KPMG LLP
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

[redacted]

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Authorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick 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

Ashlyn D'Aoust, Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta T2P 0R4
E-Mail: ashlyn.daoust@asc.ca

Anne-Marie Beaudoin, Corporate Secretary
Authorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montreal, Québec H4Z 1G3
E-Mail: consultation-en-cours@lautorite.qc.ca

October 26, 2011

Dear Sirs/Mesdames:

[redacted]***ngoing Governance and Disclosure Requirements for Ventures Issuers***[redacted]

This letter is in response to the Request for Comment published at (2011) 34 OSCB (Supp-5) concerning proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* and related amendments.

Generally, we support the direction the CSA has taken in the proposed materials to recognize venture issuers distinct from non-venture issuers and our appreciative that this is a national proposal as we believe that it is in the interest of an efficient securities market to have the requirements be harmonized across the country. In particular, we support the creation of an annual report and believe that the reasons stated for the creation of an annual report for venture issuers would apply equally for non-venture issuers.

In Appendix A we have addressed a number of matters on which specific comment was not requested:

- Transition issues
- Material change reports
- Issuers quoted in the U.S. over-the-counter market
- Form 51-103F1- Liquidity and capital resources

With respect to the matters that the CSA specifically requested comment, please see below our comments on selected questions. We did not respond to questions we believe would be best answered by investors or preparers.

- Do you support the proposal to replace the requirement to file three and nine month interim financial reports (and associated MD&A) with a prescribed framework for voluntary three and nine month financial reporting?

  – Generally, we support this initiative. We do have some concern that investors may not be alerted in a timely fashion when the financial condition of an issuer has deteriorated significantly between filings, but, we believe that this can be dealt with through material change reports (see our comment in Appendix A Material Change Reports – Deterioration in Financial Condition).

  – We would prefer the creation of a voluntary quarterly report similar to the semi-annual report as we believe the marketplace would be better served, if those issuers that elect to provide voluntary quarterly information had a clear framework under which to provide that information. We recognize that this may mean that fewer issuers may elect to provide such information but we believe that those that will elect to do quarterly reporting will be providing this information because they are a larger operating entity or institutional investors have demanded this information and thus, to be meaningful and comparable to other periods that information should be accompanied by MD&A and be certified.

  - We support the requirement for issuers to have to comply with quarterly reporting for a two year timeframe to avoid voluntary disclosure of positive results and no disclosure of results below expectations.

- If we choose not to eliminate mandatory quarterly financial reporting, are the other elements of the Proposed Instrument significant enough to justify changing the venture issuer regulatory regime?

  - Yes. We believe the other changes are of significant value as securities rules targeted specifically at venture issuers will allow venture issuers to more readily understand the requirements they must follow. Further, as future changes are required they can be developed in the context of venture issuers rather than on an "exception basis" from rules that apply to non-venture issuers.

  - If mandatory quarterly financial reporting is not eliminated then we would suggest that the semi-annual report be replaced with a quarterly report which would contain all the same material as the semi-annual report but on a quarterly basis. We believe the marketplace is simplified by having one such document similar to the United States (e.g.10-K and 10-Q). We would also suggest that similar to the United States any amended documents be readily identified as amendments (e.g. 10-K/A).

- If you do not support the proposal to replace the requirements to file three and nine month interim financial reports and associated MD&A with a prescribed framework for voluntary three and nine month financial reporting, do you think it is necessary for venture issuers to file full financial statements and MD&A for the first and third quarters?

  - We support the requirement to move to required semi-annual reporting. However, as stated above when voluntary quarterly reporting is elected, we believe a standardized quarterly report should exist.

- Would it be less burdensome, or would there be significant time savings, to prepare some subset of quarterly financial reporting, or would the work required to prepare alternative quarterly financial reporting be as onerous as preparing interim financial statements?

  - We believe issuers should address whether there would be significant time savings to preparing a subset of quarterly financial reporting.

  - We are concerned that by preparing a subset of quarterly financial reporting that there would be an increased risk of misleading information being disclosed deliberately or inadvertently. We are concerned that this may lead to a proliferation of the disclosure of various financial measures (including non-GAAP measures) such as cash burn, revenues, etc. without giving a full picture of the entity and also without preparing full internal financial statements. We believe without the discipline of a full set of financial statements to support such disclosures, the risk of error in this material would be unreasonably high.

- The Proposed Instrument does not include a pro forma financial statement requirement for acquisitions that are 100% significant. Do pro forma financial statements provide useful information about acquisitions that is not provided elsewhere in the venture issuer's disclosure?

  – We recommend that the CSA consider investor comments regarding the usefulness of pro forma financial information when determining if such information is required.

  – We would recommend that the CSA include guidance in the Companion Policy regarding voluntary preparation of pro forma financial information. By doing this, if such information is considered useful, there will be a standard basis for its preparation. This will also allow auditor's to perform the procedures in CICA HB 7110.36 which requires inquiries as to whether the "pro forma statements comply as to form in all material respects with applicable regulatory requirements."

