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September 18, 2002

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British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

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Re: Comments on Proposed National Instrument 51-102 *Continuous Disclosure Obligations (the "Rule")*, Form 51-102F1, Form 51-102F2, Form 51-102F3, Form 51-102F4, Form 51-102F5, Form 51-102F6 (collectively, the "Forms"), and Companion Policy 51-102CP *Continuous Disclosure Obligations (the "Policy")*

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Rule, Forms and Policy. Due to the number of issues addressed by the Rule, Forms and Policy that relate to both legal and accounting issues, Collins Barrow Calgary LLP and Parlee McLaws LLP have collaborated on this joint comment letter.

Introduction

- Collins Barrow Calgary LLP is a Calgary chartered accounting firm, and is a founding member of Collins Barrow National. Collins Barrow has performed audits for issuers on the TSX Venture Exchange and the TSX, and predecessor exchanges, for more than 25 years.

- Parlee McLaws LLP is an Alberta law firm with offices in Calgary and Edmonton. Parlee McLaws LLP represents issuers listed on the TSX Venture Exchange and the TSX and in all industry groups.

We have read the following documents in preparing these comments:

- The notice to comment
- The Rule
- The Forms
- The Policy
- A comment letter to you dated August 29, 2002 from TSX Venture Exchange (the "TSX Letter")

We also attended a presentation by TSX Venture staff on the proposal.

TSX Venture Exchange Comments

We support the comments contained in the TSX Letter.

In particular, we note the TSX Venture Exchange's comment that it has disclosure requirements that provide adequate public disclosure of certain transactions and discretion to permit departure from prescribed disclosure where it thinks fit, and wishes to maintain these for small issuers. In our experience, we have found disclosure requirements under TSX Venture Exchange policies to be very thorough and that variations from required disclosure is permitted only where meaningful disclosure would not be omitted as a result. We therefore do not believe that the quality of public information will suffer from continuing to follow this approach for small issuers listed on the TSX Venture Exchange.

General Comments

We found the task of reviewing, analyzing and commenting on the proposals much more onerous than expected. Given that the comment period was largely the summer months, we question whether there has been an adequate opportunity for comment.

The proposed deadlines for filing financial statements will undoubtedly result in more estimating in order to meet filing deadlines. We generally question the benefit shortening the current deadlines, particularly if accuracy is sacrificed for speed. The TSX Letter is accurate in describing the timing problems that will apply with respect to auditors. The vast majority of public companies use calendar year-ends, in order to be comparable with other issuers in their industry. We do not think this will change, even if issuers are allowed to change to off-calendar year-ends as suggested in the TSX Letter. The earlier filing deadline will mean that audits will become even more costly, since the available time to complete them will be further constrained. The CSA notes that many large issuers already file much earlier than the 140 day deadline. It is this very fact that allows smaller issuers to obtain competent audit services at reasonable cost without competing with larger issuers during the same February–March period, by scheduling their audits for April through early May.

We question the value of additional disclosure that will result from mandatory MD&A, for small issuers. As noted by the TSX Venture Exchange, financial results of these issuers are often meaningless. Many smaller issuers will be forced to turn to consultant to assist with preparation of MD&A at significant cost. For example, the proposals rely heavily on the Handbook which requires expertise that many smaller issuers do not have in-house and the diminishing ability of auditors to provide "broad" services to issuers will result in a different set of professionals being required to become conversant with the issuer's affairs to prepare MD&A.

We note that board "review" of interim and annual MD&A will be required. We assume that "review" means something less than "approve", however do not understand the distinction.

We note that you have concluded that "any incremental costs resulting from the changes are justified" by the considerations listed. As noted, we believe otherwise and would encourage the CSA to elaborate on its position in this regard. For example: Did the CSA do a sample analysis to determine whether the proposed disclosure requirements would elicit any additional meaningful information? Was there any analysis of the cost to issuers of the new disclosure requirements and if so, did the CSA also consider the increased cost of quarterly reviews? Was any analysis done on the basis of issuer size, for example, small, medium and large issuers? For small issuers, was there any review of British Columbia's Quarterly and Year End Report experience to determine whether any meaningful disclosure was being obtained?

We have encountered several instances of United States based businesses seeking their first stock exchange listing on the TSX Venture Exchange, or its predecessors, largely because the costs of doing so in the United States were prohibitive. We therefore have some apprehension that adopting United States disclosure requirements, although perhaps desirable in terms of uniformity, will for the same reasons result in small issuers of merit being unable to use Canadian public markets as a financing alternative.

