FAIR | Canadian Foundation *for* Advancement *of* Investor Rights

October 27, 2011

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité 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

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RE: Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers*

FAIR Canada is pleased to offer comments on Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (the "Proposed Instrument") prepared by the Canadian Securities Administrators (the "CSA") contained in the Notice and Request for Comment dated July 29, 2011.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulations. Visit www.faircanada.ca for more information.

FAIR Canada Comments and Recommendations – Executive Summary:

1. FAIR Canada supports the objective of clarifying obligations for venture issuers and increasing guidance for venture issuers so that compliance can be simplified and costs to venture issuers can be reduced. FAIR Canada also supports efforts to improve disclosure to reflect the needs and expectations of venture issuer investors. However, we do not agree that reducing the disclosure and governance standards applicable to venture issuers is an appropriate manner to achieve the stated goals.
2. FAIR Canada recommends that the CSA gather empirical evidence regarding issuer confusion and the cost of compliance with existing regulations and empirical evidence that the proposed rules will be less confusing and costly (including transition costs) than the current rules before introducing a proposed instrument.
3. The CSA should consult with venture issuer investors to find out what changes investors believe would improve the usefulness and understanding of disclosures.
4. Recent events involving Sino-Forest and a number of other venture issuers have resulted in substantial losses to investors and to investor confidence. The CSA may wish to reflect on recent developments in the market (particularly with emerging market listings of venture issuers) which call into question the appropriateness of this CSA initiative. Recent scandals suggest we may need tighter, more effective regulation of venture issuers in order to better protect investors and restore investor confidence.
5. FAIR Canada recommends that the CSA establish a task force that includes the Canadian exchanges, underwriters, auditors, legal advisors as well as regulators in order to tackle the problems that have arisen with emerging market listings. The task force should also consider market manipulation and market integrity issues raised by so called "analysts" who engage in short selling in advance of the public release of highly negative "research reports".
6. FAIR Canada recommends that the CSA address the conflict of interest between the listing regulatory responsibilities and listing commercial operations of TSX and TSX-V and bring them in line with international standards.
7. The CSA may wish to consider assembling all current regulatory requirements relevant to venture issuers into one manual as a way of reducing compliance costs and reducing confusion for venture issuers.
8. FAIR Canada strongly recommends that quarterly reporting be retained for venture issuers. We agree with the Ontario Securities Commission's ("OSC") comments in their Notice and Request for Comment wherein they state the changes "...could negatively impact investors by making it more difficult for them to obtain information to make timely and informed investment decisions."
9. FAIR Canada supports the consolidation of all required disclosure into one report for investors, such as the Annual Report, but does not agree it should be limited to venture issuers nor should it be contingent on providing reduced disclosure requirements as compared with current requirements.
10. FAIR Canada disagrees with the proposal for reduced disclosure for venture issuers compared to senior unlisted issuers or other issuers. FAIR Canada does not support the proposal that stock options or other securities-based compensation be disclosed on a different basis for venture issuers than is required for other issuers. Such disclosure should only be in addition to the current requirement to disclose the grant date fair value of stock options.

11. Venture issuers are already subject to reduced corporate governance requirements and FAIR Canada does not support a further reduction in corporate governance requirements for venture issuers. Any further reduction in such standards would not be in the interests of retail investors or market integrity.
12. FAIR Canada recommends that there be a requirement in TSX and TSX-V listing requirements and in a national instrument that all listed issuers, including venture issuers, be incorporated in a jurisdiction with corporate legislation that meets minimum corporate governance standards, including directors' duties to act honestly and in good faith and to exercise care, skill and diligence. FAIR Canada recommends that the conflict of interest requirement not be included in the Proposed Instrument as these obligations already exist in law and to include them (as presently worded) in the Proposed Instrument would create confusion and would not increase protections for investors and, therefore, would not be of benefit to investors.
13. We recommend that the CSA conduct a benchmarking exercise of requirements in other jurisdictions prior to altering the significance threshold for financial statement disclosure or eliminating the requirement to file Business Acquisition Reports ("BARs"). We do not support increasing the significance test from 40 per cent to 100 per cent and instead would support reducing the threshold to 25 per cent.
14. FAIR Canada supports efforts to reduce duplication of information and believes that a brief summary of governance requirements and other attachments to the information circular could be provided (rather than the full documents) with web-links provided to the full documents on the listed issuer's web-site. Implementing such a change could reduce the size of many information circulars by 50 per cent or more resulting in reduced printing and mailing costs.
15. Answers to specific questions posed in the consultation document are provided in section 3 below.

