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**James N. Morton**

Direct: 604.331.9540

Email: [jnm@mortonandco.com](mailto:jnm@mortonandco.com)

**VIA COURIER**

TSX Venture Exchange  
Suite 2700 – 650 West Georgia Street  
Vancouver, BC V6B 4N9

Attention: Zafar Khan

Dear Sirs:

**Re:**

**Proposed NI 51-101 “Ongoing Governance and Disclosure Requirements for Venture Issuers” TSX-V Request for Comments**

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We are responding to John McCoach's email requesting comments on the proposed NI 51-103.

John raised two questions in his e-mail. The first is whether the new instrument creates too much of a distinction between venture and non venture issuers. The second is whether the perceived benefits of the tailored regulation outweigh the potential costs associated with a distinct regulatory framework for venture issuers.

In formulating this response we discussed the proposed NI 51-103 with the corporate finance heads of two investment dealers active in the venture markets – one headquartered in Vancouver and the other in Toronto – as well as a number of firm clients.

This comment letter does not address all of the changes contemplated by the new instrument. It focuses on certain of the purposes and specific provisions that we consider bear on the questions raised by Mr. McCoach.

**A. Purpose of NI 51-103**

The purposes NI 51-103, in summary form, are set out below.

1. To relieve compliance challenges for venture issuers.

In that regard, we note the following:

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- a) Venture issuers will spend additional time and incur increased professional fees in preparing and becoming familiar with the new disclosure requirements and associated documents.
  - b) The time and cost savings associated with the streamlined form of the venture issuer's annual information circular will be largely offset by the additional costs associated with the Annual and Mid Year Reports.
  - c) The requirement to prepare two separate documents, the Annual Report and the Information circular rather than one does not appeal to venture issuers who are currently comfortable with the one document approach to filings.
  - d) The Annual Report may result in concise but less complete disclosure about venture issuers, many of whom have complex businesses. We would rather err on the side of "full" rather than "concise" disclosure.

Given the forgoing, we are of the view that the new regime will not result in significant relief from existing compliance challenges for venture issuers.

2. To reduce duplication in compliance documents.

The new policy will result in an increased number of compliance documents for venture issuers, including the Annual and Mid Year Reports. In addition to these documents there will be new forms for a venture issuer: Long Form Prospectus, Short Form Prospectus and TSX-V Short Form Offering Document. Although it is contemplated that these different documents will contain less duplication in content, there will be an adjustment period which requires time, effort and additional costs. For example, many venture issuers conduct brokered financings where agent's counsel are large firm Toronto lawyers who may not (even over time) be as familiar with these new forms. Their lack of familiarity (and the fact that all securities counsel will have to work with different forms for different issuers) may well result in more, rather than less expense. Simply because the form is different for venture issuers, may not reduce the requirements for disclosure from agent's counsel.

The disclosure documents tailored for venture issuers will distinguish venture issuers from non venture issuers. Many of our more advanced venture issuer clients have been working for years to avoid any distinction between themselves and TSX listed issuers. To a large extent this goal has been achieved and the new policy may be seen as a step backwards by more senior TSX-V listed companies. Many of these companies do not see the benefits of graduating to the TSX but this new regime may force them to reconsider their strategy. If that is the case and advanced companies listed on the TSX-V consider that their only alternative is to list on the TSX, the increased listing and compliance costs associated with such a listing would be an argument against the adoption of the new rule.

3. By adopting a separate regulatory instrument it may make it easier for venture issuers to understand the regulatory requirements applicable to them.

Venture issuers have varying degrees of sophistication and financing resources. Many have specialized in house staff and/or outside advisors to prepare and make their disclosure filings. The more developed the venture issuer, the greater the number of disclosure filings.

TSX-V NEX listed companies, Capital Pool Companies and a number of CNSX listed companies, as well as other issuers with relatively small market capitalizations, often do not have the human or financial resources to understand and meet disclosure compliance challenges to the same degree as more developed venture issuers. These companies could be referred to as junior venture issuers. The introduction of NI 51-103 would be of significant benefit to them. However, our view is that these junior issuers are not clamouring for change and have, over the years, become comfortable with the existing regime.

## **B. NI 51-103 proposals of concern**

The following is a summary of certain key provisions of NI 51-103 and our associated comments:

1. New Annual Report and Mid Year Report forms.

These reports will include tailored director and executive officer compensation disclosure. Tailoring executive and director compensation and corporate governance disclosure for venture issuers differentiates these issuers from non venture issuers, many of whom are only distinguished by the stock exchange on which their securities are listed. The distinction may hamper the ability of analysts to compare venture companies to non venture companies. This might result in reduced analyst coverage for venture issuers.

