Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose OR LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

F: +1 416.216.3930
nortonrose.com

On June 1, 2011, Ogilvy Renault joined Norton Rose Group.

Direct line
+1 416.216.4806

Email
pierre.soulard@nortonrose.com

November 11, 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

Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta T2P 0R4
Fax: (403) 297-2082
E-mail: ashlyn.daoust@asc.ca

Attn: Ashlyn D'Aoust, Legal Counsel, Corporate Finance

and

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Attn: Anne-Marie Beaudoin, Corporate Secretary

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment 51-103
Ongoing Governance and Disclosure Requirements for Venture Issuers

This letter responds to certain of the questions posed in Notice and Request for Comment 51-103 – *Ongoing Governance and Disclosure Requirements for Venture Issuers* (the **Proposed Instrument**) published by members of the Canadian Securities Administrators (**CSA**) on July 29, 2011. We thank you for inviting comments on this initiative. For ease of reference, we have reproduced the questions to which we have responded below.

By way of general comment, we note that the Toronto Venture Exchange (**TSXV**) is home to a wide range of issuers, from capital pool companies (**CPCs**) and other shell issuers to smaller public issuers, where money is raised generally by private placement, to TSXV issuers who access the short-form prospectus system and may soon be eligible to migrate to the Toronto Stock Exchange (**TSX**). An issuer's choice of exchange is often driven by where its competitors and other issuers similar to them are listed. For example, large extraction industry companies may choose to list solely on the TSXV and are able to raise adequate capital with such a listing. On the other hand, comparatively small life sciences companies may list on the senior TSX despite the more

Norton Rose OR LLP is a limited liability partnership established in Canada. Norton Rose OR LLP together with Norton Rose LLP, Norton Rose Australia, Norton Rose South Africa (incorporated as Deneys Reitz Inc) and their respective affiliates constitute Norton Rose Group, an international legal practice with offices worldwide, details of which, with certain regulatory information, are at nortonrose.com.

onerous requirements, because their competitors are American companies who are reporting quarterly and their investor community expects such reporting. Consequently, regulators should bear in mind that certain venture issuers may voluntarily provide disclosure similar to that of senior issuers even if doing so is more onerous, while other venture issuers may not be strongly motivated to migrate to the senior exchange and may take full advantage of any lesser regulatory burden on venture issuers by remaining on the TSXV.

If regulators consider it undesirable for large issuers to remain listed exclusively on the TSXV and thereby avoid the mandatory quarterly reporting and other requirements of the TSX, they may consider distinguishing among venture issuers according to size or other criteria when determining the appropriate regime.

Mid-year financial reporting

1. **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?**

    a) **If you support this proposal, why? What are the benefits?**

    b) **If you do not support this proposal, why not? What are your concerns?**

We support the elimination of mandatory three and nine month financial reporting and MD&A. The proposed change will be of substantial benefit to smaller issuers for whom the preparation of disclosure documents is a proportionately greater expense and will permit such issuers to focus more time and resources on business activities. Larger issuers will likely continue to provide three and nine month interim financials and MD&A to meet the demands of investors and/or underwriters, and to prepare for their eventual migration to the TSX. The Proposed Instrument provides such issuers with a prescribed framework should they select this option.

We are of the view that in addition to being able to voluntarily provide three and nine month financial statements, issuers should be permitted to fully opt out of the venture issuer regime and file the same disclosure as a senior issuer if they so choose.

Combined with mandatory material change reporting, the proposed semi-annual financial reporting would provide the market with financial information on a timely basis and would be consistent with the requirements imposed in other jurisdictions. Due to the extended filing deadline for annual financial statements, the elimination of first quarter financial statements will not significantly affect the disclosure record as such statements are finalized only shortly after the annual financials. In general, quarterly income statement data is less relevant to venture company investors. The market may, however, be interested in the company's cash on hand, burn rate, capital resources, and progress towards its corporate goals. Consequently we believe semi-annual reporting should be complemented by a three and nine month report disclosing information about the company's liquidity, working capital, capital resources, changes in capital structure, and principal uses of cash during the quarter.

Venture investors are also interested in detailed information about a company's exploration or research programs and we would support quarterly reporting on these matters. This information, combined with disclosure of information on capital and expenditures, helps the market understand the company's progress towards its goals and to evaluate its prospects accordingly. CEO and CFO certification of this information should not be required.

