-annual reporting be limited to venture issuers below a certain market capitalization or those not generating significant revenue? Please explain.
11. Would the proposed alternative disclosure requirements under the Proposed Semi-Annual Reporting Framework provide adequate disclosure to investors? Would any additional disclosure be required? Is any of the proposed disclosure unnecessary given the existing requirements for material change reporting and the timely disclosure requirements of the venture exchanges? Please explain.
12. Do you have any other feedback relating to the Proposed Semi-Annual Reporting Framework?

Questions relating to transition provisions

13. Do you think the proposed transition provisions are sufficiently clear? If not, how can we make them clearer?

14. Do you think the transition provisions in the amending instrument for NI 51-102 would provide reporting issuers with sufficient time to review the Proposed Amendments and prepare and file an annual disclosure statement for a financial year ending on, for example, December 31, 2023 if the final amendments are published in September 2023? Do you think more time should be afforded to smaller reporting issuers (such as venture issuers)?

PART 10 – How to Provide Comments

Please submit your comments in writing on or before September 17, 2021. If you are not sending your comments by email, please send us an electronic file containing the submissions (in Microsoft Word Format).

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
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-8381
consultation-en-cours@lautorite.qc.ca

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 11 – Questions

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

British Columbia Securities Commission

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ANNEX A

PROPOSED AMENDMENTS TO NI 51-102

ANNEX B

PROPOSED ANNOTATED FORM 51-102F1 *ANNUAL DISCLOSURE STATEMENT*

ANNEX C

PROPOSED ANNOTATED FORM 51-102F2 *INTERIM DISCLOSURE STATEMENT*

ANNEX D

PROPOSED CHANGES TO 51-102CP

ANNEX E

PROPOSED AMENDMENTS TO EXISTING RULES

Consequential and housekeeping amendments

The proposed amendments to NI 51-102 result in certain consequential amendments to existing rules applicable to reporting issuers. Consequential amendments involve adding definitions of and references to annual disclosure statement and interim disclosure statement and updating existing references to NI 51-102 to reference the amended NI 51-102 requirements.

In addition to consequential amendments, housekeeping amendments are proposed for certain rules to clarify existing requirements, correct outdated references to “interim financial statements” by replacing them with “interim financial report” and reflect the name change of “Aequitas NEO Exchange Inc.” to “Neo Exchange Inc.”.

For the following rules, only consequential and housekeeping amendments are proposed:

- Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*
- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects*
- National Instrument 44-102 *Shelf Distributions*
- National Instrument 45-106 *Prospectus Exemptions*
- Multilateral Instrument 45-108 *Crowdfunding*
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*
- National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*
- National Instrument 52-110 *Audit Committees*
- National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*
- National Instrument 55-104 *Insider Reporting Requirements and Exemptions*
- National Instrument 58-101 *Disclosure of Corporate Governance Practices*
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

Amendments to align prospectus disclosure requirements with continuous disclosure requirements

In addition to consequential and housekeeping amendments, we are proposing amendments to certain prospectus form requirements in NI 41-101 and NI 44-101. These proposed amendments correspond to the proposed amendments to the continuous disclosure requirements. The objective of these proposed amendments is to maintain alignment between the prospectus and continuous disclosure regimes.

National Instrument 41-101 *General Prospectus Requirements*

We propose to amend Form 41-101F1 *Information Required in a Prospectus* as follows:

- Update references to “special purpose entity” by replacing them with “structured entity” as the latter term has superseded the former term under Canadian GAAP applicable to publicly accountable enterprises.
- Amend certain disclosure requirements relating to market for securities and trading price and volume
 - to allow reporting issuers to identify the exchanges and quotation systems only where the issuer has applied for and received a listing,
 - to remove requirement to disclose trading price and volume traded or quoted for Canadian marketplaces as this information is available in other publicly available sources, and
 - to provide an option for issuers that have securities traded or quoted on a foreign marketplace to disclose the website or other publicly available source rather than providing trading price and trading volume information.
- Repeal the following disclosure requirements as they are duplicative to requirements in Form 51-102F1 *Annual Disclosure Statement* that apply to an issuer for the purposes of filing a long form prospectus in Form 41-101F1 *Information Required in a Prospectus*:
 - subsection 5.1(4);
 - section 8.4;
 - section 8.6;
 - section 16.3;
 - paragraphs 22.1(1)(c);
 - paragraph 22.1(1)(d).
- Repeal certain disclosure requirements relating to cash dividends or distributions since they are duplicative of requirements under the accounting standards.
- Add an instruction to the risk factor disclosure requirement to signal explicitly to issuers the option to provide risk factor disclosure (including risk mitigation strategy for each risk factor where applicable) in a tabular form or other alternative format.
- Amend certain disclosure requirements relating to settlement agreements entered into by promoters with a securities regulatory authority to limit the lookback period to 10 years.
- Repeal the disclosure requirement relating to transfer agents, registrars, trustees or other agents, since this information is usually available on the issuer’s SEDAR profile or other publicly available sources.

