



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

Notice and Request for Comment

Proposed National Instrument 51-103

Ongoing Governance and Disclosure Requirements for Venture Issuers

Proposed Amendments to

**National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101
*Short Form Prospectus Distributions***

and

National Instrument 45-106 *Prospectus and Registration Exemptions*

and Proposed Related Consequential Amendments

July 29, 2011

1. Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for comment proposed rules and rule amendments which introduce a new mandatory regulatory regime for venture issuers intended to streamline and tailor venture issuer disclosure to reflect the needs and expectations of venture issuer investors and to make the disclosure requirements for venture issuers more suitable and more manageable for issuers at this stage of development. The proposals address continuous disclosure and governance obligations as well as disclosure for prospectus offerings and certain exempt offerings that require prescribed disclosure. The proposals were influenced by our understanding of the characteristics of the venture market, which are set out in Appendix A to this Notice.

2. Goals of the current proposals

(a) Governance and disclosure

The proposed new governance and disclosure regulatory regime for venture issuers:

- is designed to provide tailored disclosure to enhance informed investor decision making in this segment of the market, by
 - eliminating certain disclosure obligations that may be of less value to venture issuer investors,
 - providing supplemental disclosure that we think is of relevance to venture issuer investors,

- reduces the length of regulatory instruments by
 - tailoring the regulatory requirements to focus on those applicable to venture issuers,
 - streamlining and reducing disclosure redundancies,
- makes it easier for venture issuer investors to read disclosure documents and locate key information,
- is designed to enhance the substantive governance standards for venture issuers, relating to conflicts of interest, related party transactions and insider trading, in order to maintain or improve investor confidence in the venture market,
- is expected to allow venture issuer management more time to focus on the growth of the business,
- enhances regulators' abilities to focus on the unique challenges associated with the venture market when considering rule making.

(b) Prospectus and exempt offerings

The revised prospectus and exempt offering disclosure regime for venture issuers:

- in the case of short form prospectuses, TSXV short form offering documents and qualifying issuer offering memoranda, contemplates incorporation by reference of the continuous disclosure documents required by the new governance and disclosure regime,
- in the case of long form prospectuses,
 - introduces a new long form prospectus form that more closely conforms the required disclosure to the new governance and disclosure regime, in particular, the disclosure required under the proposed new annual report,
 - requires only two years of audited annual financial statements, but maintains the junior issuer financial statements exemption that currently exists in the long form prospectus form,
- replaces business acquisition reports (BARs) with enhanced material change reporting including financial statements for acquisitions that are 100% significant,
- does not require three and nine month interim financial reports or associated management's discussion and analysis (MD&A).

3. Purpose of this Notice

The CSA is publishing this notice, and related materials, in order to obtain input on the current proposal. There are a number of specific questions set out in section 10 that we would like to receive comments on, but we are also interested in general comments about the proposal.

This notice and the following materials are being published for a 90-day comment period:

- Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (Proposed Instrument),
- Proposed amendments to National Instrument 41-101 *General Prospectus Requirements* (NI 41-101),
- Proposed amendments to National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101),
- Proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106),
- Proposed consequential amendments to National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102),
- Proposed consequential amendments to National Instrument 52-109 *Certification of Disclosure In Issuers' Annual and Interim Filings* (NI 52-109),
- Proposed consequential amendments to National Instrument 52-110 *Audit Committees* (NI 52-110),
- Proposed consequential amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101),
- Proposed consequential amendments to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101),
- Proposed consequential amendments to National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101),
- Proposed consequential amendments to National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107)
- Proposed consequential amendments to National Instrument 44-102 *Shelf Distributions*,
- Proposed consequential amendments to National Instrument 45-101 *Rights Offerings*,
- Proposed consequential amendments to National Instrument 55-104 *Insider Reporting Requirements and Exemptions*,

- Proposed consequential amendments to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*,
- Except in Ontario, proposed consequential amendments to Multilateral Instrument 11-102 *Passport System*, and
- In Ontario and Quebec, proposed consequential amendments to Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*

The materials also include proposed changes to the following policies:

- Companion Policy 41-101CP *General Prospectus Requirements*;
- Companion Policy 44-101CP *Short Form Prospectus Distributions*;
- Companion Policy 44-102CP *Shelf Distributions*;
- Companion Policy 45-106CP *Prospectus and Registration Exemptions*;
- Companion Policy 43-101CP *Standards of Disclosure for Mineral Projects*;
- Companion Policy 51-101CP *Standards of Disclosure for Oil and Gas Activities*;
- Companion Policy 51-102CP *Continuous Disclosure Obligations*;
- Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*;
- Companion Policy 52-109CP *Certification of Disclosure In Issuers' Annual and Interim Filings*;
- Companion Policy 71-102CP *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
- National Policy 12-202 *Revocation of a Compliance Related Cease Trade Order*;
- National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults*;
- National Policy 51-201 *Disclosure Standards*; and
- National Policy 58-201 *Corporate Governance Guidelines*.