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. The consolidation of venture issuer requirements and the reduction of duplication will make the regulations less onerous to comply with.

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?**

   a) **If you think full financial statements are necessary, why do you think so? Specifically, how do you use this information?**

   b) **If you do not think that full financial statements are necessary, is there something other than full financial statements that could provide you with the information that is necessary or relevant for your purposes? Please specify what financial or other information would suffice and explain why.**

   c) **Does the information noted in (b) vary for issuers based on industry, size or whether the issuer generates revenues? If so, please explain.**

Please see our response to Question 1 above.

<u>Other financial statement requirements</u>

6. **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 are of the view that semi-annual financial reporting, quarterly disclosure of information regarding liquidity and capital and material change reporting obligations (that incorporates disclosure of material changes in the financial position of an issuer) will together provide investors with sufficient information to make investment decisions and will reduce the burden on venture issuers.

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?**

   a) **If you think that 100% is the correct threshold, explain why.**

   b) **If you do not think that 100% is the correct threshold, explain why. Should the threshold be lower? Please provide your views on an alternative threshold, with supporting reasons.**

   c) **Should financial statements be required at all for these transactions?**

We believe 100% is the correct threshold for acquisitions by a venture issuer. Preparing financial statements in respect of such transactions should be required.

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?**

   a) **If you are of the opinion that pro forma financial statements do provide useful information, specifically, what information do they provide and how do you make use of that information?**

We do not believe pro forma financial statements provide useful information not provided elsewhere in the venture issuer's disclosure.

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 NI 41-101F1. Should this exemption be expanded to apply to all venture issuers?

a) If you think the exemption should be expanded, explain why.

b) If you do not think that the exemption should be expanded, explain why.

The TSXV contains a diversity of issuers some of whom are large, well-established and should not be exempted from providing historical information to investors. Other smaller venture issuers may be in a development or exploration stage and may not have any revenues or may not have been in existence for a substantial period of time. These issuers are not stable enough for long term trends and historical financials to be of use to investors. Therefore, we are of the view that the current scope of the "junior issuer" exemption is appropriate and should not be expanded. Exemptive relief from the requirements of Form 41-101F1 may always be sought by issuers in individual circumstances, and underwriters and agents will advise the issuers as to what financial information is appropriate and necessary to market to investors.

Governance requirements and executive compensation disclosure

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?

We are of the view that control persons are not independent of management and this should be reflected in their addition to the list. This change would reduce the likelihood of conflicts of interest and increase investor confidence in the corporate governance practices and financial reporting of venture issuers.

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?

i) If you think that executive compensation and corporate governance disclosure should be provided in both the annual report and the information circular, explain why.

ii) If you do not think that it is necessary to provide executive compensation and corporate governance disclosure in both the annual report and in the information circular, explain why.

We are of the view that director and officer compensation disclosure is most appropriately set out in the information circular and no distinction should be made between TSXV and TSX issuers. A reference in the Annual Report to the information circular should be sufficient to keep investors well informed.

General disclosure requirements

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?**

We are of the view that the CPC is a unique vehicle and should be excluded from the application of the Proposed Instrument. The current regulations create a tailored regime for CPCs and the appropriate disclosure regime will be imposed depending upon the qualifying transaction that the CPC completes. This should be left in place.

14. **We also invite further comment. If you have suggestions about additional steps that we could take to tailor a regulatory regime that is directed at the venture market, please provide them.**

The definition of "material contract" in the Proposed Instrument should conform to the definition of "material contract" contained in NI 51-102.

The insider trading offence applies to the insiders of the issuer and not the issuer itself. We do not think it is appropriate to require an issuer to "police" its insiders. Market practice dictates that most issuers already have insider policies.

There is currently no requirement for venture issuers to provide detailed information in respect of voting results at shareholder meetings, whereas such disclosure is required of other reporting issuers under section 11.3 of NI 51-102. It is our view that this requirement should be included in the Proposed Instrument, as the cost of providing this information is minimal and it can be of value to investors.

* * * * * *

This letter has been prepared by members of the Securities Group of Norton Rose OR LLP but may not reflect the views of all of its members. If you have any questions concerning these comments, please contact Pierre Soulard (direct line: (416) 216-4806 or by e-mail at Pierre.Soulard@nortonrose.com) or Tracey Kernahan (direct line: (416) 216-2045 or by e-mail at Tracey.Kernahan@nortonrose.com).

Yours very truly,

for: Pierre Soulard
Partner