1. Introductory Comments – Tighter, More Effective Regulation of Venture Issuers Required

1.1. FAIR Canada recognizes the importance of the venture market in Canada and is pleased to continue to participate in the consultation process as the CSA attempts to achieve the goals of tailoring and streamlining venture issuer disclosure to reflect the needs and expectations of venture issuer investors and to make the disclosure for venture issuers more suitable and manageable for issuers at this stage of development. The purpose of the Proposed Instrument includes enhancing informed investor decision making, making it easier for venture issuer investors to understand disclosure documents and locate key information and tailoring regulatory requirements to focus on those applicable to venture issuers so that it is easier for venture issuers to meet their compliance obligations and allow them more time to focus on their businesses.

1.2. FAIR Canada supports the objective of clarifying obligations for venture issuers and increasing guidance for venture issuers so that compliance can be simplified and costs to venture issuers can be reduced. FAIR Canada also supports efforts to improve disclosure to reflect the needs and expectations of venture issuer investors. However, we do not agree that reducing the disclosure and governance standards applicable to venture issuers is an appropriate manner to achieve the stated goals.

1.3. FAIR Canada believes that empirical evidence should demonstrate that the current rules are confusing or costly to comply with and that new rules will be less confusing and costly (including transition costs) than the current rules before a proposed instrument is introduced.

1.4. FAIR Canada also questions why a proposed instrument, purportedly aimed at improving investor usefulness, has been introduced prior to any consultation with investors. This would suggest a less than optimal process for an investor-focused initiative.

Recommendation 1: FAIR Canada recommends that the CSA gather empirical evidence regarding issuer confusion and the cost of compliance with existing regulations and empirical evidence that new rules will be less confusing and costly (including transition costs) than the current rules before introducing a proposed instrument.

Recommendation 2: FAIR Canada also recommends that the CSA consult with venture issuer investors to find out what changes investors believe would improve the usefulness and their understanding of venture issuer disclosure.

1.4 FAIR Canada believes that recent events, in which a number of significant issues have come to light regarding venture issuer listings whose securities have been cease traded, suspended or are under investigation (such as Zungui Haixi Corporation, Cathay Forest Products Corp, and Xianburg Data Systems Canada Corporation[1]) demonstrate the need for the CSA to revise its approach and focus instead on the imposition of tighter, more effective regulation of venture issuers in order to better protect investors and restore investor confidence. The Proposed Instrument will reduce investor protection rather than focus on improving regulatory oversight of smaller issuers.

Recommendation 3: FAIR Canada recommends that the CSA reflect on recent developments in the market (particularly with emerging market listings of venture issuers) and consider the imposition of tighter, more effective regulation of venture issuers in order to better protect investors and restore investor confidence.

1.5 The current regulatory regime in Canada already provides venture issuers with tailored, less-onerous requirements for certification, governance and continuous disclosure, by considering their often smaller size, as well as capital and resource restrictions, as compared with non-venture issuers. There is no need to further reduce substantive regulatory requirements. **Indeed, recent events have demonstrated that Canada needs more robust, yet customized, regulation of its venture issuer market in order to restore confidence and improve investor protections.**

1.6 A reduction of the existing level of disclosure would result in informational gaps for investors and would increase the risks of investing in an already risky prospective venture market. This would not be a responsible course of action for regulators whose mandate is to protect investors nor would it improve confidence in the venture capital market. Our specific concerns with the Proposed Instrument are set out below in section 2.

[1] See Appendix 1 for a chart of TSX Venture Exchange companies that have been cease traded, delisted or are under investigation as a result of allegations of fraud, accounting irregularities or failure to file required filings. The list is of current (2011) problematic TSX-V China listings and is not complete and does not include billion dollar TSX listings such as Sino-Forest and Silvercorp Metals.

Task Force on Emerging Market Listings Required

1.7. FAIR Canada recommends that the CSA establish a task force that includes the Canadian exchanges, underwriters, auditors, legal advisors as well as regulators to tackle the problems that have arisen with emerging market listings. The current regulatory system is not operating in a way that effectively protects investors and an examination of all aspects of how emerging market listings come to market is required – including standards of audit, due diligence, and the ability of regulators to oversee, investigate and prosecute companies whose books and records and mind and management are located in a foreign country.

