August 20, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Also, address comments ONLY to the following for distribution to other participating CSA members

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Dear Sirs/Mesdames:

Re: Proposed amendments to NI 51-102

Thank you for the opportunity to comment on the proposed amendments to NI 51-102. We agree with several of the proposed amendments, and with the concept of relieving some of the documentation and regulatory burden placed upon venture issuers. We have reviewed the request for comments and provided below our responses to selected questions.

Conceptually, we agree with the idea of reduced disclosure requirements – the quarterly highlights – for those venture issuers who have yet to generate significant revenue. However, we believe that a definition of "significant revenue", and detailed application instruction, is needed in order to improve understanding and consistency of implementation amongst venture issuers. Further, as the annual MD&A requirements are not being changed under the proposal, we would expect many venture issuers would simply roll forward the annual MD&A disclosures, rather than investing time to revise and revamp the MD&A to provide only quarterly highlights. As a result, we anticipate that ongoing cost savings as a result of this proposed change will be minimal; in fact, on initial implementation, we would expect costs to increase as venture issuers would likely face professional fees from their legal counsel and/or financial consultants in the review of the first quarterly highlights report.

For executive compensation, we support the current requirement to disclose a maximum of 5 individuals and 3 years. For many venture issuers, there are only a few executives, and the majority of these issuers' expenses tend to be management and executive salaries. As many venture issuers are cash constrained, or pre-revenue, we believe that, instead of limiting disclosure to a maximum of three individuals (the CEO, the CFO, and the next highest paid executive), investors' and stakeholders' needs might be better served by requiring that a minimum of three individuals' (including the CEO and CFO) compensation be disclosed.

We support the proposal to eliminate the requirement to disclose the grant date fair value of stock options and other share-based awards to executives as this information is available in the financial statements. The financial statement disclosure of detailed information about stock options and other equity-based awards issued, held and exercised, will provide sufficient information for investors to assess how, and to what extent, the issuer's executives are being compensated. For many venture issuers, the grant date fair value of awards tends to distort the true compensation paid to executives and board members, as many of these options and other share-based awards expire unexercised.

Although we support the elimination of grant date fair value of stock options and other share-based awards to executives, we believe there is merit to retaining disclosure of executive compensation for 3 years. Investors rely on management to ensure appropriate stewardship of the issuer, and a third year of disclosure may show trends and provide better insight into evaluating changes in executive compensation against the issuer's performance.

That being said, we support the proposal to reduce, from three to two, the number of years of audited historical financial statements and related disclosures in the "Description of the business and history". For many venture issuers, the third year is not as relevant in an initial public offering (IPO). As noted above, investors are more likely to rely on strong management than on the historical performance of the issuer, when making investment decisions in many IPO situations. We note that two years of historical financial information is also consistent with requirements for IPO filings with the Securities and Exchange Commission.

Below are our *responses* to the **questions** raised in the proposal for comment.

1. **We propose to permit venture issuers without significant revenue in the most recently completed financial year to provide the more tailored and focused "quarterly highlights" form of MD&A in interim periods. Venture issuers that have significant revenue would be required to provide existing interim MD&A for interim periods because we think that larger venture issuers should provide more detailed disclosure.**

a. Do you agree that we have chosen the correct way to differentiate between venture issuers?

In theory, we agree with differentiating between venture issuers; however, while revenues may be a key differentiator, we believe that other key measures should also be considered, such as market capitalization, total assets, or total expenditures. For example, for resource issuers, a more appropriate measure might be exploration expenditures or capitalized expenditures.

Also, we believe that the key measure or measures selected should be clearly defined – for example, what constitutes "significant revenue".

We further believe that the test should not be performed only once per year, as events such as commencement of revenue generation activities, a significant acquisition, or cessation of revenue generating activities should be taken into account to ensure that investors are being provided with relevant and useful information during the year. Accordingly, the test should be performed on a quarterly basis.

b. Should all venture issuers be permitted to provide quarterly highlights disclosure?

No. The information requirements of MD&A provide a useful format for presenting information to investors and shareholders, disclosures that are familiar to these parties. While quarterly highlights may be useful for smaller pre revenue venture companies, many venture issuers have revenues and the current MD&A disclosures provide useful information for shareholders and investors.

Question relating to executive compensation disclosure

2. **We are proposing to clarify filing deadlines for executive compensation disclosure by both venture and non-venture issuers. In most cases, the disclosure is contained in an issuer's information circular and the filing deadline is driven by the issuer's corporate law or organizing documents, and the timing of its annual general meeting (AGM). Issuers may also include the disclosure in their Annual Information Form.**

   We are proposing to revise Section 9.3.1 of NI 51-102 to set the deadline for filing executive compensation disclosure by non-venture issuers at 140 days. For venture issuers, we are proposing a corresponding deadline of either 140 days or 180 days. For venture issuers whose corporate law or organizing documents permit a later AGM, an earlier deadline could result in an issuer filing its executive compensation disclosure twice: once as a stand-alone form to meet the deadline in Section 9.3.1 of NI 51-102 and a second time with the information circular filed for the AGM.

What is the most appropriate deadline applicable to venture issuers for filing executive compensation disclosure: 140 days, 180 days or some later date? Please explain.

We feel that 140 days is an adequate deadline for filing and since the audited financial statements are due within 120 days of year end, venture issuers should have all the information necessary in order to file within 140 days. This also provides timely information to shareholders and potential investors.

Questions relating to BARs - proposed and recently completed acquisitions

Under the Previous Proposals, the venture issuer prospectus requirements for acquisition financial statements were to be harmonized with the proposed changes to the significance threshold in a BAR. We received limited stakeholder comments on this proposal. In the process of preparing the Proposed Amendments, we identified a potential policy concern that may justify a difference between the BAR requirements and the prospectus and information circular requirements in respect of certain proposed acquisitions.