The NI 51-102 (continuous disclosure obligations), NI 52-110 (Audit Committee), and NI 58-101 (disclosure of corporate governance practices) compliance requirements will be replaced by specific requirements for disclosure of conflicts of interest, related party transactions and insider reporting. Accordingly, it appears that boards of venture issuers and management and advisors will not be required to maintain a broad corporate governance perspective or to provide disclosure of such practices.

2. New Long Form Prospectus, Short Form Prospectus and TSX-V Short Form Offering documents for venture issuers.

The recently introduced revised NI 43-101 removed the requirement for a venture issuer that has filed a current Technical Report with the filing of its Annual Information Form, to file a

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Technical Report upon the filing of a Short Form Prospectus. NI 51-103 does not require venture issuers to file Technical Reports upon the filing of an Annual Report. Correspondingly NI 51-103 contemplates NI 43-101 being amended to require venture issuers to file current Technical Reports at the time of filing a Short Form Prospectus.

A Short Form Prospectus is a financing tool for venture issuers. Time is of the essence in financings. The requirement to concurrently file a current Technical Report increases the time it takes to obtain a receipt for a Short Form Prospectus. This was acknowledged in the revised NI 43-101. NI 51-103 will reverse this.

3. Streamlined information circular.

A venture issuer will be required by NI 51-103 to file a streamlined information circular and an Annual Report prior to each annual shareholder meeting. The Annual Report will have a tailored form of executive compensation and corporate governance disclosure. The corporate information in an annual information circular required to be filed by a non venture issuer will, accordingly, now be significantly different from that of a venture issuer.

NI 51-103 provides venture issuers the option to continue to file 3 and 9 month quarterly statements. For the reasons set out in section 4 below there is some evidence that many venture issuers will so elect. Such venture issuers may also wish to elect, for the same reasons, to prepare and file an information circular that incorporates the disclosure contemplated by NI 52-110 and 58-101. NI 51-103 does not contemplate venture issuers being able to do this.

4. Removal of mandatory requirement to file 3 and 9 month financial statements and MDA.

NI 58-101 (disclosure of corporate governance practices) seeks to foster responsibility, accountability and transparency among public company boards and management. The requirement that issuers file quarterly financial statements is one of the ways that such objectives are realized. Making the filing of the 3 and 9 month quarterly statements optional would appear to be in conflict with the intent of this corporate governance policy.

One of the corporate finance individuals who we reviewed the proposed instrument with indicated that he thought independent directors of the venture issuers advised or financed by his firm would not agree to those issuers not filing such statements.

We have indications from the management at a number of venture issuers that they intend, should NI 51-103 be adopted, to continue to have their companies file 3 and 9 month quarterly statements. We understand their rationale for doing so to be as follows: (a) they wish to follow best disclosure practices; (b) if possible they wish to minimize any distinction in the public markets between their venture issuer companies and non venture issuers; and (c) they are interested in making their graduation to the TSX a “seamless” process.

**D. NI 51-103 Proposals of benefit to venture and non venture issuers**

The following NI 51-103 proposals we consider would be of benefit to both venture and non venture issuers.

- (i) Replacing Business Acquisition Reports with enhanced material change reporting including financial statements for acquisitions that are 100% significant.
- (ii) Introduction of corporate governance requirements relating to conflicts of interest, related party transactions and insider trading.
- (iii) Introduction of an options significance test which permits significance to be calculated using the acquisition date of market capitalization instead of the market capitalization at the announcement date.
- (iv) Requiring delivery of disclosure documents only on request, in lieu of mandatory mailing requirements.

Perhaps consideration could be given to revising existing instruments to incorporate the intent of the aforementioned proposals for the benefit of both venture and non venture issuers.

**E. Conclusions**

One of the corporate finance professionals we discussed this proposed instrument with posed two questions:

- (a) Why would changes be made to disclosure policies to favour the “weaker” issuers (e.g. NEX, CPC, and some CNSX issuers)?
- (b) Who would want to report using one regime and then have to change when they graduate to the TSX?

Our conclusions respecting the introduction of NI 51-103 in its current format are as follows:

- (i) The tailored regulation addresses compliance challenges faced by junior venture issuers to a much greater degree than the more developed venture issuers. While these issuers may comprise a majority (in terms of numbers) of venture issuers, we do not agree with favouring their interests over those of the more advanced venture issuers.
- (ii) The junior venture issuers are, for the most part, the least able to properly disclose and implement any new rules. Currently however, they do comply with the existing rules. None of our clients who might be considered in this category have expressed to us any interest in new disclosure rules.

- (iii) We consider a number of the NI 51-103 proposals as outlined in section D above should be incorporated into policy in a way that would benefit all venture and non venture issuers.

In summary, our conclusion is that the actual and perceived benefits of the proposed regulation to the majority of venture issuers will not outweigh the costs of such regulation.

Respectfully Submitted,

**MORTON & COMPANY**

“James N. Morton”

Per: James N. Morton

JNM