1.8. Many investors choose to participate in emerging markets by buying securities of companies located on a developed county's exchanges (such as the TSX Venture Exchange ("TSX-V")) and investors take comfort in the fact that companies listed in Canada or on other developed countries' exchanges are well-scrutinized. This confidence has now been called into question. Moreover, many of these companies enter developed markets through a reverse takeover or reverse merger transaction with the goal of using the junior exchange as a stepping stone to a major exchange such as the TSX. This process avoids the stricter scrutiny of a direct initial public offering and this requires re-examination and review by a task force, as has been undertaken in the US and is being undertaken by the OSC.

Recommendation 4: FAIR Canada recommends that the CSA establish a task force that includes the Canadian exchanges, underwriters, auditors, legal advisors as well as regulators in order to tackle the problems that have arisen with emerging market listings. The task force should also consider market manipulation and market integrity issues raised by so called "analysts" who engage in short selling in advance of the public release of highly negative "research reports".

Conflicts of Interest in TSX and TSX-V Listing Regulation Needs to Be Addressed

1.9. FAIR Canada also recommends that the CSA undertake an examination of the effectiveness of the TSX and TSX-V listing requirements given the nature of the conflict between their listing regulatory responsibilities and their respective listing business operations. Implementation of specific measures to properly manage the TSX and TSX-V's listing conflicts is long overdue.

1.10. The listings regulation function is an important regulatory and standard-setting role that has a significant impact on market integrity and investor protection. We are concerned about the absence of adequate safeguards to manage the inherent conflict of interest arising between the for-profit status of the TMX and the TSX and TSX-V's roles as regulators of listed companies. As stated in an expert report commissioned by FAIR Canada entitled "Managing Conflicts of Interest in TSX Listed Company Regulation"[2] (the "FAIR Canada Report"):

> **While the TSX's recognition order contains specific conditions to address the self-listing conflicts of interest, it does not contain any terms that require the TSX to separate its listings regulation operations from business operations, or to implement any policies or procedures to address the conflicts of interest between its listings business and listings regulation mandates.**

[2] John W. Carson, "Managing Conflicts of Interest in TSX Listed Company Regulation" (2010), online: <http://faircanada.ca/wp-content/uploads/2008/12/TSX-Listings-Conflicts-final-report-23-Jul1.pdf> [*Carson*].

1.11. The FAIR Canada Report also found that all of the other seven major exchanges reviewed have addressed their conflicts of interest by implementing one of three specific and sound approaches to conflict of interest management. **Of the exchanges reviewed, the report stated that "[t]he TSX is the only exchange among this group that has not implemented specific measures to manage its listings conflicts…"**

1.12. In its March 2010 report on the OSC[3], the Standing Committee on Government Agencies (the "Committee") cited concern "with the perception that the TSX falls below international standards with respect to the separation of its regulatory and commercial activities."[4] **The Committee recommended "that the [Ontario Securities] Commission review the potential for conflict of interest between the regulatory and commercial functions of the Toronto Stock Exchange and that it take the steps necessary to address any problems identified."[5]**

1.13. The TSX is a regulatory outlier of developed country exchanges in that it has not acted to adequately manage conflicts of interest inherent in its business and regulatory objectives. Canadian regulators must act to ensure that, at a minimum, the TSX meets the minimum international "best practice" standard for the management of conflicts of interest. This comment applies equally to the TSX-V.

Recommendation 5: FAIR Canada recommends that the relevant CSA members address the conflict of interest between the TSX and TSX-V's listing regulatory responsibilities and their listing business operations and bring them in line with international standards.

Create a Manual for All Existing Venture Issuers

1.14 As we commented in response to CSA Multilateral Consultation Paper 51-403 *Tailoring Venture Issuer Regulation* (the "Initial Consultation"), if a principal goal of the initiative is to clarify current obligations for venture issuers, it would arguably be more efficient and less resource-intensive to assemble all current regulatory requirements for venture issuers into a manual for venture issuers rather than incur the cost (both in terms of time and resources on the part of both regulators and stakeholders) of the rule-making process. The Proposed Instrument does not create a single instrument where all of the rules applicable to venture issuers can be found. Given that venture issuers will still have to comply with other national instruments and securities laws in the applicable provincial acts, we do not believe that the goal of clarifying obligations and thereby reducing compliance costs will be achieved through the CSA's current proposals. Providing a comprehensive manual which would explain all current requirements would be preferable.