National Instrument 44-101 *Short Form Prospectus Distributions*

We propose to amend Form 44-101F1 *Short Form Prospectus* as follows:

- Update references to “special purpose entity” by replacing them with “structured entity” as the latter term has superseded the former term under Canadian GAAP applicable to publicly accountable enterprises.
- Amend certain disclosure requirements relating to market for securities and trading price and volume
 - to allow reporting issuers to identify the exchanges and quotation systems only where the issuer has applied for and received a listing,
 - to remove requirement to disclose trading price and volume traded or quoted for Canadian marketplaces as this information is available in other publicly available sources, and
 - to provide an option for issuers that have securities traded or quoted on a foreign marketplace to disclose the website or other publicly available source rather than providing trading price and trading volume information.
- Repeal the disclosure requirement relating to prior sales given that some related information may be available in continuous disclosure or other publicly available source.
- Add an instruction to the risk factor disclosure requirement to signal explicitly to issuers the option to provide risk factor disclosure (including risk mitigation strategy for each risk factor where applicable) in a tabular form or other alternative format.
- Amend certain disclosure requirements relating to settlement agreements entered into by promoters with a securities regulatory authority to limit the lookback period to 10 years.

Amendments to provide appropriate exemptions from continuous disclosure requirements for foreign issuers

For the following rule, we are proposing amendments to exempt designated foreign issuers and SEC foreign issuers from the requirements to prepare, approve, file and deliver annual disclosure statements and interim disclosure statements.

National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

- Include new provisions to specify how designated foreign issuers and SEC foreign issuers can meet the securities legislation requirements relating to the preparation, approval, filing and delivery of annual disclosure statements and interim disclosure statements.

ANNEX F

PROPOSED CHANGES TO EXISTING POLICIES

Consequential and housekeeping changes

The proposed amendments to NI 51-102 result in certain consequential changes to existing policies applicable to reporting issuers. Consequential changes involve adding references to annual disclosure statement and interim disclosure statement and updating existing references to NI 51-102 to reference the amended NI 51-102 requirements.

In addition to consequential changes, housekeeping changes are proposed for certain policies to clarify existing guidance, delete guidance that are no longer applicable or redundant, and correct outdated references.

For the following policies, only consequential and housekeeping changes are proposed:

- National Policy 11-201 *Electronic Delivery of Documents*
- National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*
- National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*
- National Policy 12-202 *Revocation of Certain Cease Trade Orders*
- National Policy 12-203 *Management Cease Trade Orders*
- National Policy 41-201 *Income Trusts and Other Indirect Offerings*
- Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects*
- Companion Policy 45-106CP *Prospectus Exemptions*
- National Policy 46-201 *Escrow for Initial Public Offerings*
- Companion Policy 51-101CP *Standards of Disclosure for Oil and Gas Activities*
- National Policy 51-201 *Disclosure Standards*
- Companion Policy 52-109CP to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees*
- Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*
- Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

Changes to reflect alignment of certain prospectus disclosure requirements with continuous disclosure requirements

In addition to consequential and housekeeping changes, for the following companion policies, changes are being proposed to reflect alignment of certain prospectus disclosure requirements with the continuous disclosure requirements:

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

- Update references to “special purpose entity” by replacing them with “structured entity”, as the latter term has replaced the former term under Canadian GAAP applicable to publicly accountable enterprises.
- Delete section 4.4 as a result of repealing section 8.6 of Form 41-101F1 *Information Required in a Prospectus*.

Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions*

- Update references to “special purpose entity” by replacing them with “structured entity”, as the latter term has replaced the former term under Canadian GAAP applicable to publicly accountable enterprises.

ANNEX G

SEMI-ANNUAL REPORTING FOR CERTAIN VENTURE ISSUERS ON A VOLUNTARY BASIS

How will the market receive adequate ongoing disclosure under the Proposed Semi-Annual Reporting Framework?

