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Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta T2P 0R4

Attention: Ashlyn D'Aoust
Legal Counsel, Corporate Finance

Dear Ms. D'Aoust:

Re: Proposed National Instrument 51-103

In response to the Notice and Request for Comment (the “**Notice**”) published by the Canadian Securities Administrators (the “**CSA**”) on July 29, 2011 in respect of Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (the “**Proposed NI**”), TSX Venture Exchange (“**TSXV**”) provides the following comments and feedback.

A. Responses to Questions Posed in the Notice:

The Notice sets forth 13 questions for which the CSA requested specific feedback. Our responses to certain of those questions are as follows (enumerated in the manner set forth in the Notice):

2. *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. TSXV acknowledges that the proposal to eliminate mandatory quarterly financial reporting constitutes a significant component of the Proposed NI, however, TSXV is of the view that the other elements of the Proposed NI are significant enough to justify changing the venture issuer regulatory regime.

TSXV agrees with the general reason and rationale behind the Proposed NI, specifically that the overall regulatory regime in Canada should recognize and address the fact that the issues relevant to the venture market and its participants may differ from those relevant to the non-venture market and its participants. The current regulatory regime is largely a “one size fits all” regime created in the context of non-venture issuers with certain variations and exemptions built-in for venture issuers. TSXV agrees with the general proposition that having regulation that is specifically tailored to venture issuers would potentially better address the issues that are more relevant to the venture market and its participants as compared to the current regulatory regime. In this regard, TSXV

commends the CSA for the comprehensive scope and nature of the Proposed NI in that it covers a wide spectrum of fundamental continuous and timely disclosure requirements as well as corporate governance requirements in detail. Given that the breadth and scope of the Proposed NI far exceeds matters relating to quarterly financial reporting, TSXV is of the view that even if the CSA chooses not to eliminate mandatory quarterly financial reporting, the other elements of the Proposed NI are significant enough to justify changing the venture issuer regulatory regime.

10. *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?*

(a) *If you think that control persons should be added, explain why.*

(b) *If you do not think that control persons should be added, explain why.*

TSXV recommends that control persons be added to the list, similar to section 21(b) of Policy 3.1 of the TSXV Corporate Finance Manual.

TSXV understands that the purpose and intent of section 5(1) of the Proposed NI is to ensure that some measure of independence is included in the composition of a venture issuer's audit committee without requiring venture issuers to comply with the broader independence requirements applicable to non-venture issuers set forth in National Instrument 52-110 ("NI 52-110"). TSXV acknowledges that shareholdings alone may not interfere with a director's independent judgment, however, in the view of TSXV, it is reasonable to take the position that a director's independent judgment may be comprised if that director holds, directly or indirectly, a sufficient number of securities of an issuer to affect materially the control of the issuer. As such, TSXV is of the position that it is necessary to include control persons in the list of persons that are not considered independent for audit committee purposes.

[In respect of audit committee independence, please also refer to our comment below regarding the inclusion of consultants as persons that should not be considered independent for audit committee purposes.]

13. *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? If so, which requirements?*

TSXV recommends that CPCs be exempted from filing any annual and mid-year reports in respect of any annual or mid-year period that falls within the CPCs first 24 months of listing on TSXV (being the time period a CPC has to complete its Qualifying Transaction) provided that the CPC has not completed its Qualifying Transaction within such time period. Once a CPC has either completed its Qualifying Transaction or 24 months have elapsed since its listing on TSXV, the CPC would be required to file all annual and mid-year reports for each annual and mid-year period that occurs after either the completion of the Qualifying Transaction or the elapsing of the 24 months post-listing, as the case may be.

TSXV is of the view that the foregoing is sufficient for CPCs and would not compromise the publicly available disclosure in respect of a CPC given that:

- (a) The CPC's IPO prospectus contains all relevant information about the CPC including substantially all of the information prescribed by Form 51-103F1.
- (b) During the first 24 months post-listing (assuming the CPC has not completed a Qualifying Transaction during such time period), the information contained in the CPC's IPO prospectus generally remains unchanged so there is no need to provide periodic disclosure in the form of annual or mid-year reports to update the market on the CPC's business and affairs. Doing so would be unnecessarily repetitive.
- (c) During the period in which it is exempt from filing annual and mid-year reports, the CPC would still be required to file its annual and interim period financial statements and MD&A (with CEO and CFO certifications), annual general meeting materials and timely disclosure documents. As such, the CPC's disclosure record would remain current and both easily accessible and understandable, notwithstanding the fact that it does not include either annual or mid-year reports.

