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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Prince Edward Island Securities Commission
Office of the Superintendent of Securities, Government of Newfoundland and Labrador
Department of Community Services, Government of Yukon
Office of the Superintendent of Securities, Government of the Northwest Territories
Legal Registries Division, Department of Justice, Government of Nunavut

Ladies and Gentlemen:

Proposed Republished National Instrument 51-103

Thank you for the opportunity to comment on this proposed republished National Instrument (NI).

Small public companies are of significant value and job creators in the Canadian economy. It is important that these organizations operate in a reporting and regulatory environment that is both attractive and protective of investors' interests. These entities find it increasingly difficult to thrive, however, in an environment of ever more complex and voluminous regulatory and reporting requirements. Accordingly, as we noted in our November 4, 2011 letter that commented on the original proposed NI, we applaud the Canadian Securities Administrators for this initiative to simplify governance and disclosure requirements for entities on the venture exchange.

This response from the CICA's Canadian Performance Reporting Board (CPRB) and Risk Oversight and Governance Board (ROGB) draws on the views of our Small Company Advisory Group (SCAG). The CPRB and ROGB publish business reporting research and guidance and governance guidance, respectively, that they consider to be in the public interest. The CPRB's and ROGB's members are drawn from the primary stakeholders in the business reporting community – senior financial management, directors of public companies (including audit committee chairs), investors, auditors, and financial academics. The SCAG advises CICA about the needs of small Canadian public companies. Members of the SCAG all work in this important sector of the Canadian economy as senior financial management, audit committee chairs, or auditors.

In our view, while the overall reporting and governance objectives for venture issuers should be the same as for non-venture issuers, the execution of such objectives should take into account venture issuers' resource constraints, provided users of venture issuer reports are made aware that execution differences exist. Accordingly, we remain generally supportive of the proposals set out in the proposed NI. However, we do have several concerns, in particular on the subject of mid-year reporting. In the event that the CSA continues, as it now proposes, to require quarterly financial statements of all venture issuers, we strongly believe a full MD&A should be required in all instances. More broadly however, we regret that the CSA has retreated from its original proposals to reduce the requirements for interim reporting. As well, we believe the responsibilities for audit committees should be the same for all issuers.

Overleaf we set out our specific comments on this and various other matters. If you would like to discuss our comments in more detail, please contact Chris Hicks, CPA, CA at chris.hicks@cica.ca or Gigi Dawe at gigi.dawe@cica.ca.

Yours truly,

Thomas S. Chambers, FCA
Chair, Canadian Performance Reporting Board

Huw Thomas, CPA, CA
Chair, Risk Oversight and Governance Board

COMMENTS ON PROPOSED REPUBLISHED NATIONAL INSTRUMENT 51-103

1. Mid-year financial reporting

Removal of MD&A requirement
We note that the CSA now plans to eliminate the previously-proposed mid-year report and introduce an interim report for all interim periods, consisting of a title page, quarterly highlights, which would contain a short discussion of the venture issuer's operations and liquidity, the interim financial statements and a certificate from the CEO and CFO. A venture issuer might choose, in addition to the quarterly highlights, to provide more traditional MD&A in the form prescribed in NI 51-102.

In the event that the CSA continues to require quarterly financial statements of all venture issuers, we believe a full MD&A should also be required in all instances. For the great majority of venture issuers, the primary cost and effort of quarterly reporting is attached to preparing quarterly financial statements in accordance with IFRSs. Once this work has been carried out, the additional effort required in preparing any other accompanying disclosure documents is generally significantly less. This being the case, we do not believe the CSA's current proposal would provide a significant cost saving for the majority of venture issuers. In fact, we believe many issuers would incur additional costs in analyzing the instrument and in determining the appropriate changes to their current practices.

At the same time, the proposal would reduce consistency between issuers in what is disclosed, particularly since, as currently drafted, the requirements for an interim report are very brief, and in contrast to some other areas of the proposed instrument, provide little guidance on matters that should be addressed. For example, it is unclear that the proposal as currently drafted would consistently generate meaningful quarterly discussion about adverse developments in working capital or similar issues. Overall, we do not believe the benefits of this aspect of the proposals would exceed their likely costs.

Voluntary three and nine month financial reporting
The above-noted comments assume that the CSA may not return to its original proposals to reduce the requirements for interim reporting. Subject to the observations we made in our original response we believe those original proposals were well-founded, and even at this advanced stage in the project, we urge the CSA to reconsider. We accept that the CSA faced a difficult task in finding the best path through a diverse and often conflicting collection of comments on this matter. However, the comments provided do not convince us of the cost/benefit of quarterly reporting. Members of CICA's Small Company Advisory Group find the costs of preparing quarterly financial reports very significant but the benefits limited. For example, many venture issuers operate in the exploration and development stages of the extractive industries where interim financial reporting is less important. The flexible approach set out in the original proposed NI would have allowed entities whose circumstances made interim financial performance information more valuable to provide this reporting on a voluntary basis, while significantly reducing the time and cost devoted to financial reporting in cases where interim reporting is simply unimportant. Indeed, the concept of detailed financial reporting every three months is questionable. Many argue that time would be better spent on operational excellence, managing the business, and strategy. Outside North America, most public company financial reporting requirements centre on half yearly and annual reporting without any concerns being experienced. This view seems to be supported by the strong indication provided in responses to the original CSA proposal

that the absence of 3 and 9 month interim reports would not deter investors from investing in venture issuers. As well, it should be noted that many view quarterly reporting to be a contributor to short-termism in the capital markets and some large companies such as Unilever have moved away from quarterly reporting of earnings.