Recommendation 6: FAIR Canada recommends that assembling all current regulatory requirements relevant to venture issuers into one manual should be contemplated as a way of reducing compliance costs and reducing confusion for venture issuers.

[3] Standing Committee on Government Agencies, "Report on Agencies, Boards and Commissions: Ontario Securities Commission" (March 2010), online: <http://www.ontla.on.ca/committee-proceedings/committee-reports/files_pdf/OSC%20Report%20English.pdf>.

[4] *Supra* note 2 at 35.

[5] *Supra* note 2 at 35.

2. Comments about Specific Proposals in the Proposed Instrument

New Definition of Venture Issuer Adds Complexity

2.1. The new definition of venture issuer excludes debt-only issuers, preferred share-only issuers and issuers of securitized products, who will be known as "senior unlisted issuers". The senior unlisted issuers will be subject to the current venture issuer rules. The new definition of venture issuer also does not include any issuer that is subject to BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets*. As a result there will be three regimes if the Proposed Instrument becomes effective: (1) the Proposed Instrument for venture issuers; (2) current venture issuer requirements for senior unlisted issuers; and (3) current non-venture issuer requirements for all other issuers. While the Proposed Instrument may reduce some complexity for some issuers, it adds to the complexity of the overall structure as an investor must determine which of the three regimes a given issuer falls within.

Removal of Required Quarterly Financial Statements and MD&A

2.2. FAIR Canada does not support the proposed elimination of quarterly financial statements and MD&A. **FAIR Canada agrees with the OSC's comments in their Notice and Request for Comment wherein they state the changes "...could negatively impact investors by making it more difficult for them to obtain information to make timely and informed investment decisions."**[6] To remove these filings would result in a gap in continuous disclosure, making it more difficult for investors to determine whether to invest or sell their shares of a particular venture issuer and allow too much time to lapse between regulators obtaining such information for purposes of review and investigation of possible issues. Investors will be forced to increasingly rely on information in press releases which may not be issued as required or provide enough information to maintain a properly informed market.

2.3. While there are other jurisdictions that have semi-annual filings, such as Australia and the U.K., these jurisdictions have never implemented quarterly reporting and do not differentiate between the senior and junior segments of the market (unlike Canada and the U.S.). In addition, in Australia, certain mining exploration entities must provide a quarterly report that (i) provides details with respect to its operations; and (ii) includes financial reporting focused on cash flows, liquidity and related party transactions. Until such time as the CSA develops specific proposals regarding improved quarterly financial disclosure, FAIR Canada does not support their elimination given the additional risks this will place on investors.

Recommendation 7: FAIR Canada strongly recommends that quarterly reporting be retained for venture issuers.

[6] Ontario Securities Commission, "Proposed National Instrument 51-103 Ongoing Governance and Disclosure Requirements for Venture Issuers and Related Amendments – Supplement to the OSC Bulletin" (July 29, 2011), (2011) 34 OSCB (Supp-5), at Appendix H at page 213.

Introduction of the Annual Report with Reduced Disclosure

2.4. The annual report will combine business, corporate governance and executive compensation disclosure along with a combination of disclosure currently found in an AIF, MD&A and information circular, and the last two years' audited financial statements, CEO and CFO certificates. While FAIR Canada supports the idea of consolidating all required disclosure into one report for investors, such a reform should not be limited to venture issuers nor should it be contingent on providing reduced disclosure requirements as compared with current requirements.

Recommendation 8: FAIR Canada supports the consolidation of all required disclosure into one report for investors, such as the Annual Report, but does not agree it should be limited to venture issuers nor should it be contingent on providing reduced disclosure requirements as compared with current requirements.

Reduced Compensation Disclosure

2.5. FAIR Canada is of the view that venture issuers should not provide less disclosure with respect to executive compensation as compared with senior unlisted issuers or other issuers. FAIR Canada does not agree that venture issuers should only have to provide two years' worth of information (rather than three) nor should the table combine named executive officers ("NEOs") and director compensation rather than produce it in a separate format as is required for other issuers.

