FAIR Canada Canada's Investor Rights Advocate | Promoteur des droits des investisseurs

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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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
2640 boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Re: Canadian Securities Administrators (CSA) – Proposed Coordinated Blanket Order 51-933 Exemptions to Permit Semi-Annual Reporting for Certain Venture Issuers; Proposed Ontario Securities Commission Rule 51-507 Exemptions to Permit Semi-Annual Reporting for Certain Venture Issuers

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.[1]

[1] Visit www.faircanada.ca for more information.

A. Introduction

We recognize the CSA's desire to reduce disproportionate regulatory burden for venture issuers by permitting them to opt into a semi-annual reporting regime (SAR) voluntarily. Although these companies may benefit from SAR, decreasing the frequency of core financial disclosures introduces significant investor protection risks. Investors may experience delayed financial information, information gaps, and larger earnings surprises. There may also be reduced comparability within an issuer's peer group and a greater risk of selective disclosure. Ultimately, less disclosure could impair investors' ability to make informed decisions, undermining confidence in the capital markets. Any efforts to alleviate reporting burdens must be carefully weighed against the regulators' responsibility to protect investors, promote fair practices, and uphold the integrity of Canada's capital markets.

Although some developed economies have adopted SAR, this does not mean it is the appropriate approach for Canada's capital markets. Our distinct structural features, regulatory landscape and investor base may warrant a different approach. Rather than defaulting to the practices in other jurisdictions, the CSA should critically assess whether SAR reflects the needs and interests of Canadian investors and issuers and the realities of the Canadian market. Ultimately, the goal should be a disclosure framework that supports transparency, investor confidence and market integrity, rather than one that merely follows lower standards adopted elsewhere.

In this context, we commend the CSA for first undertaking a pilot project to test SAR before any future rulemaking. This measured approach allows the CSA to collect data on the impact of SAR, providing needed insights into how it affects investor protection, market transparency, and regulatory burden. This evidence-based process ensures that any future rules are crafted with a clear understanding of their practical implications, fostering informed policy development.

For the pilot to yield useful results, however, it must be designed with clear parameters, appropriate oversight, and objective metrics to evaluate outcomes. The metrics should measure the intended reduction in issuer burden and any adverse effects on investor protection. They should include quantitative indicators, such as changes in reporting costs for participants and the number of investor inquiries or complaints related to reduced disclosure. Qualitative measures, such as investor confidence and perceptions of disclosure quality, should also be assessed through surveys and focus groups.

Finally, the Consultation states that the CSA plans to pursue a formal rulemaking project on SAR. We caution against treating this as a foregone conclusion. Any decision to proceed should be firmly grounded in the findings from the pilot. Only by thoroughly assessing the results can the CSA determine whether to engage in rulemaking.

Below, we elaborate on our investor protection concerns, offer additional input regarding the pilot's metrics and results, and respond to the Consultation questions. To mitigate the investor protection risks associated with SAR, we propose several enhancements to the CSA's proposal. For example, we recommend mandatory alternative disclosure between reporting periods and requiring shareholder approval of SAR. These measures are designed to maintain transparency and accountability, and to strengthen investor confidence in SAR.

B. Investor Protection Concerns with SAR

SAR raises investor protection concerns related to:

- Investor confidence,
- Information timeliness and transparency,
- Complexity and inconsistency, and
- Insider trading.

As discussed in the "Pilot Metrics and Results" section below, the pilot should include metrics that measure and monitor how a shift to SAR impacts these key investor protection concerns.

Reduced investor confidence in markets

Quarterly reporting has been a staple of North American markets for decades, providing a reliable cadence that investors, analysts, and lenders use to monitor a company's financial health and performance. It provides timely, standardized information that supports transparency and comparability across issuers. If select issuers opt to move to SAR, it could disrupt well-established expectations and processes and diminish investor confidence in the market's integrity and fairness. The existence of different standards can create the perception that certain issuers receive special treatment or benefit from reduced scrutiny. Unequal transparency among companies could also weaken the sense that markets are fair, well-regulated, and designed to protect all participants equally.