Ensuring adequate and timely disclosure is central to the Proposed Semi-Annual Reporting Framework. The Proposed Semi-Annual Reporting Framework would add a new requirement that an issuer files alternative disclosure within 60 days of the end of the issuer's interim period for which financial statements and MD&A would not be filed to

- provide an update on the issuer's operations, major operating milestones, commitments, unexpected events, risks that are likely to materially affect operations going forward, and explain any significant changes from previous disclosures regarding the use of proceeds from any financing, and
- disclose information and events that are material, including those related to the following:
 - the issue or cancellation of any securities;
 - new or modified litigation or liabilities;
 - new or modified financing arrangements;
 - defaults under financing arrangements;
 - changes to the financial condition of the issuer;
 - the inability to pay debts as they become due;
 - related party transactions.

Other existing regulatory and exchange requirements include

- the material change reporting requirements under Part 7 of NI 51-102 to immediately issue and file a news release disclosing a material change,
- the business acquisition report requirements under Part 8 of NI 51-102 for significant acquisitions, and
- for listed venture issuers, the timely disclosure requirements of the venture exchanges, including TSXV Policy 3.3 – *Timely Disclosure* and CSE Policy 5 *Timely Disclosure, Trading Halts and Posting Requirements*.

1. Continuous Disclosure – NI 51-102

Policy area	How semi-annual reporting would be implemented on a voluntary basis
Filing of interim disclosure statement – interim financial reports and interim MD&A (Part 3A)	<i>A venture issuer could elect to only file an interim disclosure statement for its interim period ending six months before the end of the financial year⁷.</i>
Alternative disclosure for interim periods where it does not file an interim disclosure statement (new)	<p><i>A venture issuer using semi-annual reporting must, for each interim period where the issuer does not file an interim disclosure statement, file alternative disclosure in a news release to</i></p> <ul style="list-style-type: none"> • <i>provide updates on the issuer’s operations, major operating milestones, commitments, unexpected events, risks that are likely to materially affect operations going forward, and explain any significant changes from previous disclosures regarding the use of proceeds, and</i> • <i>disclose information and events that are material, including those related to:</i> <ul style="list-style-type: none"> ○ <i>the issue or cancellation of any securities;</i> ○ <i>new or modified litigation or liabilities;</i> ○ <i>new or modified financing arrangements;</i> ○ <i>defaults under financing arrangements;</i> ○ <i>changes to the financial condition of the issuer;</i> ○ <i>the inability to pay debts as they become due;</i> ○ <i>related party transactions.</i>
Filing of financial statements after becoming a reporting issuer (section 4.7)	<i>A venture issuer can elect to only file an interim financial report for its interim period ending six months before the end of the financial year if it will be taking advantage of semi-annual reporting when it becomes a reporting issuer.</i>
Impact on change in year-end requirements (section 4.8)	<i>A venture issuer can change its year-end and retain the ability to use semi-annual reporting on a voluntary basis.</i>
Impact on financial statements of a reverse takeover acquirer for periods before a reverse takeover (section 4.10)	<i>Under a reverse take-over, if the reverse take-over acquirer will qualify as a venture issuer and intends to use semi-annual reporting upon becoming a reporting issuer then it can elect to use the semi-annual reporting provisions when applying this section.</i>
Inclusion of semi-annual interim financial report for an acquired business required to be filed in a BAR (subsection 8.4(3))	<i>A venture issuer using semi-annual reporting that has made a significant acquisition can elect to only include an interim financial report for an acquired business for an interim period</i>

⁷ The phrase “interim period ending six months before the end of the financial year” is used to describe the period covered by semi-annual reporting.

Policy area	How semi-annual reporting would be implemented on a voluntary basis
	<i>ending six months before the end of the financial year of the acquired business.</i>
Allowing an earlier interim financial report for an acquired business required to be filed in a BAR (subsection 8.4(4))	<i>A venture issuer using semi-annual reporting that has made a significant acquisition can elect to only include an interim financial report for an acquired business for an interim period ending six months before the end of the financial year of the acquired business.</i>
Additional Filing Requirement - Change of status report – a venture issuer voluntarily ‘opts into/out of’ semi-annual reporting (Part 11)	<i>A venture issuer must file a notice promptly after either opting into or out of semi-annual reporting.</i>
Transition provisions (Part 14)	<i>Transition would have the following guiding principles</i> <i>(a) eligible issuers must file a notice advising the market when it enters or exits the semi-annual reporting regime,</i> <i>(b) opting in/out must be done at the beginning of a fiscal year and that the commitment would be for at least one complete year unless an issuer becomes ineligible due to becoming a SEC issuer or ceasing to be a venture issuer, and</i> <i>(c) if an issuer loses eligibility during a year under (b), it must file all applicable interim filings (Q1 and Q3) that were not otherwise filed prior to the date that it no longer qualified for semi-annual reporting.</i>

2. CEO/CFO Certification – NI 52-109 Certification of Disclosure in Issuers’ Annual and Interim Filings

Policy area	How semi-annual reporting would be implemented on a voluntary basis
Certification of interim filing	<i>A venture issuer using semi-annual reporting would be required to certify as to their interim disclosure statement for the semi-annual reporting period. The venture issuer would not be required to file an interim certificate as to their alternative disclosure in a news release.</i>

3. Acceptable Accounting Principles and Auditing Standards – NI 52-107 Acceptable Accounting Principles and Auditing Standards

No substantive changes are required to accommodate semi-annual reporting.

