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Via Electronic Correspondence to Addressees Indicated in Schedule "B"

December 12, 2012

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Prince Edward Island Securities Office
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

Dear Sirs:

Re: Notice and Request for Comment – Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* and Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions* and National Instrument 45-106 *Prospectus and Registration Exemptions* and Proposed Related Consequential Amendments

We are responding to the Canadian Securities Administrators (the "**CSA**") Notice of Republication and Request for Comment – Proposed National Instrument 51-103 – *Ongoing Governance and Disclosure Requirements for Venture Issuers* (the "**Proposed Instrument**") and Proposed Amendments to National Instrument 41-101 – *General Prospectus Requirements*, National Instrument 44-101 – *Short Form Prospectus Distributions* and National Instrument 45-106 – *Prospectus and Registration Exemptions* and Proposed Related Consequential Amendments dated September 13, 2012 (the "**Request**"). The comments provided herein are those of a number of practitioners in our securities group and are not those of Burnet, Duckworth & Palmer LLP or its clients.

For the purposes of this letter we have provided general comments in response to the Request and the Proposed Instrument and have provided general drafting comments as set forth in Schedule "A" attached hereto.

General

Although we have not performed a detailed analysis of every aspect of the drafting of the Proposed Instrument and the related proposals, we have provided a summary of some of the key issues we have noted in this letter. In addition, the following are some general comments on the Proposed Instrument.

As noted in our previous comment letters, we applaud the efforts of the CSA in attempting to improve both the quality of venture issuer disclosure as well as streamlining the disclosure requirements for venture issuers to decrease the costs and time required to comply. In addition, we note that the CSA has made a number of improvements to the proposed new regime for venture issuers based on the comments received to date and we appreciate the willingness of the CSA to consider and respond thoughtfully to such comments.

Opt-Out/Annual Reports/Management's Discussion and Analysis

We do still have some general concerns with respect to the implementation of the proposed new regime for venture issuers. One of our main concerns is the inability of a venture issuer to opt-out of complying with the new regime and continue to use the current regime. We note that many venture issuers prefer to tailor their disclosure to replicate the disclosure of non-venture issuers as many of their peer companies are companies that are listed on the TSX. Investors are accustomed to seeing disclosure in a certain manner and having that disclosure easily comparable to other companies that they are interested in investing in. To the extent disclosure documents are different for venture issuers from those for non-venture issuers, as remains the case in certain aspects of the Proposed Instrument, it may significantly harm such venture issuers' ability to raise additional capital.

We note that although one of the goals of the Proposed Instrument is to make the disclosure requirements for venture issuers more manageable, complying with the requirements for annual reports will require significant dedication of time and resources for venture issuers - especially in the first few years after implementation of the Proposed Instrument. The disclosure required in the annual report goes far beyond the current baseline disclosure requirements for venture issuers. In addition, much of the disclosure required in an annual report is significantly different from the disclosure required in an annual information form. As such, even for venture issuers who currently file annual information forms, the preparation of the initial annual report will require a significant dedication of time and resources. The Proposed Instrument should strive to adopt disclosure that more closely mirrors the requirement under Form 51-102F2 – Annual Information Forms in order to partially reduce the burden of annual reports for venture issuers, which will at least assist the venture issuers who currently file annual information forms. An alternate approach could be to allow venture issuers to file the annual report in the form of Form 51-102F2, provided that they include in their Form 51-102F2 filing certain additional disclosure from the Form 51-103F1 that the CSA determines is necessary to include.

Finally, we note that the CSA indicates in its response in Annex A to the Request that under the Proposed Instrument, that venture issuers may voluntarily file certain documents in the form required under National Instrument 51-102 – Continuous Disclosure Obligations ("NI 51-102") (i.e. management's discussion and analysis); however, the Proposed Instrument should be revised to make it clear that there is an option for the venture issuer to file management's discussion and analysis in the form required under NI 51-102 as opposed to the quarterly reports currently contemplated under the Proposed Instrument. The Proposed Instrument should also reflect whether a venture issuer has the ability to voluntarily file any other continuous disclosure under NI 51-102 in lieu of under the Proposed Instrument and, if this is not the case, should make clear that any venture issuer wishing to file documents under the NI 51-102 regime will be required to apply for exemptive relief from the CSA.

Audit Committee Independence – Control Persons

We note that the CSA's response in Annex A to the Request indicates that the CSA believes control persons should not be considered independent for the purposes of audit committees. As stated in our previous response letter, we do not believe that control persons should be added to the list. In many circumstances, the interests of control persons are not aligned with the interest of management of a venture issuer. Like many other shareholders and stakeholders, control persons generally have an interest in ensuring accurate financial reporting. Eliminating control persons as potential independent candidates for the audit committee will result in the pool of potentially qualified candidates being reduced. Venture issuers already have a difficult time attracting qualified candidates to serve as directors and therefore efforts should be taken not to reduce the ability of venture issuers to attract qualified persons to act as independent directors any further.