2.6. FAIR Canada does not support the proposal that stock options or other securities-based compensation be disclosed on a different basis for venture issuers than is required for other issuers. Disclosure of the fair market value at the time compensation is earned could be an additional disclosure but should not replace the current requirement to disclose the grant date fair value of stock options. The current requirement of grant date fair value provides important information to investors as it discloses the amount the board intends to pay an executive at the time the award is made. Including the additional requirement to disclose the amount realized by the executive at the time it is earned (or "exercised") would allow investors to compare the two amounts. FAIR Canada recommends that there be a broad consultation with all relevant stakeholders, including investors, on the proposal to disclose non-cash compensation such as stock options using fair market value at the time it is earned in addition to the grant date and that such a proposal be considered for all issuers and not just venture issuers.

Recommendation 9: FAIR Canada disagrees with the proposal for reduced disclosure for venture issuers compared to senior unlisted issuers or other issuers. FAIR Canada does not support the proposal that stock options or other securities-based compensation be disclosed on a different basis for venture issuers than it is for other issuers. Such disclosure should only be in addition to the current requirement to disclose the grant date fair value of stock options.

Reduced Governance Disclosure

2.7. Venture issuers are already subject to reduced corporate governance requirements and FAIR Canada is opposed to any further reduction of such standards. In FAIR Canada's view, any reduction in governance standards would not be in the interests of retail investors or market integrity. Venture issuers should be subject to the same disclosure requirements as large issuers

given that all shareholders are entitled to the same level of information on such important matters.

2.8. FAIR Canada does not agree that venture issuers do not have to: (i) disclose and identify the independent and non-independent directors and the basis for that determination; (2) disclose whether a director is a director of any other issuer and identify both the director and the other issuer; and (3) describe the steps taken to identify new candidates for board nomination including who identifies new candidates and the process used to identify new candidates.

Recommendation 10: FAIR Canada does not support reduced corporate governance requirements for venture issuers and is opposed to any further reduction in such standards as it would not be in the interests of retail investors or market integrity.

Duplication of Existing Legal Requirements - Obligations of Directors and Officers

2.9. FAIR Canada recommends that there be a requirement in TSX and TSX-V listing requirements and in a national instrument that all listed issuers, including venture issuers, be incorporated in a jurisdiction with corporate legislation that meets minimum corporate governance standards, including directors' duties to act honestly and in good faith and to exercise care, skill and diligence. Issuers should be required to be incorporated in a jurisdiction with an acceptable standard of corporate governance (i.e. in a major developed jurisdiction).

2.10. Our understanding is that the TSX-V does not require that listed issuers be incorporated in Canada or pursuant to the corporate laws of a Canadian province or territory, and simply requires that the applicant complete a reconciliation of its constating documents and the corporate law or equivalent legal regime of its home jurisdiction with that of the Canada *Business Corporations Act* where the applicant is not incorporated or created under the laws of Canada or any Canadian province[7]. It also imposes on directors and officers the requirements to act honestly and in good faith with a view to the best interests of the issuer and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. However, the latter requirements are contractual relationships between the TSX-V and the issuer and would be difficult for a shareholder to enforce if the issuer is incorporated in the British Virgin Islands or in China (for example).

Recommendation 11: FAIR Canada recommends that there be a requirement in TSX and TSX-V listing requirements and in a national instrument that all issuers, including venture issuers, be incorporated in a jurisdiction with corporate legislation that meets minimum corporate governance standards, including directors' duties to act honestly and in good faith and to exercise care, skill and diligence.

Duplication of Existing Legal Requirements - Conflicts of Interest and Trading Policies

2.11. The Proposed Instrument attempts to add a new requirement for the board of directors to develop policies and processes to address conflicts of interest between the venture issuer and any of its directors or executive officers and to avoid insider trading. FAIR Canada is of the view that

[7] See Part 1, section 1.18 of Policy 2.3 of the TSXV Corporate Finance Manual and see Part 5 of Policy 3.1 for the directors and officers duties.

these obligations already exist in law and to include them (as presently worded) in the Proposed Instrument would create confusion and would not increase protections for investors and, therefore, would not be of benefit to investors.

Recommendation 12: FAIR Canada recommends that the conflict of interest requirement not be included in the Proposed Instrument as these obligations already exist in law and to include them (as presently worded) in the Proposed Instrument would create confusion and would not increase protections for investors and, therefore, would not be of benefit to investors.

Replacement of Business Acquisition Reports with reports of material change, material related entity transactions or major acquisitions.