The Proposed Instrument including the guidance, the proposed amendments, the proposed consequential amendments and proposed changes to the above policies are collectively referred to as the Proposed Materials. We are publishing the Proposed Materials with this Notice. You can also find the Proposed Materials on the websites of many CSA members.

4. Background

The securities regulators in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan initially published CSA Multilateral Consultation Paper 51-403 *Tailoring Venture Issuer Regulation* (Consultation Paper) on May 31, 2010, to elicit feedback on a number of proposals designed to create a new regulatory regime for the venture market (Consultation Proposals). In order to better demonstrate the Consultation Proposals, Sample Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers*, including all related forms, was attached to the Consultation Paper. The Consultation Paper can be accessed at the following internet address:

www.albertasecurities.com/securitiesLaw/Pages/ViewDocument.aspx?ProjectId=f9c626cd-81a5-4a5f-8174-a15069b30589.

In addition to publishing the Consultation Paper, we coordinated consultation sessions across the country to solicit feedback on the Consultation Proposals. Invitations were extended to issuers, company associations, investors, investor associations, dealers, advisers, lawyers, accountants and stock exchange staff (from both the TSX Venture Exchange (TSXV) and the Canadian National Stock Exchange). We initially held 14 consultation sessions in Halifax, Toronto, Montreal, Winnipeg, Calgary, Edmonton and Vancouver. Following the main consultation sessions, a number of smaller meetings were held in September and October 2010 with investors, investment advisors, accounting firms and local bar associations.

In addition to the feedback obtained from the in-person consultation sessions, we received 35 comment letters in respect of the Consultation Paper.

The Consultation Paper was published to help us assess market interest in a more tailored approach to regulating venture issuers. Although there were different levels of support for each of the specific Consultation Proposals, the results of the consultations indicated strong support for pursuing a more tailored approach to venture issuer regulation, including the development of a separate instrument tailored to the continuous disclosure and governance obligations of venture issuers.

5. Why we are pursuing the current proposals

There are numerous reasons behind the CSA's initiative for a more targeted and tailored approach to regulation of the venture market. Some of these reasons include:

- **Significance of venture issuers** - We think that the role venture issuers play in the Canadian equity capital markets and the broader economy justify pursuing a separate regulatory regime.
 - **Significance of venture market** - Venture issuers by number represent a significant component of the total number of reporting issuers. For example, of the 3,730 issuers listed on the Toronto Stock Exchange (TSX) and the TSXV as at May 31, 2011, 2,188 or approximately 59% are listed on the TSXV. This is a significant portion of the equity capital markets.
 - **Economic role** - Venture issuers, as small and medium-sized enterprises, can play an important economic role. They directly and indirectly provide jobs, explore for new resources, serve as incubators for new technologies, and contribute to gross domestic product.
 - **Senior issuers of tomorrow** - Venture issuers grow and become the senior issuers of tomorrow. For example, over the last five years, approximately 50 venture issuers

have graduated to the TSX per year with approximately 335 of the 1,542 currently listed TSX issuers being graduates of the TSXV.¹

- **Compliance challenges** - Venture issuers have advised us that they have difficulty meeting existing disclosure requirements. For example, the length and complexity of, and the necessary duplication in, the existing rules may create more of a compliance challenge for venture issuers given that they are less likely to have the funds to readily access professional advisers or employ specialized staff to focus solely on securities regulatory compliance matters.
- **Current disclosure format** - The current format of required periodic disclosure, consisting of separate MD&A, financial statements, CEO and CFO certifications, information circulars, and, in some cases, annual information forms (AIF), requires that each of these documents be capable of standing on its own. This creates duplication between the documents as it is necessary for each to be read on a stand-alone basis and provide a complete picture of the issuer's business.
 - **Implications for issuers** - This duplication lengthens the rules and creates additional compliance costs for issuers in reading and interpreting them and ensuring each of the documents required by the rules conforms to the others. The duplicative disclosure can also add to the printing and mailing costs for those documents required to be mailed.
 - **Implications for investors** - The duplication can impact investors.
 - Investors may be less likely to read disclosure documents due to the length and duplication. This issue may be exacerbated for retail investors with limited time and resources. The lack of a periodic narrative summary of the business may also make it difficult for an investor to get a complete picture of the issuer.
 - Venture market investors are frequently investing without the benefit of research reports prepared by analysts to aid investment decisions. Requiring a single disclosure document that would encapsulate all annual disclosure and another for a mid-year period allows us to remove much of the duplication. It could also provide investors with a more complete, yet concise, picture of the venture issuer's business.
- **Regulatory instruments applicable to all issuers** - Although the existing regulatory framework already accommodates venture issuers, it can often be necessary to read and understand an entire regulatory instrument, including the inapplicable portions, to appreciate the scope of the venture issuer-specific provisions. Separate instruments applicable only to venture issuers that are streamlined and targeted at venture issuer regulation may make it easier for venture issuers to understand the requirements they must follow.

¹ Information derived from TSX information at May 31, 2011. The 335 currently listed graduates do not include those that have been acquired by other issuers.