Specific Comments

The Rule

1.1(1) Definitions in local securities laws will take precedence over definitions in the Rule. Issuers and their advisors will therefore be required to read the Rule and the Forms in the light of the definitions in the Rule and in all jurisdictions where the issuer reports. Presumably, the disclosure standard will default to the definition which is broadest. The effects of this will only be discovered through experience but adopting this approach appears to be contrary to the stated objectives of simplicity and uniformity. For example, the definition of "insider" in the Rule uses the defined term "executive officer" while the Alberta *Securities Act* uses the term "senior officer". The definitions are quite different in their approach. In determining what disclosure is required, an issuer will presumably begin with the Rule and add any additional disclosure that is required by local legislation, (or vice versa) a tedious task when multiple jurisdictions are involved and one of questionable value. We submit that the Rule should contain its own definitions and that they should be paramount.

4.3 Again, we note the distinction between “review” and “approve”.

4.4(2) We suggest that the words "if any" be placed at the end of each of subsections (a), (b) and (c). This gives comparative interim statements the same treatment as annual statements. (See 4.1(1)(a)(ii).)

4.6(1) As noted above, the requirement is to "review", which raises questions regarding standards to be followed.

4.9(2) We believe that the words "an amount" should be added after "represents" in line 2.

4.13(1) An issuer with a December year end that becomes a reporting issuer on May 14 will be required to file quarterly financial statements on May 15. We suggest a more workable approach is to commence filing with the interim period during which the issuer becomes a reporting issuer. In the example above, Q1 statements would not be filed because the issuer did not become a reporting issuer until Q2. In addition, we foresee scope for duplication of information in the public record. For example, where an issuer becomes a reporting issuer by filing a prospectus during Q1, the prospectus may well contain year end statements. However, the year end statements will be required to be filed separately on the applicable deadline. We suggest that issuers be exempt from its initial filings of year end statements (and if our suggestion above is not adopted, quarterly statements) where they have been previously filed as part of another document.

5.1(2) Allowing small businesses an exemption from the requirement for AIF would appear to be recognition that the disclosure provided by AIF is not useful in the context of a small businesses. We question how this changes based on the aggregate market value of the issuer's securities. As seen in the market for technology stocks, market value may not bear any relationship to assets or revenues. In addition, we note that the definition of "aggregate market value" relies on simple averages which could lead to anomalous results.

6.4 Again, we note the distinction between "review" and "approve".

8.1(2) An acquisition of an interest in a joint venture is included in the term "acquisition" but an interest in a joint venture is not included in the term "business" under subsection (3). It is therefore unclear how the significance tests relate to the acquisition of an interest in an "joint venture".

It is common in the natural resource sector to develop properties and undertake projects by the formation of a joint venture or a partnership. It is unclear how the significant acquisition and disposition provisions will apply to these situations. For example, it is common for resource issuers to transfer properties to a partnership in which it and its wholly owned subsidiary are the only partners. The transaction makes no difference in the consolidated results of the issuer, however the transaction may satisfy the significance tests as both a significant acquisition and a significant disposition. In such situations, the additional disclosure required is meaningless. An alternative approach might be to measure consolidated assets and income before and after the acquisition.

8.2 We agree with the TSX Venture Exchange that these provisions should be simplified and a single threshold defined on a basis that is easily understood and encourages compliance. We agree that, if this form is to apply to Small Businesses, a threshold of 50% should be used, the manner of computing the test should be made extremely simple and understandable, and one year of financial statements should be required where the threshold is exceeded. The requirement to adjust financials for differences in accounting policies under 8.2(8) is difficult and expensive to apply. For example, if two entities have amortized assets under different policies, it may take substantial work to re-state the figures, for questionable benefit.

8.4(3)(b)(iii) We believe that the word "from" in the phrase "93 days before or after from" should be deleted.

10.1(1) We note, and question the value of, the duplication of information that will result from the requirement to include information in each of the documents referred to in subsection (2).

Form 51-102 – AIF

General When reviewing the general instructions and comparing them to what is currently in Form 44-101F1, we noted subtle changes to language but are undecided as to whether they resulted in changes to disclosure obligations. For example, the instructions to Form 44-101F1 state "...do not focus, unless specifically required, on external factors that affect issuers generally." Form 51-102F1 states "Your AIF describes your company ... and other external factors that impact your company specifically."