Loss of timely information and less transparency

Quarterly reporting provides investors with timely information about a company's operations and financial condition. It enables investors to closely track performance, assess management's effectiveness, and respond promptly to any changes in the business environment.

Without quarterly disclosures, investors are more likely to base their decisions on outdated data. This could lead to earning surprises, obscure emerging risks and hinder their ability to make informed, timely investment choices. Less frequent reporting also means retail investors may make decisions based on stale information and be more susceptible to rumours and market sentiment.

Complexity and inconsistency

Reduced reporting for certain issuers makes it harder for investors to compare companies, as they may be filing financial information on different schedules. This variation introduces another layer of complexity into an already complicated regulatory framework, making it more difficult for investors to navigate.

Retail investors, in particular, are unlikely to realize that some issuers listed on the same exchange may be following different reporting standards, nor can they easily identify which issuers are doing so. Uniform reporting standards are essential to maintain clarity, comparability, and fairness for all market participants.

Risk of insider trading

Less frequent financial reporting increases the risk of insider trading. Longer intervals between disclosures create extended periods in which material, non-public information may exist, providing insiders with more opportunities to exploit this informational advantage. Quarterly reporting acts as an important safeguard by narrowing these windows, ensuring that new information is regularly released and reducing the potential for insider trading.

Although venture issuers using SAR would remain subject to material change reporting requirements, these reports do not fully address investor protection concerns with SAR. Material change reports are at the issuer's discretion and are less thorough than quarterly reports. As a result, material change disclosures could omit essential details that regular quarterly reporting would capture, leaving investors with an incomplete picture.

C. Pilot Metrics and Results

The CSA's evaluation of the pilot must address these investor protection concerns through comprehensive, well-defined metrics. These metrics should capture the experiences and interests of all relevant stakeholders, especially investors and issuers. In addition, we strongly urge the CSA to scrutinize the reporting practices of all pilot participants with particular attention to whether any material financial information was delayed or omitted. A detailed analysis of the pilot will enable regulators to identify any shortcomings and determine whether additional safeguards are necessary before considering the adoption of SAR.

Surveys, focus groups, and other methods could be used to assess investor behaviour, confidence, and perceptions of SAR. Key investor-focused metrics could include:

- *Inquiries and complaints*: The volume and nature of investor inquiries and complaints related to SAR,
- *Investor understanding*: Levels of understanding/confusion among investors about the nature and implications of reporting changes,
- *Investor confidence*: Investor confidence in SAR issuers compared to issuers using quarterly reporting,
- *Investor perceptions of disclosure quality*: The timeliness, sufficiency and transparency of information provided by SAR issuers versus quarterly reporters,
- *Comparability*: Comparability between SAR issuers and quarterly reporters, specifically, whether investors feel able to compare performance and disclosures effectively,
- *Perceived risks*: Perceptions of heightened insider trading risks among SAR issuers relative to those reporting quarterly, and
- *Overall satisfaction*: Overall investor satisfaction with disclosure under SAR.

Issuer-focused metrics could include:

- *Cost and time savings*: Details on compliance and accounting cost savings, including reductions in external audit and legal fees and management time saved as a result of SAR,

- *Compliance quality*: An assessment of compliance quality, such as the number of late filings or deficiencies under SAR compared with quarterly reporting, and the frequency and timeliness of material change disclosures,

- *Market impacts*: Analysis of market impacts, such as changes in trading volume or stock price volatility,

- *Financing impacts*: Effect of SAR on the issuer's cost of capital and access to financing,

- *Analyst coverage*: Changes in analyst coverage, including the number of analysts following the issuer and the depth of coverage, and

- *Overall satisfaction*: Issuer satisfaction surveys to determine if SAR meets the company's reporting needs and expectations.