- The proposed long form prospectus form for venture issuers provides the subset of "junior issuers" with an exemption that allows them to provide only one year of audited financial statements together with unaudited comparative year financial information in their IPO prospectus. This is consistent with current requirements for junior issuers under Form NI 41-101F1. Should this exemption be expanded to apply to all venture issuers?

  – We are concerned that investors may take unwarranted reliance on unaudited comparative information and for this reason would not like to see an extension of the exemption provided to "junior issuers".

  – Overall, we believe the reduction from three years to two years of audited financial statements sufficiently addresses the differing needs of investors in venture issuers versus non-venture issuers.

- The Proposed Instrument requires an audit committee to be composed of at least three directors, a majority of whom are not executive officers or employees of the venture issuer or an affiliated entity of the venture issuer. Should control persons be added to this list, similar to section 21(b) of Policy 3.1 of the TSX Venture Exchange Corporate Finance Manual?

  – We support changes which enhance the independence of the audit committee as we have found that an independent audit committee will enhance audit quality through support of the auditor. Further, in a regime with less frequent mandated reporting it is even more crucial that an audit committee that is independent will be making critical decisions regarding what information requires a material change report or should be contained in the mid-year and annual reports.

– We support the requirement to require the audit committee to be composed of at least three directors a majority of whom are not executive officers or employees of the venture issuer or an affiliated entity of the venture issuer. We would further support a decision to include control persons in this list to ensure the independence of the audit committee.

- The Proposed Instrument would permit a capital pool company (CPC) to satisfy certain of its annual report disclosure obligations by referring to disclosure previously provided in its initial public offering prospectus. Should CPC's be exempted from further aspects of the annual or mid-year report requirements? Is so, which requirements?

    - We do not believe that additional relief is required for capital pool companies.

Thank you for the opportunity to comment on NI 51-103 and related amendments. Should you wish to discuss our comments in more detail, we would be pleased to respond.

Yours truly,

Laura Moschitto
Partner, KPMG LLP
(416) 777-8068

Appendix A

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The proposed rule does not provide any guidance regarding any transition matters for situations such as:

- an issuer than moves from being a venture issuer to a non-venture issuer. Would these issuers be required to provide comparative Q1 and Q3 reports in the year of transition?

- an issuer that moves from being a non-venture issuer to a venture issuer. Would these issuers be required to continue providing Q1 and Q3 reports for two years?

- the implications for pro forma financial statements when a non-venture issuer takes over a venture issuer. For example, an acquisition occurs in July for calendar year end entities. The acquirers latest quarter is June 30 but the venture issuer has not prepared any interim financial statements. Would the venture issuer be required to prepare a first quarter financial statement for the pro forma rather than using publicly available information since the difference in period ends exceeds 93 days?

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Related party transactions

The proposed rule requires that upon the occurrence of a material related entity transaction or once a decision to implement a material related entity transaction is made either by the board of directors or by senior management who believe that confirmation of the board of directors is probable, that a news release is filed. By the 10th day after the event, Form 51-103F2 must either be filed or a press release available containing that same information.

We are concerned that the CSA is requiring management to predict whether the board will approve the transaction and that securities rules are requiring public disclosure of unapproved transactions. If this requirement remains, we believe the rule should require that in the case that the board does not approve the transaction that material change disclosure occur again.

Deterioration in financial condition

We are concerned that given the length of time between reporting, material changes in the financial condition of an issuer may develop and not be reported on a timely basis. For example, for a December 31 year end company that reports its Q2 results August 31st, no additional financial information is required until April 30th which is a period of 8 months. We believe that there should be an explicit requirement for management to assess by 60 days after each quarter end the issuer's ability to continue as a going concern. When management is aware, in making its assessment, of material uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern, the entity shall:

- disclose those material uncertainties, if they have not been previously disclosed by filing a material change notice;

- disclose any additional identified material uncertainties by filing a material change notice.

We would also recommend that management be explicitly required to make the same assessment and disclosures at the time of filing a prospectus.

We believe this requirement will help to ensure investors will have the same critical information on a timely basis regarding material uncertainties that would be available if an issuer prepared interim financial statements without imposing a requirement to prepare interim financial statements.

[redacted]

We do not understand the rationale for excluding venture issuers who would otherwise qualify as venture issuers from using these streamlined rules except for the fact that they are captured by BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the Counter Markets.*

Further, as we understand the proposed rule, in Ontario these issuers would be considered to be venture issuers. We are not clear how an issuer in Ontario and another province could comply with both NI 51-103 for Ontario and NI 51-102 for other provinces.

We recommend that these issuers be treated as venture issuers in all jurisdictions.

[redacted]

Section 17(5)(a)(iii) requires disclosure about "whether the venture issuer reasonably expects to have sufficient funds to maintain activities and meet planned growth or development". We would recommend changing this to read "whether the venture issuer reasonably expects to have sufficient funds to maintain activities and meet planned growth or development". This will require alerting investors when future operations may need to be curtailed significantly to allow an entity to continue to operate. We have found that a number of companies argue that they don't need any disclosure because they can continue to operate for the next 12 months, albeit at a significantly reduced level.