Linda Hohol
President
TSX Venture Exchange
10th Floor, 300 Fifth Avenue S.W.
Calgary, AB, Canada T2P 3C4
T (403) 218-2828
F (403) 234-4352
linda.hohol@tsxventure.com

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Roseann Youck
Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

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

Dear Mesdames:

Re: Comments on Proposed Changes to National Instrument 51-102 – Continuous Disclosure ("NI 51-102"), Forms 51-102F1, 51-102F2, 51-102F3, 51-102F4, 51-102F5, 51-102F5 (collectively the "Forms") and Companion Policy 51-102CP (the "Companion Policy")

I. Introduction

The TSX Venture Exchange ("TSX Venture") has reviewed NI 51-02, the Forms and the Companion Policy, as published for comment by the CSA pursuant to its notice of June 20, 2003 (the "CSA Notice").

Given our role as an exchange for emerging issuers, our response to NI 51-102 takes into account the issues and concerns inherent in the public market for these issuers.

II. General Comment

We are in general agreement with the changes reflected in proposed NI 51-102. In particular, we strongly support the introduction of the new definition of "venture issuer" as added at section 1.1.

We believe that these relaxed disclosure and filing obligations are appropriate for venture issuers and are expected to be of considerable benefit to them in terms of both time and cost savings.

III. Specific Comments

A. Comments Applicable to Venture Issuers

Although we are of the view that the introduction of the new definition of venture issuer combined with the exemptions or relaxations available to those issuers under proposed NI 51-102 will be of considerable benefit, we do have some concerns, which are as follows:

1. The Business Acquisition Report ("BAR")

(a) Concerns Respecting Section 8.1(4)

Although, at first blush, the exemption from the requirements to file a BAR as set forth at section 8.1(4) may be viewed as a

valuable exemption for venture issuers, we have several concerns, which are summarized as follows:

(i) the exemption specifically applies solely to disclosure included in an “information circular” and does not appear to contemplate disclosure included in filing statements, which may also be utilized as an alternative detailed disclosure document by issuers listed on TSX Venture, particularly in the context of various transactions, including reverse take-overs;

(ii) the exemption essentially requires that the financial statements included in an information circular (Form 51-102F5) must satisfy the disclosure requirements of the OSC long form prospectus or any other prospectus form (i.e., Form 12, Form 14, etc.) that is permitted to be used in a particular jurisdiction.

As a consequence of this requirement, in order for an issuer to be relieved from the “standard” financial statement disclosure requirements applicable to Form 51-102F5, (even in the context of reverse take-overs), that issuer will be required to seek an exemption from the applicable securities commission pursuant to section 13.1. It is anticipated that as issuers will be required to make applications solely to securities commissions, such applications will add timing delays as well as increased costs to emerging issues, particularly in the context of reverse take-over filings, at a time when most emerging issuers are ill prepared to afford these added costs.

By way of contrast, we note, in the context of CPCs, that section 14.5 of Form 51-102F5, appears to permit TSX Venture to grant exemptions in regards to financial statements to be included in an information circular respecting a CPC’s Qualifying Transaction provided that

the CPC complies with the policies and requirements of TSX Venture Exchange. This will, presumably, mean compliance with any TSX Venture waiver granted pursuant to TSX Venture's policy.

(iii) Despite the exemption at section 14.5 of Form 51-102F5, (which essentially permits a CPC to satisfy prospectus disclosure requirements, by complying with TSX Venture Policies), it is not clear whether section 8.1(4) provides a CPC with an exemption from the preparation of a BAR. (The exemption at section 14.5 of Form 51-102F5 is discussed in more detail below). Section 8.1(4) provides that unless "the information circular contains information and financial statements **required by section 14.2 of Form 51-102F5…"** (our emphasis), the exemption from BAR is not available. Based on this wording, if the information and financial statements included in a CPC's information circular are not prepared in accordance with section 14.2 (but are prepared pursuant to section 14.5 of Form 51-102F5) then the CPC will be required to prepare a BAR. We do not believe that this was the intent. Accordingly, we would suggest that the wording in section 8.1(4) be amended to insert after the words "section 14.2" the words "or section 14.5". We believe that this change will address the problem.