The Consultation notes that the pilot will be "multi-year," but does not specify an exact duration. We recommend that the CSA establish a timeframe to ensure accountability. Once the pilot is complete, the CSA should conduct a review before proceeding with any permanent regulatory changes. To foster stakeholder confidence and encourage constructive feedback, we recommend that the CSA publish a detailed report outlining the findings and lessons learned.

If the pilot is expected to last several years, we recommend an interim progress report midway through the pilot. This would provide valuable updates to market participants, enhance transparency, and allow for early identification and resolution of emerging issues.

D. Question 1: Proposed Eligibility Criteria for SAR

FAIR Canada generally agrees with the CSA's proposed eligibility criteria for SAR, but suggests the following enhancements.

Annual revenue limit

We are concerned that the CSA's proposed $10 million annual revenue threshold may not effectively limit eligibility to smaller venture issuers. While revenue is a useful indicator, relying on it as the sole criterion may not fully capture a company's size, stage of development, or operational complexity. It fails to distinguish between companies that are genuinely in their formative stages and those that, while generating low revenue, have substantial market capitalizations or large shareholder bases. This distinction is crucial because certain sectors, such as mining exploration, biotechnology and energy, often feature issuers with low revenue but significant asset values or strong growth potential. In such cases, quarterly reporting may be

warranted to ensure transparency, given their speculative nature, operational risks, or potential for considerable cash burn.

For issuers listed on the TSX Venture Exchange (TSXV), limiting SAR eligibility to Tier 2 companies may better reflect the CSA's intent. Tier 2 companies are generally characterized by their early-stage status, smaller operational scale, and more limited financial resources, making them better candidates for reduced reporting. In contrast, Tier 1 companies tend to be more mature with complex operations, larger shareholder bases, and more regulatory requirements. By focusing on Tier 2 issuers, the CSA would more effectively direct regulatory relief to those who stand to benefit most.

Applying this criterion across pilot participants, however, is complicated by the fact that the pilot includes issuers listed on CNSX Markets (CSE), which does not employ a tier structure. To address this issue, we recommend that the CSA consider additional metrics, such as market capitalization, number of shareholders, assets, and operating history, to better capture what constitutes a smaller issuer. These measures would provide a more holistic view of a company's profile and help ensure that reduced reporting is appropriately targeted at those issuers for whom it is intended.

Length of time as a reporting issuer

We recommend that companies demonstrate a minimum track record of 24 months as reporting issuers, rather than the CSA's suggested 12-month requirement for SAR eligibility. Extending the eligibility period would enhance investor confidence, as it provides a longer history for stakeholders to assess an issuer's ability to consistently meet continuous disclosure obligations. A lengthier history offers greater transparency, enabling investors to better identify financial patterns, operational trends, and the company's overall stability. These are critical factors that a single year of disclosures may not adequately capture.

When a significant corporate event occurs, such as a takeover or merger, we recommend that the 24-month eligibility period be reset from the formation date of the new entity. These transactions often result in significant changes to the company's financial profile, management structure, and risk landscape, making prior disclosures less relevant to assessing the entity's future prospects. Restarting the clock ensures that investors have sufficient time and data to evaluate the new company's ability to meet regulatory requirements and maintain sound disclosure practices.

Penalties, sanctions and cease trade orders

The Consultation proposes that issuers should not have been subject, within the past 12 months, to any penalties, sanctions, or cease trade orders that were not lifted within 30 days of issuance. We believe a more robust approach is warranted and recommend extending the look-back period to 24 months.

A longer timeframe would provide a clearer picture of the issuer's ongoing adherence to regulatory requirements and overall track record. Limiting the review to just the past year risks overlooking significant or repeated infractions that may have occurred outside this narrow window, allowing companies with a history of problematic conduct to qualify for reduced disclosure. By broadening the assessment period, the CSA can better protect investors and reinforce market

integrity, ensuring that only consistently compliant issuers benefit from less stringent disclosure requirements.