4.3 We believe the first reference to subsection (1) in Instruction (i) should be a reference to subsection (2).

We believe the words "then a company may comply with subsection (2) by providing the information required based on the larger pool and disclosing that it has done so." should be separated from subsection (2) so it applies to both subsection (1) and (2).

Form 51-102F2 – Management Discussion and Analysis

General We note the general trend toward encouraging and requiring issuers to provide forward-looking information We believe this is a trend adopted from U.S. disclosure requirements. We also note that the General Instructions to MD&A require cautionary language but unlike U.S. regulations which contain "safe harbor" rules, the proposals do not. We have concern that issuers are being pushed toward forward-looking disclosure in an uncertain legal environment.

1.1(a) We believe that the word "as" in line 1 should be deleted.

Form 51-102F3 – Material Change Report

We question the value of this report. In our experience this report gives no information that is not contained in the news release regarding the material change. Since news releases are filed on SEDAR, the Material Change Report would seem to be useless duplication, except in the case of a confidential filing. We suggest that you consider deleting the requirement to file this form except where confidentiality is requested. If some jurisdictions resist this on the basis of loss of filing fees, we suggest that they charge a filing fee for the news release instead.

Form 51-102F4 – Business Acquisition Report

2.2 We suggest this requirement be deleted, or changed to the closing date of the acquisition. An issuer will be required to disclose the effective date for accounting purposes in the financial statements for the period that includes the acquisition. We can see no benefit to shareholders of knowing the effective date (which for smaller issuers may not be confirmed until the quarter-end accounting is completed and the transaction reviewed by the auditors or other accounting consultants) until they have been provided results of operations for the period of acquisition and wish to know the date the issuer commenced to include results of the target business in earnings.

Item 3 We agree with the issues raise in the TSX Letter regarding financial statements requirements for acquired businesses, especially with respect to audits of previously unaudited operating results of target businesses acquired by Small Businesses. More relevant information is usually developed in the course of the review of the transaction value and future viability of the business with the Exchange, which by its nature includes a thorough assessment of the balance sheet values. We suggest such audits be limited to an audit of the most recent balance sheet to confirm the net assets being acquired.

We have found the development of “carve-out” financial statements, for net assets purchased from a vendor but without separate accounting records, to be a largely futile exercise. Numerous arbitrary assumptions are required to create carrying values, amortization, income tax, and site restoration expenses and various other values. Vendors are often reluctant to provide any meaningful assistance to provide information to make accurate computations, which increases the assumptions used. There is a marked lack of generally accepted practice, or accounting standards in this area, and we suspect practices followed in developing such statements vary widely.

We agree that preparation of pro-forma financial statements can provide valuable information to shareholders. However, we suggest such statements be limited to a pro-forma balance sheet. Similar to carve-out statements, pro-forma statements of earnings and cash flows quickly involve so many assumptions that they become useless in terms of assisting users to evaluate the impact of the acquisition. In our view, a pro-forma balance sheet is useful since it is otherwise difficult for a user to evaluate the post-acquisition liquidity and financial position of the company, including financing transactions that are usually involved. Operating results and cash flows, by contrast, are easier for users to assess simply with separate income and cash flow statements for each entity for the preceding period. Many income transactions recorded during a period (impairment write-downs and allowances, future income taxes, etc.) can easily be assumed to be radically different when the period is re-stated for a merger at the beginning of the period. Our view is that the pro-forma earnings and cash flow figures have very little predictive value and are inherently unreliable.

Form 51-102F5 – Information Circular

6.1(a) The name of each director and proposed director should also be stated.

9.7 In subsection (i) under "routine indebtedness" we believe line 1 should read "If an issuer or its subsidiaries..."

Item 12 We do not understand the need to disclose addresses (or in the case of subsection (b), home addresses) of persons in connection with this item and in the interests of personal security of those affected, we do not believe that it should be required disclosure.

Form 51-102F6 – Statement of Executive Compensation

1.1(c) We note that "aggregate market value" has replaced "public float" for purposes of this test. This could expand disclosure to a significant number issuers. We wonder whether any survey has been done to estimate its effect.

We would be pleased to discuss any of our comments if you wish to do so.

Yours truly,

Collins Barrow Calgary LLP

"Dean R. Woodward"

Parlee McLaws LLP

"James D. Thomson"