IIAC ACCVM
INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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October 7, 2016

Huston Loke
Director, Corporate Finance
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON M5H 3S8

Email: hloke@osc.gov.on.ca

Dear Mr. Loke:

Re: Financial Statement Requirements for IPOs in Canada vs US

The Investment Industry Association of Canada (the "IIAC" or the "Association"), in discussion with our members and certain Canadian stock exchanges, has identified a difference in Canadian and US securities regulation that potentially may have significant negative effects on the ability of Canadian stock exchanges to attract certain listings.

The recent implementation of the US Jumpstart Our Business Startups Act (the "JOBS Act"), has created an unequal and unfavorable competitive environment for issuers that are considering a listing on a Canadian exchange, versus, or in addition to, a US stock exchange.

Under the JOBS Act, Emerging Growth Companies ("EGCs") are permitted to file IPO registration statements that include two years of audited financial statements and selected financial data in addition to any required unaudited interim financial statements, with a correspondingly reduced MD&A section. Emerging growth companies are companies with total gross annual revenues of less than US$1 billion during their most recently completed fiscal year whose first public offering of common equity securities occurred on or after December 9, 2011.

The JOBS Act provisions are in contrast those under National Instrument 41-101, which requires that investors receive no less than three years of audited historical financial statements for IPOs of non-venture issuers undertaken via a long form prospectus, subject to very narrow and specific exemptions discussed in the companion policy to the National Instrument.

Although the regulation in Canada grants venture issuers similar status as EGCs, it should be noted that the JOBS Act criteria for EGCs permits issuers that are substantially larger than Canadian venture issuers to go public with 2 rather than 3 years of audited financial statements. In fact, based on information provided by the TSX, the EGC criteria would have applied to 95% of IPO listings on the TSX from January 2010 to July 2016.

Given that EGC qualifying companies that meet listing requirements of a senior exchange in Canada are subject to more onerous requirements to obtain a Canadian versus a US listing, we are concerned that such issuers may forego Canadian listings if they are required to undertake the time and cost to provide an additional year of audited financial statements.

The requirement for an additional year of audited financial statements represents a significant burden in terms of time and cost which may be material enough to deter issuers from listing on a Canadian marketplace, and as such, have a negative impact on the health of the Canadian capital markets.

In developing the JOBS Act, US regulators have determined that given the nature of EGCs, the 3rd year of audited financial statements does not provide material additional information over and above the most recent 2 years, which would offset the costs of providing this information. Our members support this position, and indicate it is applicable to Canadian issuers. This is particularly true where the EGC is an entity that has experienced significant year over year growth.

In general, businesses are often valued based on financial projections using the most representative fiscal year, typically, the most recently completed fiscal year. The third year of historical audited financial statements may not be representative of the current business, which makes older financial statements less relevant. In addition, reducing the financial statement requirement to 2 years will provide issuers with increased flexibility in respect of the timing of a possible IPO, which may increase the number of issuers participating in public markets. Given the often volatile nature of the markets for issuers that fit the EGC size profile, the timing of listing is critical, and the periods where listing is optimal or even possible may be restricted. In addition, where a listing is taking place in more than one jurisdiction, the presence of different and in particular, more onerous requirements on one of the markets will reduce the chance that the issuer will list on that market.

Given the significant difference in time and cost to obtain an additional year of audited financial statements, the likelihood of issuers undertaking a dual listing will be reduced. The loss of such listings has negative effects on the Canadian capital markets, in general, as well as Canadian retail and institutional investors.

IIAC members are key intermediaries in taking companies public, and undertake the necessary due diligence required to evaluate the appropriateness of the issuer for public listing. They are of the view that in the case of EGCs, the third year of historical financial statements, are generally of limited value in evaluating the issuer. In cases where such statements could provide valuable information and background, the dealers responsible for bringing the issuer public and signing the prospectus would ensure that such information is provided, either by requiring an additional year of audited statements, a year of unaudited financial statements, or the provision of further information by the issuer. However, requiring this information for all issuers, where it may not provide useful information, creates an unnecessary and costly competitive disadvantage for issuers seeking to go public in Canada, without a corresponding increase in investor protection.

We acknowledge that in many circumstances, inconsistencies in Canadian and US regulation are justified by differences in the nature of the markets. In this circumstance, however, the situation to which the regulations apply are consistent in respect of the market, the affected issuers and ultimately, the investors.

We would be pleased to meet with you to discuss the implications of adjusting the requirements under NI 41-101 to align with US regulation in order to improve the competitive capital market environment in Canada.

If you have any questions or comments, please do not hesitate to contact me.

Yours sincerely,

Susan Copland
Managing Director, IIAC

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