840 West Hastings Street
Vancouver, B.C.
V6C 1C8

CANADIAN LISTED COMPANY ASSOCIATION

Via e: mail to consultation-en-cours@cvmq.com pbrady@bcsc.bc.ca
Alberta Securities Commission
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

c/o Peter Brady, Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: (604) 899-6814
e-mail : pbrady@bcsc.bc.ca

c/o Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec
H4Z 1G3
Fax : (514) 864-6381
e-mail : consultation-en-cours@cvmq.com

Re: 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")*

Dear Sirs / Mesdames:

The Canadian Listed Company Association (the "CLCA") is pleased to respond to the request for comments on the CSA's proposal for continuous disclosure obligations.

Introduction

The CLCA is a non-profit association representing companies listed on the TSX Venture Exchange, currently with 370 registered corporate members. The CLCA acts with an advocacy and educational purpose for members. The Board of the LCA is made up of senior officers and directors of TSX listed companies reflecting a variety of business sectors and key professional associations. Members of our Board participate in policy advisory committees of the TSX and generally the association attempts to help communicate securities commission proposals to members.

The CLCA believes the CEO's and entrepreneurs that are at the heart of wealth creation and public company operation need to have an understanding and a voice in the rapidly changing securities regulatory regime in which they operate. Our website can be found at http://www.lcaca.com

On the specific topic of the Continuous Disclosure Rule the CLCA held a seminar on June 11, 2002 in Vancouver with 120 attendees from TSX Venture Exchange listed companies. Representatives of the BCSC, the TSX Venture Exchange, and a chartered accountant in private practice presented details of the proposal to members. Our newsletter of August 21, 2002 provided members a brief account of the highlights of the rule along with some commentary. On September 9, 2002 we arranged for 14 representatives of TSX Venture listed companies, mainly CEO's and CFO's to attend a focus group at the BCSC to discuss the proposal.

Overview

The CLCA is generally supportive of the securities harmonization project of the Canadian Securities Administrators (the "CSA") and we encourage any aspect of this proposal that eliminates duplication or multiple reporting requirements that differ across jurisdictions. We commend the CSA for recognizing that Canada's unique market structure isn't directly comparable to the U.S., or perhaps any other developed country market, because of the large number of small development stage issuers in Canada. We suggest a simpler definition for determining size category might facilitate compliance by issuers and understanding by the investing public. Overall though, the proposal isn't well coordinated with the requirements of issuers listed on a recognized stock exchange, particularly the TSX Venture Exchange. We are

concerned that this proposal layers a new set of definitions and requirements over those currently in use by exchange listed companies and familiar to investors.

We would also like to point out that the CSA system of "Request for Comments" itself should be reviewed in light of the effectiveness of survey techniques and focus groups to obtain opinions from a broad audience. The volume of proposals being released that affect issuers makes it impractical for many issuers to adequately understand the impact of proposals until the proposal is actually implemented.

Another area of concern is the statement that the CSA believes the proposals benefits exceed any costs. This proposal doesn't refer to any empirical evidence regarding the current and pro forma cost of compliance, no survey of investors and analysts to determine what disclosure documents are relied on, and no survey or focus group analysis to determine how valuable the new reporting standards are to the users of the information. It's not apparent on what basis the statement is made that the benefits clearly outweigh the costs of this proposal when there is no measurement made of either costs or benefits. In some of our specific comments below we point out the benefit of some of the proposed disclosure isn't readily apparent. The CLCA would like to assist the CSA in obtaining more factual information from issuers and suggest that a more rigorous cost benefit analysis be implemented as part of any proposal.

In our comments below we point out that the AIF is broadly used in the West because it is a tool for meeting one of the greatest needs of small issuers, access to capital markets. Accordingly, we fully endorse the proposal by the BCSC to allow instant access to the market without a prospectus if a rigorous continuous disclosure regime is adopted. To call for prospectus standards in CD disclosure without any of the benefits and privileges of a prospectus will be a significant detriment to formation of capital for small and medium size ventures.

Specific comments are made in the appendix below in response to certain questions posed in the request for comments.

Thank you for the opportunity to convey our comments.

Yours truly,

D. Bruce.

Bruce McLeod P.ENG
President

Donald Gordon MBA, CFA
Executive Director

Appendix
Specific Questions in Notice to Comment

1. *Criteria for Determining Financial Statement Filing Deadlines* -
   (a) Is it appropriate to use TSE non-exempt company criteria to determine deadlines for filing financial statements? If not, why not, and what other criteria should we consider?

The CLCA represent TSX venture companies, none of which would likely meet this standard so we don't have direct information from the issuers affected. Generally we agree with the choice of a highly visible category already in common use that is administered closely by a competent organization. This is much preferred to the arbitrary setting of financial tests. However the criteria should only include companies that are actually classified by the exchange as senior issuers, rather than appear to meet the requirements.