(b) Concerns Respecting Qualifications to Auditors' Reports Concerning Inventory in a BAR

The financial statements of an acquired business that must be included in a BAR filed in accordance with NI 51-102, will be required to comply with the applicable requirements of NI 52-107, *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("NI 52-107"). Although by separate correspondence relating to NI 52-107, we have made comments

on the financial statements to be included in a venture issuer's BAR, we believe it is important to reiterate that concern.

We believe that subsection 6.2(6)(b) of NI 52-107 imposes far too onerous a requirement on venture issuers. We are of the view that the cost of performing a full balance sheet audit as at a date other than a financial year, solely for the purpose of the BAR, far exceeds any benefit received by a user of a venture issuer's financial statements.

We believe that venture issuers should not be required to satisfy the conditions at subsections 6.2(6)(a) and 6.2(6)(b) of NI 52-107, and that an exemption from these requirements should be available to venture issuers.

In addition, we are concerned that the word "qualification" as found at subsection 6.2(b) of NI 52-107 is unclear. We are of the view that the Companion Policy should make it clear to venture issuers that the word "qualification" under generally accepted auditing standards, specifically excludes a denial of opinion.

2. Information Circular Form

The exemption, found at section 14.5 of Form 51-102F5, exempts a CPC from the standard prospectus disclosure (including financial statement) requirements, as set forth at section 14.2 of Form 51-102F5 "provided that the issuer complies with the policies and requirements of the TSX Venture Exchange in respect of the Qualifying Transaction".

We have concerns with this exemption, which are summarized as follows:

(a) the exemption is only available to CPCs effecting Qualifying Transactions in accordance with TSX Venture requirements. It does not appear to be available to other issuers effecting reverse take-overs.

We are of the view that a Qualifying Transaction is merely one form of reverse take-over and accordingly, the treatment of reverse take-overs under NI 51-102 should be the same as the treatment accorded to Qualifying Transactions. Such similar treatment should include providing issuers with an exemption from the disclosure requirements at section 14.2 of Form 51-102F5, provided that the issuer complies with the policies and requirements of TSX Venture in respect of a reverse take-over.

Please be advised that the policies of TSX Venture afford very similar protections to investor interests, both in the context of Qualifying Transactions and reverse take-overs. These protections apply with respect to disclosure requirements, shareholder approval and pre-approval by TSX Venture of the disclosure to be included in the information circular and, in the case of a CPC, the disclosure to be included in a CPC Filing Statement. (We refer you to TSX Venture Policy 2.4 – *Capital Pool Companies* and TSX Venture Policy 5.2 – *Changes of Business and Reverse Take-Overs* found at our website, www.tsxventure.com).

Please be aware, however, that we are currently in discussions with our lead regulators, the Alberta Securities Commission and the British Columbia Securities Commission, as to our future role in reviewing and pre-approving information circulars for both Qualifying Transactions and reverse take-overs. Depending on the results of these discussions, it may be that at some future date, TSX Venture may no longer be reviewing these information circulars, as is currently the case.

(b) the wording in section 14.5 of Form 51-102F5 is problematic. It states that “section 14.2 [the prospectus disclosure requirements] **does not apply to a Form 51-102F5** prepared in connection with a Qualifying Transaction for an issuer that is a CPC …” (our emphasis). Based upon this wording, a CPC effecting a Qualifying Transaction may be exempted from the standard

prospectus disclosure requirements of section 14.2 of Form 51-102F5 provided that it utilizes an information circular (i.e., Form 51-102F5). Although TSX Venture Policy 2.4 – *Capital Pool Companies* permits a CPC to effect a Qualifying Transaction and obtain shareholder approval through the use of an information circular, that policy also permits a CPC to effect a proposed arm's length Qualifying Transaction without shareholder approval, utilizing a CPC Filing Statement, provided that certain conditions are satisfied. The disclosure standards for the CPC Filing Statement are virtually identical to the disclosure standards applicable to a CPC's information circular, except for the fact that the CPC Filing Statement does not include any disclosure as to proxy-related matters or matters dealing with a shareholder meeting or shareholder approvals, as those matters are irrelevant. (We refer you to TSX Venture Form 3B1/3B2, which sets forth the disclosure requirements applicable to both a CPC information circular and a CPC Filing Statement).