2.12. Under the Proposed Instrument, the significance test for financial statement disclosure would be lowered so that instead of requiring reporting of acquisitions that are 40 per cent significant, only acquisitions that are 100 per cent significant would trigger a report. FAIR Canada does not support the elimination of the requirement to file Business Acquisition Reports (BARs) as we see value to investors in the filing of these reports nor do we support the 100 per cent level proposed for significance of acquisitions. If anything, the significance level should be lowered rather than raised. The CSA should conduct a benchmarking exercise of requirements in other jurisdictions such as the US, UK, Australia and Hong Kong before it alters the significance test for financial statement disclosure or eliminates the requirement to file BARs.

Recommendation 13: FAIR Canada recommends that the CSA conduct a benchmarking exercise of requirements in other jurisdictions prior to altering the significance threshold for financial statement disclosure or eliminating the requirement to file BARs. We do not support increasing the significance test from 40 per cent to 100 per cent and instead would support reducing the threshold to 25 per cent.

Reduce Duplication of Information and Thereby Reduce Costs

2.13. FAIR Canada supports efforts to reduce duplication of information and believes that a brief summary of governance requirements and other attachments to the information circular could be provided (rather than the full documents) with web-links provided to the full documents on the listed issuer's web-site. Implementing such a change could reduce the size of many information circulars by 50 per cent or more.

Recommendation 14: FAIR Canada believes that a brief summary of governance requirements and other attachments to the information circular could be provided (rather than the full documents) with web-links provided to the full documents on the listed issuer's web-site. Implementing such a change could reduce the size of many information circulars by 50 per cent or more.

3. FAIR Canada's Response to Specific Questions Posed in the Notice and Request for Comments

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

No, FAIR Canada is opposed to eliminating quarterly reporting. See paragraphs 2.2 and 2.3 above.

3.2 *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?*

No, see section 1 above for FAIR Canada's view of the Proposed Instrument and the direction that the CSA should be taking.

3.3 *3. If you do not 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, do you think it is necessary for venture issuers to file full financial statements and MD&A for their first and third quarters?*

Yes, see paragraphs 2.2 and 2.3 above.

3.4 *4. If venture issuers were not required to file first and third quarter financial statements, would this deter you from investing in all venture issuers? Why or why not?*

See paragraphs 2.2 and 2.3 above.

3.5 *7. The Proposed Instrument eliminates the requirement to file business acquisition reports (BARs) for significant acquisitions. Instead, it requires venture issuers to provide financial statements of an acquired business if the value of the consideration transferred equals 100% or more of the market capitalization of the venture issuer. Is 100% the correct threshold?*

FAIR Canada believes that BARs should be retained and BARs should be required when the acquisition is significant, as set out in the current requirements. If anything, we would support reducing the threshold from 40 per cent to 25 per cent. See paragraph 2.11 above.

3.6 *8. 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 believe the requirement should be retained but the exchange should have the ability to waive the requirement is the information is not material or it is unduly costly to produce.

3.7 *9. 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 41-101F1. Should this exemption be expanded to apply to all venture issuers? Why or why not?*

We have no objection to the proposal to expand it to all venture issuers.

3.8 *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?*

FAIR Canada is of the view that if there is a requirement with respect to composition of the audit committee as set out in other laws or in listing requirements, there is no need to include it in the Proposed Instrument as it does not improve investor protection and may lead to confusion. Control persons should be permitted on the audit committee but a minimum of two members of the audit committee should be independent directors.

3.9 *11. The Proposed Instrument requires that director and executive officer compensation as well as corporate governance disclosure be provided in a venture issuer's annual report instead of in its information circular. The information circular directs investors to the issuer's annual report for this information. We are attempting to reduce duplication for venture issuers, but want to balance that goal with ensuring that investors have adequate information available for decision making purposes, namely when they make their decision to elect directors.*

a. Should venture issuers be required to duplicate director and executive officer compensation disclosure in the document that shareholders have on hand when they vote for directors, the information circular?

Executive compensation should be disclosed in the Information Circular as well as in the Annual Report.

3.10 *12. In the Proposed Instrument, we have replaced the requirement to disclose the grant date fair value of stock options or other securities-based compensation in the executive compensation disclosure with a requirement to disclose other details about stock options, including amounts earned on exercise. We made this change as a result of feedback received regarding the relevance and reliability of the grant date fair value of stock options for venture issuers. Does specific disclosure of the grant date fair value and the accounting fair value of stock options or other securities-based compensation provide useful information for venture issuers? If so, please explain.*

See paragraph 2.6 above.

3.11 *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?*

No comment.