> ***We do agree that in certain circumstances there may be factors that prevent a control person from exercising independent judgment if they were to serve on the audit committee; however, rather than a deemed determination that such persons are not independent a better approach may be to adopt the test from Section 1.4 of National Instrument 52-110 – Audit Committees which requires a board of directors to make determination as to the independence of potential candidates for audit committees based on whether there is a "material relationship" which could be reasonably expected to interfere with the exercise of a member's independent judgment. We note in the CSA's response in Annex A to the Request that the adoption of the "material relationship test" was not considered appropriate; however, a subjective test for venture issuers as opposed to a bright line test would be more beneficial for venture issuers for the reasons outlined above. We specifically re-draw your attention to the fact that, at present, venture issuers have a difficult time attracting qualified candidates to serve as directors and audit committee members without an exclusionary rule against control persons as potential independent candidates. The companion policy to the Proposed Instrument could be drafted to draw attention to the issue of a control person being considered an independent member of the audit committee and could state that particular attention should be given to the issue.***

We would be happy to expand upon any of the foregoing at your convenience and thank you for the opportunity to comment. If you wish clarification on any of the foregoing please feel free to contact Jessica Brown or Ted Brown of our office at your convenience.

Yours truly,

"*Burnet, Duckworth & Palmer LLP*"

cc: Burnet, Duckworth & Palmer LLP
Attn: Securities Group

SCHEDULE "A"
SUMMARY OF GENERAL DRAFTING COMMENTS

As noted in the main body of our letter, we have not performed a detailed analysis of every aspect of the drafting of the Proposed Instrument and the related forms; however, the following summary provides a description of some of the key drafting issues we noted in our review of the Proposed Instrument and related forms:

NI 51-103

Section 1(1) - Definitions

Definition of "related entity" – We question whether it is advisable to have a requirement to refer to an issuer's GAAP to make a determination of whether an entity is a related entity. In general, we believe this definition, as well as the definition of "related entity transaction", should be carefully considered and revised.

Definition of "related entity transaction" – In addition, as noted above pursuant to our comments on the definition of "related entity", we question whether it is advisable to include subsection (a) of this definition as it requires venture issuers and their advisors to refer to the issuer's GAAP to determine whether a transaction is a material related entity transaction. This may prevent an issuer from receiving quick concrete advice to help make a determination as to whether something is a material related entity transaction.

Section 4 – Conflicts of Interest and Material Related Entity Transactions

With respect to the conflict of interest provisions contained in the Proposed Instrument, we question the need to include this provision in the Proposed Instrument as corporate legislation would typically apply in most cases and specifically prescribes steps to be taken by corporations when dealing with conflicts of interest.

Section 15 – Delivery Options for Information Circular and Proxy Related Material

We are generally supportive of implementing options for notice and delivery of information circulars and proxy related materials; however, we do note that many corporate statutes will prevent issuers from taking full advantage of such options.

Section 19 – Contents of and Filing Deadline for Form 51-103F2 – Report of Material Change or Other Material Information

Subsection 19(1)(b)(ii) suggests that a news release can include the information required pursuant to proposed Form 51-103F2 in lieu of also filing Form 51-103F2 – *Report of Material Change or Other Material Information* ("**Form 51-103F2**"). While we are generally supportive of only one document being filed if it includes all relevant and required information, we question the wording of this subsection with regards to what is intended by "includes a title stating…". It would not be market standard to include a reference to a report required by the CSA in the title to a news release and would not provide any benefit to the reader as the filing would be made under SEDAR under the material change report category. If it is the intention of the subsection to have a heading in the news release stating that it is also a Form 51-103F2, the subsection should be revised to make this intent clear. Additionally, in respect of SEDAR filing requirements, it may be confusing for investors reviewing a venture issuer's SEDAR profile if the venture issuer chooses to combine its news release and Form 51-103F2 under the SEDAR category for material change reports and not also under the SEDAR category for news releases.

Section 20 – Confidential Report of Material Change

We question whether a venture issuer should be precluded from reliance on Section 20 of the Proposed Instrument if the material change is in relation to a related entity transaction. We suggest that the requirements in respect of confidential material change reports for venture issuers be consistent with the requirements set out in Part 7 of NI 51-102. The

requirements in NI 51-103F2 could also be revised to provide that when a venture issuer is filing a confidential material change report, disclosure must be included in the covering letter which specifically discloses that the material change is with respect to a related entity such that the material change can be monitored appropriately by the regulatory authorities.