In these circumstances, we are of the view that the wording in section 14.5 of Form 51-102F5 should be amended to specifically accommodate CPC Filing Statements, in addition to information circulars, provided the issuer complies with applicable TSX Venture policies and requirements.

(c) as stated in paragraph 1(a)(iii) above despite the exemption at section 14.5 of Form 51-102F5 available for CPCs, this exemption does not appear to provide a CPC with an exemption from the BAR filing requirement.

3. Statement of Executive Compensation

We note that Form 51-102F6 requires that disclosure in most respects will only apply to Named Executive Officers or NEOs, who will include:

(a) each CEO; and

(b) each of the issuer's most highly compensated executive officers, other than the CEO…whose **total salary and bonus exceeds $100,000** (our emphasis).

This will mean that for TSX Venture issuers, the disclosure as to executive compensation will apply, in many cases, solely to the CEO, and will not apply to other executive officers, as they will, in most instances, be compensated for less than $100,000 per year. Therefore, in the case of TSX Venture issuers, only CEO disclosure will likely be made in many instances.

Due to the recent accounting scandals that have arisen in the United States and the increasing importance of a reporting issuer's Chief Financial Officer, we are of the view that, in addition to the CEO, executive compensation disclosure should also be mandated for the CFO, regardless of whether the CFO's compensation meets the $100,000 threshold.

C. Other Comments

Certain of the new continuous disclosure filings are of some concern, including the following:

1. Change to Corporate Structure

If a reporting issuer (including a venture issuer), is a party to an amalgamation, arrangement, winding up or reverse take-over that has the effect of changing its continuous disclosure obligations, then by reason of 4.9 of NI 51-102, that issuer will be required to deliver a notice setting out various matters including parties to the transaction, description of the transaction, effective date of the transaction, names of each party ceasing to be a reporting issuer upon completion of the transaction, the date of the reporting issuer's first financial year-end subsequent to the transaction, as well as disclosure as to interim periods.

We are of the view that much of this disclosure will already be included in both press releases and material change reports filed by issuers in the context of the particular transaction and need not be repeated in an additional filing. In the case of venture issuers listed on TSX Venture effecting either Qualifying Transactions or reverse take-overs, at least some of this disclosure will be required to be made in the context of press releases and material change reports filed by these issuers. (We refer you to section 12.2 of Policy 2.4 – *Capital Pool Companies* and section 2.1 of Policy 5.2 – *Changes of Business and Reverse Take-Overs*, which sets forth certain detailed disclosure that must be included in a press release issued in the context of these transactions).

Accordingly, we are of the view that if an issuer has provided some or all of the disclosure set forth at section 4.9, in the context of another transaction, then clarification should be made in NI 51-102, to the effect that no further disclosure need be made pursuant to section 4.9 in regard to the previously disclosed information.

2. Material Document Filings

Unless previously filed, section 12.2 requires that a reporting issuer file certain documents, including material contracts that "create or materially affect the rights or obligations of securityholders" if those contracts can reasonably be regarded as material to an investor. The wording of this provision is unclear. If the intent is simply to require that indentures (i.e., warrant indentures) governing certain securityholders be filed, then this should be clarified. On the other hand, if the intent of the provision is that all material contracts be filed (other than those entered into in the ordinary course of business), then this may cause a problem for venture issuers since almost every contract will be viewed as material, necessitating a filing. If this is the intent, we are concerned that such filings may be burdensome to our issuers. Further comment on this point is outlined in our Response to Comments below.

IV. Response to Comments

In respect of the request for comments that was outlined at pages 5 to 6 of the CSA Notice, our comments are as follows, with your request for comments outlined in italics:

Filing documents – Part 11 of the Rule requires reporting issuers to file copies of any materials they send to their securityholders. Part 12 of the Rule requires reporting issuers to file copies of contracts that create or materially affect the rights of their securityholders.