Ineligible for SAR if reporting quarterly to third parties

We recommend that issuers be deemed ineligible for SAR if they are obligated to prepare quarterly financial statements for external stakeholders, such as creditors, institutional investors, or other parties. If an issuer is already generating quarterly reports, the purpose of SAR (i.e., to reduce reporting frequency and regulatory burden) no longer applies. In such cases, these financial statements should be made publicly available to ensure transparency and consistency in disclosure practices.

Moreover, if an issuer failed to publicly file these quarterly reports, significant fairness concerns would arise. Providing financial information to select groups, such as debt holders, while withholding it from others, including equity holders and the broader investing public, undermines the principle of equal access to material information. This selective disclosure could distort market dynamics, erode investor confidence, and compromise the integrity of the capital markets. To uphold fairness and maintain a level playing field, any quarterly financial information shared with third parties should be publicly disclosed to all market participants.

E. Question 1 - Proposed Conditions for SAR

We generally agree with the CSA's proposed conditions for issuers participating in the SAR pilot, but recommend the following changes.

Notice of change to and from SAR

The proposed blanket order requires an issuer to announce its adoption of SAR through a news release. Relying on this single method, however, is not enough to inform investors, as many do not routinely monitor press releases.

Given the importance of financial information, notice should be prominent, timely, and communicated through multiple channels. In addition to the news release, we recommend that issuers be required to simultaneously, or as soon as possible thereafter, notify stakeholders through the following avenues:

- *Proxy materials*: Require issuers to highlight the change prominently in their next set of proxy materials, including the rationale, the timing of the change, and implications for investors.

- *Management's Discussion & Analysis* (*MD&A)*: Require a dedicated, plain-language section in the next MD&A titled **"**Change in Reporting Frequency to Semi-Annual Reporting" thoroughly explaining the change.

- *Website home-page alert and investor relations page posting*: Require a home-page banner or pop-up alert for a minimum period (e.g., 30 days) and posting on the company's investor relations page.

- *Email notice to registered shareholders*: Require direct email notice to registered shareholders. For beneficial shareholders, intermediaries should be required to forward the notice, as they do for proxy materials.

- *Reminder in final quarterly report:* The final quarterly report before SAR should contain a clear reminder, such as: "This is the final quarterly report before the company transitions to semi-annual reporting beginning on [date]."

The Consultation states that if an issuer can no longer rely on the blanket order or opts out of SAR, it should *consider* issuing a news release. We strongly recommend applying the same multi-channel approach for notice of SAR to the discontinuation of SAR. This ensures that investors receive clear, timely, and comprehensive communication throughout the process.

Switching between SAR and quarterly reporting

The blanket order disallows re-entry into SAR for 12 months if the issuer opts out or becomes ineligible. We support this stipulation, as it prevents flip-flopping between SAR and quarterly reporting. By discouraging frequent switches, this provision protects investors from the confusion and uncertainty that can arise when companies alternate reporting frequencies.

However, we question whether the 12-month period is sufficient, especially when an issuer has left SAR due to concerns such as inadequate disclosure, governance lapses, or financial instability. In such situations, a longer period may be needed to restore trust and signal a genuine commitment to improved practices. Extending the re-entry period would also deter opportunistic behaviour and contribute to a more predictable and stable reporting environment. We urge the CSA to closely monitor this condition during the pilot and consider adjustments based on the observed impacts on investor confidence and market stability.

F. Questions 1 & 2 - Recommended Additional Conditions

FAIR Canada proposes the following additional conditions, which would apply during the pilot and be incorporated into any future rules on SAR.

Waiting period before first using SAR

The CSA proposal lacks a transition period, which would allow an issuer to announce a switch to SAR immediately after a quarter ends and bypass the interim report for that period. We recommend a mandatory waiting period after notice before an issuer's initial use of SAR. Specifically, once a company announces its intention to adopt SAR, it should be required to file the current quarter's report, and SAR would become effective thereafter. This would ensure that investors receive a final quarterly report after the issuer announces SAR, promoting transparency and avoiding surprises during the changeover.