Form 51-103F1

Section 16 – Corporate Structure

In addition to requiring venture issuers to disclose each subsidiary entity, Section 16 also requires disclosure of each party with whom the venture issuer participates in a joint venture or partnership. Despite the guidance in Section 2 of Form 51-103F1 to focus on materiality, we believe the inclusion of every joint venture or partnership in which a venture issuer is a party in the disclosure required under Section 16 will be overly inclusive unless there is some exclusion for non-material or in-the-ordinary course of business joint ventures and partnerships. Many venture issuers, and in particular oil and gas venture issuers, may have many joint ventures or partnerships that they are undertaking with other parties which are immaterial in nature or entered into in-the-ordinary course of business. One option to make the requirements clearer with respect to this section is to include guidance (similar to the instruction provided under Item 3 of Form 51-102F2) which set a percentage threshold to determine whether a subsidiary, joint venture or partnership could be omitted. The requirement should also include a materiality threshold to indicate which subsidiaries and joint ventures should be included (i.e. as per the language included in the instruction for Item 3 in Form 51-102F2). Additionally, those joint ventures or partnerships which are entered into by the venture issuer in the ordinary course should be specifically excluded. Any material joint venture or partnership agreement would likely also constitute a material contract and would be disclosed pursuant to other sections of the Form 51-103F1.

Section 18 – Two Year History and Management's Discussion and Analysis in an Annual Report

We believe that subsection 17(2)(c) essentially mandates the disclosure of non-GAAP measures by venture issuers. We question the advisability of implementing such a requirement as it would appear to contradict the general approach that the CSA has taken to discourage non-GAAP measures from being disclosed as such measures may not have standardized meanings. Although we do believe that the disclosure of non-GAAP measures should be allowed, provided that the necessary disclosure explaining the non-GAAP measures are also included, we do not believe it is advisable to make it a requirement to disclose non-GAAP measures. Finally, we question the use of the word "typically" in subsection 17(2)(c) as it will be difficult for management of a venture issuer to assess which key operating statistics and measures are "typically" used for an entire industry as many issuers and analysts likely use different statistics and measures even in the same business.

Section 19 – Business Objectives, Performance Targets and Milestones

Although many venture issuers do provide guidance which discloses performance targets for the upcoming year, the requirement to disclose such targets may be burdensome and carry with it inherent risk for the venture issuers to the extent that such performance targets are not achieved. It will also require the venture issuer to provide regular updates when the expectations as to the achievability of such performance targets change, which places additional burdens on reporting issuers. We believe that the disclosure of such performance targets should be a voluntary decision of venture issuers. For example, projections of production, cash flow and earnings are currently only disclosed by some issuers and not others and such decision to disclose this information should remain voluntary. Additionally, some boards of directors do not believe that public disclosure of such projections and non-GAAP measures are appropriate given the stage of development of certain issuers and, in particular, venture issuers.

Section 36 – Governance and Ethical Conduct

We question the need for this requirement as for the majority of venture issuers it would result in boilerplate disclosure of the statutory duties of directors or officers which would have limited utility for most investors. It may be advisable to only include this requirement for venture issuers not incorporated under a Canadian corporate statute. Another alternative would be to require disclosure as to whether the venture issuer's directors and officers are *not* subject to any statutory or

contractual obligations or duties substantially similar to the statutory duties under Canadian corporate law as such disclosure would be of greater use and information for investors.

Form 51-103F2

Section 7 – Date of Material Change, Related Entity Transaction, Major Acquisition or Other Transaction

We question the relevance of disclosing the date of the decision to implement a material related entity transaction under subsection 7(b). In addition, it is not clear if the decision in this case is the decision of management or the board of directors of the venture issuer. If the disclosure of the date will be required, the section should be revised to make clear that the date to be disclosed is the date that the required approval was obtained (i.e. if board approval is required, the date of the board approval).

Form 51-101F4

Section 14 – Cease Trade Orders, Penalties, Sanctions and Bankruptcies of Proposed New Directors

The disclosure requirements under this section are slightly different than the current disclosure requirements under Section 7.2 of Form 51-102F5 as well as the proposed disclosure requirements under subsection 29(4) of Form 51-103F1. In particular, the disclosure of cease trade orders and bankruptcies is only required in Form 51-104F4 if a director or executive officer of the venture issuer was a director, CEO or CFO of an entity that was subject to a cease trade order or bankruptcy and in other instances (i.e. Form 51-102F5 and Form 51-103F1), the disclosure is required if a director or executive officer of the venture issuer was a director or any executive officer of an entity that was subject to a cease trade order or bankruptcy. It is not clear to us the rationale for the different disclosure thresholds and we believe that the language in the different Forms should be consistent.

Annex D – Proposed Amendments to National Instrument 44-101 – *Short Form Prospectus Distributions*

8 – Amendments to Form 44-101F1 re: Use of Proceeds (Item 4.11 Actual use of financing proceeds)

We believe that the disclosure proposed by the revisions to Item 4.11 of Form 44-101F1 should be limited to circumstances where there was an actual material change in the use of proceeds from a previous financing. For example, often oil and gas issuers will reallocate use of proceeds from the drilling of one well to another or the nature of the expenditures may change (i.e. the intended use of proceeds was for completing wells and the proceeds were used for drilling wells), which should not require additional disclosure in the form proposed by Item 4.11 of Form 44-101F1. However, additional disclosure could be required when there is a marked departure from the intended use of proceeds to the actual use of proceeds (i.e. the intended use of proceeds was for drilling wells and the proceeds were used for an acquisition).

SCHEDULE "B"

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