(a) We propose to limit these requirements to instances in which securities of the class are held by more than 50 securityholders. This is to prevent issuers from having to file documents that relate to isolated securityholders, such as a bank holding security in connection with a business loan, if the bank is the only holder of that class of security. Is this the correct approach, or should copies of all materials sent to securityholders and all agreements that affect the rights of securityholders, regardless of the number of securityholders, be required to be filed?

(b) Should we expand the requirement in Part 12 to require filing of all contracts that are material to the issuer? These contracts are required to be filed with an annual report on Form 10-K, in the U.S.

We believe that it is inappropriate for venture issuers to be required to file all materials sent to securityholders and all agreements that affect the right of securityholders, as such filings are anticipated to add further to the costs of venture issuers, which are generally the least able to afford any increased costs.

In any event, as these venture issuers are generally smaller issuers, virtually every contract that is entered into, aside from those entered into in the ordinary course of business, will involve a material change under securities legislation. As a consequence, these issuers will be required to issue a press release and file a material change report summarizing the material change, which would include a summary of the terms and conditions of such a contract.

Furthermore, we are doubtful that many investors in venture issuers would, in any event review a filed contract. We would expect that most investors would continue to rely on the summary of such a contract, as reflected in a press release and material change report.

Business acquisition disclosure – The Rule would require the filing of a BAR, in addition to any material change report filed in respect of the acquisition, within 75 days after completion of the significant acquisition. This requirement is meant to achieve greater consistency with the prospectus rules implemented in 2000, and to provide investors in the secondary market, on a relatively timely basis, the type of information currently required for primary market prospectus investors. The requirement is based on meeting certain defined thresholds of significance. It is patterned after a requirement of U.S. federal securities law.

(a) *Is this approach appropriate? Would it be more appropriate, for some or all classes of reporting issuer, to recast the BAR requirement as a subset of the material change reporting requirement, governed by the same trigger – the occurrence of a material change?*

(b) *If the BAR requirement is recast as a subset of the material change reporting requirement, should the current thresholds of significance be retained? If so, should they demonstrate materiality in the absence of evidence to the contrary, or merely be guidelines to materiality?*

We have no comments.

Disclosure of auditor review of interim financial statements – Subsection 4.3(3) and section 6.5 of the Rule require that if an auditor has not performed a review of the interim financial statements, a reporting issuer must disclose that fact… .

(a) *Do you agree with the approach in subsection 4.3(3) and section 6.5 of the rule? Alternatively, if a review was performed and an unqualified report was provided, should a reporting issuer be required to disclose the fact that a review has been performed? If you recommend the latter, what are the benefits of that disclosure?*

(b) *Where a review was performed and an unqualified report was provided, if a reporting issuer discloses that a review has been performed, should the review report from the auditor accompany the financial statements?*

At this time, we wish to express our concern over requiring auditor involvement with venture issuer interim financial statements. The relative cost of such a measure to a venture issuer's shareholders would be somewhat higher than for that of a senior issuer. We believe auditor review of venture issuer interim financial information would not provide a user of those statements with sufficient benefits to justify the costs.

Added MD&A disclosure – In the MD&A, we propose to require all issuers to discuss off-balance sheet arrangements, and to analyze changes in their accounting policies.

(a) *Would it be helpful to include a definition of "off-balance sheet arrangements" to the MD&A? What would you expect the definition would capture?*

(b) *The requirement to discuss and analyze changes in accounting policies applies to any accounting policies a reporting issuer expects to adopt subsequent to the date of its financial statement, and to any accounting policies that have been initially adopted during the financial period. We are considering whether this disclosure is appropriate for venture issuers. Should venture issuers be exempted from the requirement to discuss either changes in their accounting policies, or the adoption of an initial accounting policy, or both, and why?*

We have no comment, other than our view that the added MD&A disclosure is appropriate for venture issuers. They should not be exempted from the requirement to discuss either changes in their accounting policies or the adoption of an initial accounting policy.

V. Conclusion

We thank the CSA for providing us with the opportunity to comment on NI 51-102.

Naturally, if you have questions, please do not hesitate to contact me.

Yours truly,

TSX VENTURE EXCHANGE

“Linda Hohol”

Linda Hohol
President