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BY EMAIL

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The Secretary
Ontario Securities Commission
20 Queen Street West
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Attention: British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Dear Sirs and Mesdames:

Re: Comments on CSA Notice and Request for Comment (the Notice): Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* and Proposed Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (the Proposed Amendments)

Further to the Canadian Securities Administrator's (the CSA) request for comment on the Proposed Amendments published in the Notice on March 13, 2013, we submit the concerns and comments of the members of our Securities Group, for your consideration.

In this letter, when we refer to "our clients", we refer primarily to our client base of TSX Venture Exchange (TSXV) listed reporting issuers who may be impacted by the Proposed Amendments outlined in the Notice.

The Notice identified the objective of the Proposed Amendments as "providing greater transparency about significant holdings of issuers' securities". We respectfully submit that the benefit that may be derived from providing greater transparency about the holdings of an issuer's securities is far outweighed by the prejudice the Proposed Amendments would impose on market participants, particularly our clients. We most specifically oppose decreasing the early warning reporting threshold from 10% to 5% (the Threshold Change).

Page five of the Notice identified a number of reasons (the Reasons) for implementing the Threshold Change. We respectfully disagree with the Reasons. It is our submission that: (1) a shareholder at the 5% level does not effect a great enough degree of control over an issuer to warrant early warning disclosure; (2) the potential relevance in proxy-related matters of a shareholder at the 5% level is insufficient to warrant early warning disclosure; (3) the Canadian market's 10% early warning reporting threshold provides a key advantage over other major jurisdictions; and (4) the Threshold Change would impose specific prejudice on junior venture issuers, many of whom are currently experiencing difficult times.

1. *Control*

We acknowledge that it *may* be *possible* for a shareholder who controls 5% of the voting securities of an issuer (a 5% Holder) to influence control over that issuer; however, it is our submission that it is highly unlikely that a 5% Holder would be able to influence control over an issuer in a manner sufficient to warrant early warning disclosure. Securities legislation establishes a threshold (20%) at which it is presumed that a shareholder will be able to influence control over an issuer. The intrinsic significance of shareholdings at the 10% level are addressed by insider reporting requirements, separate and apart from the takeover bid reporting regime. The current 10% early warning reporting threshold (the Current Threshold) appropriately reflects that a 20% shareholder will be able to materially affect control of an issuer, by requiring the disclosure of proximity to that level, i.e. the control over 10% of an issuers voting securities. It is our submission that the ownership of 5% of the voting securities of an issuer is insufficiently close to a position that would allow a person to affect control of an issuer to carry the degree of significance necessary to warrant early warning disclosure.

2. *Relevance of a 5% Holder in proxy-related matters*

We further submit that a 5% Holder is not sufficiently relevant in proxy-related matters to necessitate early warning disclosure. While a 5% Holder is able to requisition a shareholder's meeting under corporate legislation, the ability to requisition a shareholders' meeting, in and of itself, does not allow a shareholder to influence the outcome of proxy-related matters to a degree that is sufficient to justify early warning disclosure. We acknowledge it is possible for control of an issuer to be influenced at a shareholder's meeting requisitioned by a 5% Holder, however the ability of a 5% Holder, acting alone, affect the control of an issuer at a shareholder's meeting is minimal, and thus the relevance of the ability of the shareholder to requisition such a meeting is correspondingly minimal. The relevance of the ability of the shareholder to requisition a shareholder's meeting is certainly insufficient to warrant the burden of full early warning disclosure by all 5% Holders, the vast majority of whom will never requisition a meeting.

3. Competitive advantage of Canadian markets

The 5% early warning reporting threshold in place as the standard in several other major jurisdictions should not be considered to be a reason to alter the current Canadian regime. While we acknowledge that a 5% early warning reporting threshold exists in several other major jurisdictions, including the US, we submit that distinguishing our markets from ones with burdensome and invasive early warning disclosure requirements is a key competitive advantage of Canadian markets over those abroad. Our clients benefit appreciably from foreign investment, and a material incentive for investors abroad to choose Canada (especially the TSXV) over larger and more visible US markets is the ability to exceed a 5% shareholding position in a promising junior issuer without being forced to disclose the details of their position; the implementation of the Threshold Change would entirely remove that incentive.

4. The impact of the Threshold Change on junior issuers, and current market conditions

Finally, it is our submission that any possible advantages of implementing the Threshold Change are far outweighed by the certain prejudice the it will impose upon TSXV-listed issuers. It has been our experience in dealing with our clients that the Current Threshold frequently functions as an investment cap, with the burden of disclosure at the Current Threshold dissuading many investors who would otherwise be willing and able to invest beyond the Current Threshold from doing so. In many instances during the past several years, the Current Threshold has directly limited the ability of our clients to access capital, especially in private placements with only one subscriber, where the Current Threshold frequently determines the amount raised. It is our submission that the disclosure required at the Current Threshold acts as a burden to investors in many small cap issuers, where the acquisition of 10% requires substantially less of a financial investment, and is correspondingly more frequently achieved by passive and individual investors. Despite the associated burden, we agree that the Current Threshold justifiably reflects that a 10% shareholder has achieved a significant position in an issuer, by virtue of its proximity to the 20% level. As unwillingness to be subject to early warning disclosure requirements causes many investors to be unwilling to exceed the Current Threshold, implementing the Threshold Change will, in many instances, substantially decrease the potential investment available to TSXV-listed issuers from each willing investor, causing those issuers material prejudice with insufficient if any corresponding benefit to market participants.

A significant percentage of TSXV-listed issuers currently trade below $0.10 per share, and are experiencing considerable difficulties raising capital. This issue was acknowledged by the TSXV in their extension of temporary private placement pricing relief measures, which allow issuers to distribute shares below $0.05 per share, and convertible securities below $0.10 per share. One of the most significant disadvantages of implementing the Threshold Change is the manner in which it would impact the ability of TSXV-listed issuers to raise capital. As at May 31, 2013, the average market capitalization of a TSXV-listed issuer was $15.2 million, while the average market capitalization of a Toronto Stock Exchange-listed issuer was $1.38 billion. Because the early warning reporting requirements are triggered by percentage ownership, they disproportionately burden TSXV-listed issuers and investors, as it is substantially easier for even an individual or passive investor to acquire a 10% position in a TSXV-listed issuer (requiring, on average, $1.52 million), than a Toronto Stock Exchange-listed issuer (requiring, on average, $138 million). The Threshold Change will greatly exacerbate this inequality by limiting the potential investment by any one investor, who does not wish to trigger early warning reporting requirements, in a TSXV-listed issuer to an average of only $760,000, significantly hindering the ability of junior issuers to raise capital. Furthermore, this burden becomes progressively more severe as market capitalization decreases, as investors who wish to invest in issuers with market capitalizations below $1,000,000 – often being issuers in the greatest need of financing - will be precluded from investing greater than $50,000 without triggering early warning reporting requirements.

While we oppose the Threshold Change, in the event that it is implemented, we believe it is essential to create an exemption available for TSXV-listed issuers to maintain the Current Threshold.

We urge you to reconsider the implementation of the Proposed Changes, most specifically the Threshold Change. If you have any questions with regard to our submission, please do not hesitate to contact any member of our Securities Group. We would welcome the opportunity to further discuss this matter with you.

Yours truly,

Rory S. Godinho, Securities Group Leader
on behalf of Boughton Law Corporation Securities Group