FAIR Canada urges the CSA to rethink its approach to venture issuer regulation given the comments made above, the recent scandals that have occurred with respect to TSX-V listed issuers and in light of the purpose of securities regulation as set out in the provincial securities acts.

We would be pleased to discuss this letter with you at your convenience. Feel free to contact Ermanno Pascutto at 416-572-2282/ermanno.pascutto@faircanada.ca or Marian Passmore at 416-572-2728/marian.passmore@faircanada.ca.

Sincerely,

Canadian Foundation for the Advancement of Investor Rights

Appendix 1 - List of 2011 Problematic TSX-V Emerging Market Listings[8]

Issuer Name	Issuer Symbol	Type of Listing	Date of Listing	Description of Issue(s)
Arehada Mining Ltd.	AHD.H			The company was cease traded in April 2011 as it had not filed annual financial statements. It explained in a press release that it had sold its principal business but did not yet have access to the proceeds of that sale as Chinese tax authorities had not decided what tax rate to apply. On May 9, 2011 it was permanently delisted from the TSX-V for failing to meet listing requirements. It relisted on NEX but it is suspended due to the delinquent filings.
Cathay Forest Products Corp.	CFZ		2004/09/04	The company was cease traded in February 2011 and is being investigated by the TSX and the OSC. A class action was filed against it and some of its officers and directors on June 9, 2011. It is alleged that there was a failure to provide notice or seek exchange approval for four non-arm's length deals and failure to adequately disclose the related party transactions. It was a "pick of the street" according to TMX's "2010 TSX Venture 50".
China Coal Corporation	CKO	QT from NEX	2007/02/06 QT date: 2010/05/18 NEX	In June, the company retracted statements made to the Canadian publication Northern Miner about the potential of the Mei Feng coal mine in China, which it intends to acquire. The company said that the implication in the statements that the site was richer than technical reports had suggested did not meet standards of disclosure for mineral projects. See http://www.theglobeandmail.com/globe-investor/news-sources/?date=20110619&archive=cnw&slug=C7423 for the press release.
Huaxing Machinery Corporation	HUA	QT	2009/10/07	In late September 2011, the company restated its first quarter financials after a review by the BCSC. Net income in the second quarter of 2010, with the restatement, fell 20 percent.
IEMR Resources Inc.	IRI	QT	2009/02/12	In early March 2011 the company announced that it was not in a position to file its audited financial statements and MD&A by the deadline and as a result was the subject of a temporary cease trade order.

[8] Derived from information in recent media articles, the TSX and securities commissions' websites.

Kaiyue International	KYU.P	CPC	2010/08/12	This listing has been subject to a trading halt at the company's request since early December 2010. The company is proposing to buy another company that, through two subsidiaries, owns a Chinese firm that processes prepaid mobile phone accounts. The trading is halted pending an exchange review of the transaction.
New Pacific Metals Corp	NEX		2004/11/04	The company issued a press release advising that in connection with its Technical Report dated June 17, 2011, related to its Tagish Lake Gold Project in the Yukon, it had received comments from the BCSC regarding the company's compliance with NI 43-101 Standards of Disclosure for Mineral Projects. The company's disclosure was delinquent for the period July 19, 2011 to October 6, 2011. The company was also on the BCSC's delinquent filing list from early June to mid-July 2011 because of incomplete third quarter filings.
Xianburg Data Systems Canada Corporation	XDS-X	CPC/Qualifying Transaction (20101126)	2008/08/08	The listing was ceased traded on May 10, 2011 by the British Columbia Securities Commission. It filed its audited financial statements for the year ended December 31, 2010 on September 14, 2011 but remains subject to a cease trade order issued by the BCSC and its shares are suspended on the TSX Venture Exchange.
Zungui Haixi Corporation	ZUN-X	IPO	2009/12/21	The company was cease traded September 16, 2011 by the Ontario Securities Commission after the company said its auditor, Ernst & Young LLP, had halted its audit work pending an investigation into inconsistencies in the company's bank documents and an inability to obtain bank confirmations acceptable to the auditors. Ernst & Young has since resigned. A special committee of independent directors was appointed by the board of directors to conduct an independent investigation on August 28, 2011. On September 23rd, the company announced that the independent directors and Chief Financial Officer had resigned because the CEO, Mr. Cai, was refusing to cooperate with or fund the internal investigation. A class action law suit was filed on August 25, 2011.