B. Other Comments and Feedback:

TSXV provides the following additional comments and feedback in respect of the Proposed NI.

1. **Mid-Year Financial Reporting:** As stated above, TSXV acknowledges that the proposal to eliminate mandatory quarterly financial reporting constitutes a significant component of the Proposed NI. Correspondingly, TSXV has had extensive discussions regarding this proposal both internally and externally with its stakeholders as a means of identifying and assessing the relevant issues. Consideration of this matter has been and remains a priority for TSXV. TSXV intends to further assess the matter once the CSA has published both the comments received in respect of the Proposed NI as well as the results of the surveys regarding the Proposed NI being conducted by certain CSA members.
2. **Must be a National Instrument:** We understand that at present the Proposed NI is intended to be a National Instrument with all CSA members participating. We cannot understate the importance that the Proposed NI remain a National Instrument if it is to be implemented. TSXV would not be supportive of a Multilateral Instrument as it would potentially result in TSXV-listed issuers being subject to two different, and in many ways inconsistent, regulatory regimes, an untenable situation for TSXV-listed issuers to have to deal with.
3. **Audit Committee – Financial Literacy Requirement:** At present, the audit committees of venture issuers are exempt from both the independence and financial literacy requirements prescribed by NI 52-110 for non-venture issuers. The Proposed NI includes certain audit committee independence requirements for venture issuers, however, it does not include a financial literacy requirement. TSXV recommends that the Proposed NI require that at least one member of a venture issuer's audit committee be financially literate (having the same meaning as set forth in section 1.6 of NI 52-110) as a means of providing comfort that a venture issuer's audit committee has the necessary knowledge and expertise to read and understand a set of financial statements.
4. **Audit Committee – Independence Requirements (Consultants):** As presently drafted, section 5(1) of the Proposed NI will require that a venture issuer's audit committee be

comprised of a majority of persons that are not executive officers or employees of the issuer or an affiliated entity of the issuer. Subject to the addition of control persons (as discussed above), this essentially mirrors TSXV's audit committee independence requirements as set forth in section 21(b) of Policy 3.1 of the TSXV Corporate Finance Manual.

In the experience of TSXV in interpreting and applying the provisions of section 21(b) of TSXV Policy 3.1, many persons that work for venture issuers are categorized by the issuer and individuals as consultants (as opposed to employees) of the venture issuer. As a result, in certain circumstances, issuers and individuals have argued that as consultants (as opposed to employees), the individual is independent for the purposes of section 21(b) of TSXV Policy 3.1. In general, TSXV does not agree with this argument and, for the purposes of section 21(b) of TSXV Policy 3.1, TSXV will typically view a consultant to an issuer as analogous to an employee of the issuer and therefore not independent for audit committee purposes. At present, TSXV is considering amending section 21(b) of TSXV Policy 3.1 to specifically address this matter. Correspondingly, TSXV suggests that the CSA consider including consultants in section 5(1) of the Proposed NI.

5. **Governance and Ethical Conduct Disclosure – Disclosure of Non-Action:** Items 41(2) to (7) of Form 51-103F1 require a venture issuer to provide disclosure of any steps or measures taken by the venture issuer to address certain specified corporate governance and ethical conduct matters. In light of Instruction 8 to Form 51-103F1, an issuer that does not take any steps or measures in respect of the matters described in Items 41(2) to (7) of Form 51-103F1 may take the position that they can simply omit providing any disclosure in respect of these matters as opposed to having to specifically disclose in the annual report that the issuer does not take any steps or measures in respect of these matters. TSXV suggest that the CSA redraft Items 41(2) to (7) of Form 51-103F1 to require that if the issuer does not take any steps or measures in respect of these matters that it be required to specifically disclose this in its annual report.

Please note that the general intent of this comment may apply to other sections of Form 51-103F1 in addition to Items 41(2) to (7). TSXV suggests that the CSA assess whether the issue raised by this comment may apply to other sections of Form 51-103F1.

Thank you for the opportunity to provide our comments and feedback in respect of the Proposed NI. If you require any clarification of our comments and feedback, please do not hesitate to contact the undersigned at your convenience.

Regards,

TSX VENTURE EXCHANGE INC.

Per: (signed) "*Zafar Khan*"

Zafar Khan
Policy Counsel