   (b) Is the $75 million criteria that is used in the Rule as one of the triggers of the AIF requirement, and in NI 44-101 for short form prospectus eligibility, appropriate?

Due to the fact filing an AIF in B.C. and Alberta affords the issuer an abbreviated hold period for securities issued under certain private placement exemptions, and that over 85% of the funds raised by issuers on the TSX Venture exchange are through private placements, there is fairly broad use of the AIF by small companies under this standard. The market and regulatory incentives work in this case to make the AIF widely used by small companies. We agree the mandatory standard should be high as proposed at the $75 million level. Many companies under that level have incentive to file, and in the absence of any incentive, the criteria should be targeted at very large issuers who will presumably be active and can afford the preparation costs without hardship.

2. *Elimination of Requirement to Deliver Financial Statements* - As noted above under "Summary of Significant Changes to Existing CD Requirements", the Rule will eliminate mandatory delivery of financial statements and MD&A to all securityholders. Issuers will only be obligated to deliver copies of these documents to securityholders that request them. Issuers will have to disclose annually in their AIFs and information circulars that the financial statements and MD&A are available without charge and how to obtain them. Do you agree with this approach? Why or why not? What approach would you suggest?

The CLCA agrees with this approach and any suggestions that reduce unnecessary printing, mailing and delivery costs. We suggest the proposal go further and adopt the recommendation of the OSC 5 year review committee "access equals delivery" approach and also allow email transmission.

CSA Question

3. *SEC Developments* - Should we change the Rule to reflect the proposed SEC requirements?

The Canadian capital markets are unique because of the large numbers of small public companies and the overall Canadian market is extremely small compared to the U.S., therefore the basis for comparison is questionable. Canadian companies that wish to meet US standards will do so if they develop a market there. We disagree strongly with blindly adopting US requirements that may impose inordinate costs on issuers who have no US connection. There is no market in the US comparable to the TSX Venture Exchange in terms of transparency, regulation and standards. US rules are designed for large US companies, which happen to be among the largest in the world. The market cap of the entire TSX Venture exchange is equivalent to perhaps a handful of NYSE companies but it represents over 2,200 issuers that provide a disproportionately large effect on wealth creation, economic growth, and employment which is typical of the venture capital industry.

4. *Combination of Financial Statement and MD&A Filings* - We are considering amending the Rule so that financial statements and MD&A would have to be filed at the same time, as one filing. MD&A contains important discussion of financial statement disclosure, and is already subject to the same filing deadlines as financial statements.

   Should we combine financial statement and MD&A filing requirements?

This appears to be a logical move as long as it results in integrating disclosure in a simpler format.

CSA Question

5. *Significant acquisitions disclosure* -
   The proposed Rule requires one, two or three years of financial statements depending on whether an acquisition is significant at a 20%, 40% or 50% threshold. Would it be better or worse to have only one threshold for determining significance with a requirement for two years of financial statements when the threshold is met? If you support this approach, what would you suggest as an appropriate threshold and why?

It would be better to simplify the thresholds into one standard at the highest level and consider whether the Business Acquisition report ("BAR") is relevant to the common situation of an asset acquisition. The BAR and the audited financial statement requirements don't appear to be made for asset acquisitions as they appear to contemplate the acquisition of an operating business that is kept in tact as purchased. The reality is that asset acquisitions comprise the vast majority of corporate transactions by TSX Venture companies. Even for a business transaction, its questionable whether the full financial history of the acquired business is relevant if the plan is to dispose portions of the operations, change management, and combine operations with another business. Most acquisitions by small issuers will be in the higher threshold and require some combination of the following in order to be accepted by the TSX: Filing Statement, Shareholder Circular containing prospectus level disclosure, Sponsorship by an Investment dealer, independent valuation or technical report for resource properties and audited financial statements of an acquired business of between 1 to 3 years. The BAR will be

completely redundant for most acquisitions by TSX Venture Issuers since they have to comply with a stringent reporting regime before the acquisition is completed. The imposition of historical audits, particularly for three years is inappropriate for most asset acquisitions that are based on an independent valuation and aren't an operating business. If audited statements weren't considered a determining factor in the acquisition of the business because of other information such as independent appraisals, valuations, and audits limited to key risk areas, then what benefit is derived from receiving a full audit some months later?
If the BAR is required then unless it incorporates TSX filings by reference and exempts asset acquisitions from the audit requirements, it is creating a disincentive for issuers to be listed on a recognized exchange with regulatory standards. The relevant information pertaining to an acquisition is the information used by the Company to determine the consideration, raise any required funds, and verify the integrity of financial information available at that time. Forcing historical audited statements that may not have been needed or considered relevant at the time of the acquisition to be produced well after the acquisition is absorbed by the acquiring company, would in many cases add little or no value to analysts and investors.

6. *Requirement to File Material Documents* - The Rule requires issuers to file constating documents and other instruments that materially affect the rights of securityholders or create a security.