2. Annual reports

The CSA proposes allowing incorporation by reference only in limited circumstances, citing the goal of reducing the number of documents that investors have to consult in order to make an informed investment decision. Although we believe that providing all the required information in a single annual report will generally be incrementally beneficial, some of the larger venture issuers have long-established forms of structuring their disclosures, well known to analysts and other investors, and eliminating the possibility of incorporation by reference will only disrupt these established practices, with no resulting benefit. For example, where analysts and other investors are accustomed to accessing a particular document directly on SEDAR, relocating this document within the annual report will only make the information *less* easily accessible, while introducing an unnecessary difference from practices allowed for non-venture issuers. Venture issuers might avoid this by duplicating the information, but this would introduce an unwarranted additional cost – particularly where it results in expanding the volume of information to be printed and mailed to security holders – with no apparent benefit.

We therefore encourage the CSA to provide a more balanced approach toward allowing incorporation by reference. At a minimum, we believe the CSA should be flexible in granting exemptive relief to allow such incorporation by reference, and should define the circumstances in which such relief would be routinely granted. Preferably, however, greater flexibility should be provided within the document itself. Investors must always be made aware that some other filed document may be relevant to their decision-making (most obviously, that a material news release may be issued even between the time of having made an investment decision and actually placing the trade that results from that decision). It follows that investors, for their own protection, if they choose to trade for their own account, *must* possess a mindset of being willing to consult multiple documents on an ongoing basis, so that the need to separately access a document incorporated into an annual report by reference should not be unusual or onerous.

3. Long-form prospectus

We continue to believe that one year of audited financial statements, with unaudited financial statements for the second most recently completed year, should constitute sufficient disclosure for all venture issuers. For the great majority of venture issuers, a forward-looking investment decision could not reasonably be materially affected by the small possibility that the comparative period might have been adjusted, in some unknown way, had that period been audited. In the rare cases where this does not hold, investors would be capable of taking any additional perceived risk into account in making their decisions (presumably to the issuer's disadvantage). In explicitly noting that venture issuers may seek exemptive relief from the requirement to have two years of audited financial statements, the CSA appears to acknowledge that it does not in fact consider two years of audited information to be necessary in all cases. However, this leaves it to CSA staff to assess the necessity for two years of disclosure in any individual case, using its own judgment of relative costs and benefits. We believe this is undesirable and that the securities regulator should refrain where possible from injecting itself into assessing the relative risks of competing opportunities.

4. Audit committees

The proposed NI sets out different responsibilities for audit committee members than those in NI 52-110 *Audit Committees*. We believe these overall responsibilities should be the same, regardless of where the entity is listed. In particular, we believe proposed NI 51-103 should require that the audit committee pre-approve all non-audit services, and that the audit committee should recommend to the board of directors the auditor's compensation. As well, the audit committee should be satisfied that adequate procedures are in place for review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements.

ROGB members agree with the proposed NI's view that controlling shareholders not be viewed as independent for the purposes of the audit committee. It is their view that a controlling shareholder may have undue influence on management or other audit committee members. Members of our SCAG, however, continue to believe that control persons should be counted as independent for these purposes. While control persons might on occasion bring biases of some kind to the table, in their view such biases would rarely motivate those persons to (say) actively argue in favour of non-compliant disclosure, and if such events did occur, these arguments should rarely succeed, in view of the requirements of securities law, the involvement of independent auditors, and other governance requirements. Even if some risk exists in this regard, SCAG members believe this risk is significantly less than the broader risk that audit committees might be rendered less effective in general, because even if their members are in some sense independent, they will lack suitable qualifications, experience and knowledge of the business. In other words, SCAG members believe the CSA should have placed the greatest weight on the difficulty of recruiting audit committee members for small public companies, and on the likelihood that increasing this difficulty – however well intended the reasons, considered in isolation – will not ultimately serve the greater good.

5. Compensation disclosure

The proposals continue to require a discussion of performance criteria and goals, weightings and related matters for each named executive officer. We do not believe such disclosure will often be meaningful for small public companies, for which compensation structures seldom exhibit the degree of formality suggested by this requirement, and will more likely result in over-inflated or boilerplate narratives that obscure matters more than clarifying them. We believe this should be replaced by a more general requirement to explain how compensation was determined, with the currently proposed requirements serving as examples of matters that would be discussed only in the (rare) circumstances where they apply.

6. Governance and ethical conduct

The proposals contain various detailed disclosure requirements about the conduct of the board, such as a requirement to disclose whether or not the board takes any steps to encourage and promote a culture of ethical business conduct and, if so, to describe those steps, and to disclose how the board of directors facilitates its exercise of independent supervision over management. Similar to the point above, these requirements seem likely only to result in boilerplate information in most circumstances. We suggest it would be preferable to require a broader discussion of governance matters, citing these matters as examples of what might be addressed.

7. Control reporting

The proposals currently envisage cover-page disclosure in the annual report that: “although management is responsible for ensuring processes are in place to provide them with the information they need to comply with disclosure obligations on a timely basis, (the issuer) is not required to establish and maintain disclosure controls and procedures and internal control over financial reporting.” The certificate to the annual report requires disclosing more fully that these terms are used as defined in National Instrument 52-109 *Certification of Disclosure in Issuers Annual and Interim Filings,* and that this may result in additional risks to the quality, reliability, transparency and timeliness of annual reports, interim reports and other disclosures provided by it under securities legislation. We believe the additional information in the certificate is important in understanding the context of these representations, and suggest it should also be included in the cover-page disclosure.