Specifically, if proceeds of a prospectus offering will be used to finance a proposed acquisition significant in the 40% to 100% range, the proposed amendments to the BAR requirements would result in no specific requirement to include any disclosure about the proposed acquisition in the prospectus (see Section 35.6 of Form 41-101F1 and Item 10 of Form 44-101F1). The prospectus would, however, be subject to the general requirement to provide full, true and plain disclosure of all material facts relating to the securities to be distributed.

In cases where prospectus proceeds are financing an acquisition of a business significant in the 40% to 100% range, if financial statements of the business are not necessary to meet the full, true and plain disclosure standard, there may be no financial statements of the business to be acquired in the prospectus. Similarly, if a matter being submitted to a vote of security holders is in respect of a proposed acquisition significant in the 40% to 100% range, the proposed amendments to the BAR requirements would result in no specific requirement to include BAR-level disclosure about the proposed acquisition in an information circular (see section 14.2 of Form 51-102F5). The information circular would however be subject to the requirement to briefly describe the matter to be acted upon in sufficient detail to enable reasonable security holders to form a reasoned judgment concerning the matter (see section 14.1 of Form 51-102F5).

Where the matter being submitted to a vote of security holders is in respect of a proposed acquisition significant in the 40% to 100% range, if financial statements of the business are not required for there to be sufficient detail to enable reasonable security holders to form a reasoned judgement concerning the matter, there may be no financial statements of the business to be acquired in the information circular.

3. **Do you think that a prospectus should always include BAR-level disclosure about a proposed acquisition if:**

- **it is significant in the 40% to 100% range, and**
- **any proceeds of the prospectus offering will be used to finance the proposed acquisition?**

Why or why not?

We feel that BAR level disclosure should always be provided in the 40% to 100% level, as this provides shareholders and potential investors with a means to assess the financial impact of a proposed or completed acquisition. Increasing the threshold from 40% to 100% is too large an increment as many venture issuers could double in size, while providing shareholders and investors with no information to assess the impact of the acquisition. While we agree that the proposed changes would streamline and reduce costs and time for venture issuers, we feel that investors would be at a disadvantage absent this financial information, while insiders would have a clearer picture of the potential impact of acquisitions, which would not provide a level playing field. This is particularly important to new investors if the proceeds are to be used to finance an acquisition (i.e. using the new investor's funds). BAR level disclosure provides an easy-to-interpret numerical snap-shot of the impact of an acquisition, which investors can evaluate before making an investment decision.

4. **Do you think that an information circular should always include BAR-level disclosure about a proposed acquisition if:**

- **it is significant in the 40% to 100% range, and**
- **the matter to be voted on is the proposed acquisition?**

Why or why not?

Similar response to above. Shareholders should have access to BAR level disclosure to evaluate the financial impact of an acquisition on their company, prior to voting.

5. **Do you think we should require BAR-level disclosure in a prospectus where:**

- **financing has been provided (by a vendor or third party) in respect of a recently completed acquisition significant in the 40% to 100% range, and**
- **any proceeds of the offering are allocated to the repayment of the financing.**

Why or why not?

Similar response to above – albeit the vendor or third party should be knowledgeable enough to perform their own due diligence prior to financing an acquisition. The new investors who will be participating in the prospectus financing will not have had the benefit of the due diligence process and so should be provided BAR level disclosure in order to be able to assess the financial impact of the acquisition.

6. **If we were to require BAR-level disclosure in the situations outlined above in questions 3, 4 and 5, the significance threshold for prospectus and information circular disclosure will not be harmonized with the threshold for continuous disclosure. Is this a problem?**

   We believe that the significance thresholds should be the same. The continuous disclosure rules are complex and having different significance thresholds will further complicate matters. This additional complexity is incongruent with the CSA's objective of making the filing process easier and less costly for venture issuers.

7. **If we do not require BAR-level disclosure in the situations outlined above in questions 3, 4, and 5, do you think an investor will be able to make an informed investment or voting decision?**

   No. Absent BAR level disclosure in the 40% to 100% significance range, we believe that investors will not have sufficient information to be able to make an informed investment decision. BAR level disclosure provides information about the impact of an acquisition or proposed acquisition that stakeholders find very useful when making investment decisions. Specifically, pro forma financial statements included in a BAR provide a numerical portrayal of an acquisition or proposed acquisition that is unlikely to be fully captured in a narrative discussion as required by the prospectus rules requiring full, true, and plain disclosure.

Questions relating to audit committees

We propose to require venture issuers to have an audit committee consisting of at least three members, the majority of whom could not be executive officers, employees or control persons of the issuer. NI 52-110 currently provides non-venture issuers with certain exceptions from their audit committee independence requirement (for example, for initial public offerings or in cases of death, disability or resignation of member). We are not proposing the same exceptions for venture issuers because the proposed venture issuer audit committee composition requirements are not as onerous as the non-venture issuer independence requirements.

8. **Do you think we should provide exceptions from our proposed audit committee composition requirements for venture issuers similar to the exceptions in sections 3.2 to 3.9 of NI 52-1107 If so, which exceptions do you think are appropriate?**

   We would recommend that no exceptions be provided. We agree that requiring a majority of the audit committee members be independent will enhance the governance of venture issuers and serve to improve scrutiny of quarterly reporting (as, unlike in the US, there is no requirement for auditor involvement during the quarters). We acknowledge that this requirement may potentially increase costs for many venture issuers, especially junior resource issuers, as their current audit committee members are often also management.

Yours Truly,

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