Regulatory discretion to mandate quarterly reporting

FAIR Canada strongly recommends that the blanket order provide CSA members with clear authority to require issuers to return to quarterly reporting whenever the regulator deems it appropriate. This provision would enable regulators to respond promptly if SAR leads to information gaps that could harm investors. It would also provide flexibility to address situations such as financial hardship, governance failures, compliance breaches, investigations, or enforcement actions involving the issuer. Importantly, this measure would reinforce that SAR is a conditional privilege subject to regulatory oversight, rather than an automatic entitlement, thereby prioritizing investor protection and market integrity.

Alternative disclosure for interim periods

In its 2021 consultation on SAR, the CSA proposed mandatory alternative interim disclosure within 60 days of each period's end.[2] This would include updates on operations, risks and unexpected events, and disclosure of material information, such as securities issuances or cancellations. It is unclear why the CSA is not considering this approach in the current Consultation. Without quarterly reports, SAR issuers may still release some quarterly information, but the lack of uniform standards could result in inconsistent disclosure practices. To avoid this outcome and safeguard investors, the CSA should set the standards for alternative interim reporting.

Internationally, Australia, which has SAR, offers an example of alternative interim disclosure. The Australian Securities Exchange (ASX) requires mining and oil & gas entities to file streamlined quarterly reports detailing their activities and expenditures for the quarter.[3] This model demonstrates that alternative, standardized interim reporting can balance the need for transparency and the desire to reduce reporting burdens.

We recommend that the CSA reconsider requiring SAR issuers to provide alternative quarterly disclosures for the first and third quarters. These disclosures would deliver essential updates to investors, helping to maintain transparency while alleviating the burden of more comprehensive reporting. This approach would prevent prolonged periods without information and bolster overall market confidence.

Public list of SAR issuers and investor education

We propose that the CSA maintain an easily accessible list of all companies adopting SAR on its website and SEDAR+. This resource would enable investors, analysts, and other market participants to quickly identify which issuers are using SAR, supporting informed investment decisions and market transparency. In addition, the TSXV and the CSE should publish similar lists on their respective websites indicating which of their listed companies use SAR.

We also recommend that the CSA and the exchanges develop and promote educational materials about SAR. These resources should explain the implications of SAR and guide investors on how to find information about SAR issuers. Accessible and well-promoted materials will help investors

[2] 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.
[3] ASX Listing Rules, Chapter 5, Additional reporting on mining and oil and gas production and exploration activities.

understand the new reporting landscape, make informed choices, and reduce confusion about SAR.

G. Question 2 - Additional Condition for Future Rulemaking: Shareholder Approval

We recommend that the CSA require shareholder approval (excluding related parties) of SAR at each annual general meeting (AGM) as part of any future rulemaking initiative.

SAR represents a significant shift in the frequency of financial information provided to shareholders, affecting their ability to monitor and assess a company's performance. As the owners of the company, shareholders should play a role in determining how frequently they receive reports. This fundamental decision should not rest solely with management or the board; rather, it should reflect the preferences of the shareholder base. Empowering shareholders in this manner would ensure that reporting changes are broadly supported by those with a vested interest in the company's success, enhance SAR's legitimacy, and facilitate a smoother transition to SAR.

The shareholder approval requirement could be introduced through the terms of the blanket order or as a condition imposed by the TSXV and the CSE for issuers wishing to adopt SAR. The vote could be binding or advisory. A binding vote would require a specific approval threshold, such as a majority of votes cast at the AGM to authorize SAR. An advisory vote would be non-binding, but provide meaningful feedback and direction to management and the board.

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Thank you for considering our comments on this critical issue. As investor advocates, we appreciate the opportunity to share our perspective and help shape policies that put investors first. We welcome ongoing dialogue and collaboration with the CSA and other stakeholders to build fair, transparent, efficient, and resilient capital markets for all Canadians. If you would like to discuss our submission further, please reach out—we are committed to working together to support better outcomes for investors.

Sincerely,

Jean-Paul Bureaud
President and CEO
Canadian Foundation for the Advancement of Investor Rights