4. IPO Offerings and Secondary Offerings using a Long Form Prospectus - NI 41-101 General Prospectus Requirements

Policy area	How semi-annual reporting would be implemented on a voluntary basis
Filing of Interim Financial Report and interim MD&A	<i>Allow a venture issuer to elect to include only an interim financial report and interim MD&A for its most recent interim period ending six months before the end of the financial year, if applicable, if it</i> <ul style="list-style-type: none"> <i>(a) qualifies as an IPO venture issuer and intends to use semi-annual reporting upon becoming a reporting issuer, or</i> <i>(b) is already a reporting issuer and has opted in to semi-annual reporting.</i>
Ensure that the guidance related to recent and proposed acquisitions is updated to reflect the possibility that an issuer may use semi-annual reporting for a proposed acquisition	<i>Update guidance related to recent and proposed acquisitions to reflect the possibility that a venture issuer may use semi-annual reporting for a proposed acquisition.</i>

5. Secondary Offerings using a Short Form Prospectus - NI 44-101 Short Form Prospectus Distributions, NI 44-102 Shelf Distributions and NI 44-103 Post-Receipt Pricing

Policy area	How semi-annual reporting would be implemented on a voluntary basis
Use of short form prospectuses	<i>A venture issuer using semi-annual reporting would be eligible to use the short form offering system. The current short form prospectus regime can accommodate a change to allow semi-annual reporting on a voluntary basis.</i>
Ensure that the alternative disclosure in a news release required under the continuous disclosure regime is incorporated by reference in a short form prospectus	<i>Update the requirement to incorporate by reference any additional filing (i.e. quarterly update by news release).</i>
Ensure that the guidance related to recent and proposed acquisitions is updated to reflect the possibility that an issuer may use semi-annual reporting for a proposed acquisition	<i>Update guidance related to recent and proposed acquisitions to reflect the possibility that a venture issuer may use semi-annual reporting for a proposed acquisition.</i>

**6. Exempt Distributions – Offering Memorandum for Non-qualifying issuers - Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers**

Policy area	How semi-annual reporting would be implemented on a voluntary basis
Filing of an Interim Financial Report	<p><i>A venture issuer can elect to only include an interim financial report for its most recent interim period ending six months before the end of the financial year, if applicable, if it:</i></p> <p><i>(a) qualifies as an IPO venture issuer and intends to use semi-annual reporting upon becoming a reporting issuer; or</i></p> <p><i>(b) is already a reporting issuer and has opted in to semi-annual reporting.</i></p>
Ensure that the guidance related to recent and proposed acquisitions is updated to reflect the possibility that an issuer may use semi-annual reporting for a proposed acquisition	<p><i>Update the guidance related to recent and proposed acquisitions to reflect the possibility that a venture issuer may use semi-annual reporting for a proposed acquisition.</i></p>

7. Exempt Distributions – Offering Memorandum for Qualifying issuers⁸ Form 45-106F3 Offering Memorandum for Qualifying Issuers

Note: This form relies on NI 51-102 for determination of what is required to be incorporated by reference. Therefore, changes to NI 51-102 above will consequentially affect the disclosure required in an offering memorandum for qualifying issuers.

8. Other continuous disclosure documents reviewed – no expected impact from the Proposed Semi-Annual Reporting Framework

We do not think any of the following instruments are affected by the proposal:

- NI 43-101 *Standards of Disclosure for Mineral Projects*;
- NI 51-101 *Standards of Disclosure for Oil and Gas Activities*;
- NP 58-201 *Corporate Governance Guidelines*;
- MI 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
- NI 52-108 *Auditor Oversight*;
- NI 52-110 *Audit Committees*.

⁸ “qualifying issuer” is defined under NI 45-106 to mean a reporting issuer in a jurisdiction of Canada that is a SEDAR filer, has filed all documents required to be filed under the securities legislation of that jurisdiction, and has filed a current AIF.

ANNEX H

LOCAL AMENDMENTS