   Would an acceptable alternative to filing be to require issuers to describe these documents in their AIFs or information circulars, rather than file them?

Yes, less filing of papers that can be summarized is preferred.

CSA Question

7. *Criteria for Identifying Small Issuers* - The proposed Rule distinguishes small issuers in different ways, for different purposes, as follows:
   - Issuers that are not "senior issuers" (that are TSE non-exempt) have more time to file their financial statements, MD&A and AIFs than senior issuers (see *Criteria for Determining Financial Statement Filing Deadlines* for more details);
   - Issuers that are "small businesses", based on a similar definition to that in the prospectus rules (less than $10 million for each of assets and revenue) are exempt from certain significant acquisition disclosure requirements;
   - Issuers that are small businesses (less than $10 million for each of assets and revenue) and have a market value not exceeding $75 million are not required to file an AIF;
   - For the purpose of Form 51-102F6 *Statement of Executive Compensation*, an "exempt issuer" must have revenue and a market value of less than $25 million.

   Are these ways of identifying small issuers appropriate? Is there one definition that would be appropriate for all purposes? Why or why not?

The criteria are overcomplicated to the point that investors won't be able to keep track of an issuer's category and resulting reporting requirements. Just trying to determine compliance with ongoing reporting requirements will be a challenge for regulators. The small business standard should be analyzed to determine if they are close to the existing categories of TSX and TSX Venture categories. W e suggest the senior issuer dividing line, or the threshold between the TSX (previously TSE) and the TSX Venture Exchange provides a convenient equivalent to the small business definition. Also the criteria should only include companies that are actually classified by the exchange rather than appear to meet the requirements.

CSA Question

8. *Approach to Regulation of Small Issuers* - The Rule includes some exemptions or alternative means of satisfying certain CD requirements for small businesses, as summarized immediately above. The anticipated costs and benefits of the Rule were discussed above. We invite comment on whether the cost-benefit analysis might differ for issuers of different sizes. We invite commenters to identify any provisions for which this might be the case, and to provide suggestions for disclosure alternatives that might be more appropriate for specific categories of issuer.

The CLCA highly commends the attempt to accommodate the small issuers. The cost benefit analysis is considerably different for small issuers since the incremental cost of additional disclosure can cause shareholders of the small issuer to lose their entire investment if the issuer simply can't comply. Comments against identifying the special needs of small issuers come primarily from persons not involved in that end of the Canadian capital markets and not mindful of the fact many of Canada's largest mining and technology success stories grew from the junior public market. The economic benefits of small venture capital formation are well documented in the venture capital industry and by various provincial governments, which support this with tax credit incentives for investment in private companies. The research by the TSX on "graduates" and their contribution to Canada's top ranked companies over the past decade and earlier also documents the reason we have such an active small issuer public market in Canada.

The following criteria are extremely important to these small issuers and their investors, which aren't necessarily the same criteria for large issuers:

- **Minimize overhead and administration costs**
- **Defer management salaries and compensation in return for incentives through use of equity**
- **Dependence on outside sources of funds requires quick access to capital markets**
- **Operate with a minimum number of Directors and officers that are multi disciplinary (e.g. an engineer that can do bookkeeping).**
- **Management and staff time on regulatory reporting should be kept to a manageable amount of time or it affects the operation of the business.**
- **Use funds for hard business expenditures, conserve cash**
- **Provide investors current information on current activity, if your business is doubling every year history isn't that relevant to what you're doing this year.**

From this criteria and the broad use of the AIF in the West it appears that an alternative disclosure system is one that meets these needs. The key need is the access to capital markets. Accordingly, we fully endorse the proposal by the BCSC to allow instant access to the market without a prospectus if a rigorous continuous disclosure regime is adopted. To call for prospectus standards in CD disclosure without any of the benefits and privileges of a prospectus will be a significant detriment to formation of capital for small and medium size ventures.

CSA Question

9. *Cost Benefit Analysis* - We believe that the costs and other restrictions on the activities of reporting issuers that will result from the Rule are proportionate to the goal of timely, accurate and efficient disclosure of information about reporting issuers. For more discussion of this, see the section above entitled Summary of Rule and Anticipated Costs and Benefits. We are interested in hearing the views of various market participants on any aspect of the costs and benefits of the Rule and we invite your comments specifically on this matter.

The CLCA only knows of one limited survey by the BCSC to document costs of regulatory compliance so we don't believe the CSA has an accurate view of current costs or done a pro forma analysis to calculate the costs of this proposal. As to the benefits, the main improvement is in the potential to file under one set of rules nationally. As we commented with respect to the BAR the actual benefit of some of the additional reporting requirements isn't obvious where it appears duplicative of TSX filing requirements.

The CLCA would like to engage in a dialogue with the CSA regarding what if anything, has been done to collect and analyze market data, to assess the breadth and depth of Canadian capital markets, and the use of case studies, surveys, focus groups and other techniques to test the hypothesis behind such a sweeping statement.