- **Market concerns** - New securities regulatory initiatives often arise in response to developments in international markets or emerging shareholder concerns and are often directed at issues in the senior market. Although Canadian securities regulators already consider the needs and characteristics of the venture market when developing new regulations, the scope of possible adjustments for the venture market can be limited when the adjustments are crafted to work within the confines of the regulatory regime for senior issuers. Consequently, the current securities regulatory regime is largely “one size fits all” with variations built in to address venture issuer differences. While the current regime does work, we think that improvements can be made.

Issues particular to the venture market can take longer to gain attention than those that arise in the senior market. This may arise because of the size of the venture market and the limited presence of institutional investors. A regulatory regime directed and tailored to venture issuers could facilitate greater attention to the venture market.

6. Summary of current proposals

The Proposed Instrument introduces a new definition of venture issuer which, unlike the current definition, will exclude debt-only issuers, preferred share-only issuers and issuers of securitized products. Debt-only, preferred share-only and securitized product issuers are outside the scope of this CSA project but may be, or currently are being, considered in other CSA projects. Debt-only, preferred share-only and securitized product issuers that meet the current NI 51-102 venture issuer definition (collectively to be referred to as “senior unlisted issuers”) will continue to be subject to the NI 51-102 venture issuer requirements.

The proposed venture issuer definition also excludes issuers which are subject to BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets*. The CSA, other than Ontario, has published for comment proposed Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (MI 51-105). If MI 51-105 becomes effective, we plan to exclude issuers which are subject to MI 51-105 from the venture issuer definition.

The Proposed Instrument would replace the governance, disclosure and certification obligations of venture issuers currently covered by the following:

- NI 51-102 *Continuous Disclosure Obligations*,
- NI 52-109 *Certification of Disclosure In Issuers’ Annual and Interim Filings*,
- NI 52-110 *Audit Committees*, and
- NI 58-101 *Disclosure of Corporate Governance Practices*.

As a result, consequential amendments to the above instruments are being made.

(a) Governance and continuous disclosure

The key proposals relating to governance and continuous disclosure are:

- introduction of an annual report requirement that combines into one document business, governance and executive compensation disclosure, audited annual financial statements, associated MD&A and CEO/CFO certifications,
- streamlining of information circular disclosure requirements, including moving governance and executive compensation disclosure to the annual report,
- make filing of three and nine month interim financial reports and associated MD&A voluntary,
- introduction of a mid-year report that includes a six month interim financial report, associated MD&A and CEO/CFO certifications,
- replacing BARs with enhanced material change reporting, including financial statements for acquisitions that are 100% significant,
- introduction of an optional significance test which permits significance to be calculated using the acquisition date market capitalization instead of market capitalization at the announcement date,
- introduction of substantive corporate governance requirements relating to conflicts of interest, related party transactions and insider trading,
- tailored director and executive compensation disclosure,
- requiring the delivery of disclosure documents only on request in lieu of mandatory mailing requirements, and
- requiring only two years of historical financial statements in connection with an initial public offering prospectus offering.

The proposals are not intended to have any material impact on other instruments dealing with continuous disclosure obligations. The following instruments will continue to apply to venture issuers:

- NI 51-101 *Standards of Disclosure for Oil and Gas Activities*,
- NI 43-101 *Standards of Disclosure for Mineral Projects*,
- NI 52-107 *Acceptable Accounting Principles and Auditing Standards*,
- National Instrument 52-108 *Auditor Oversight*, and

- National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101).

The CSA has published for comment proposed amendments to NI 54-101 and related amendments to NI 51-102. We plan to make corresponding changes to the Proposed Instrument to reflect any NI 54-101 related amendments that the CSA implements.

(b) Prospectus and certain exempt offerings

The key proposals relating to prospectus and certain exempt offerings are:

- modifying the disclosure obligations required of venture issuers in connection with a long form prospectus under NI 41-101,
- modifying the documents required to be incorporated by reference in the case of
 - a short form prospectus under NI 44-101,
 - a qualifying issuer offering memorandum under NI 45-106, and
 - the TSXV short form offering document contemplated under NI 45-106.

The disclosure currently required under Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) is being modified by way of the introduction of a proposed new form to be used by venture issuers. The new form conforms prospectus disclosure to that required by an annual report under the Proposed Instrument.

The proposals would modify the prospectus financial statement requirements to require only two years of audited financial statements. The proposals would remove the requirement for BARs (and associated financial statements) in connection with an offering, although financial statements would be required for reverse take-overs and acquisitions that are 100% significant. Further, three and nine month interim financial reports and associated MD&A would not be required in connection with a prospectus offering or one of the exempt offering disclosure regimes referred to above.

NI 44-101 and NI 45-106 are being revised to permit incorporation by reference into a short form prospectus, TSXV short form offering document or qualifying issuer offering memorandum of the continuous disclosure documents contemplated under the Proposed Instrument rather than the continuous disclosure documents currently required under NI 51-102.

The proposals are not intended to:

- modify the procedures for conducting a prospectus offering as set out in NI 41-101 or NI 44-101,
- modify the requirements in connection with issuer bids or take-over bids, other than allowing the disclosure in a securities exchange take-over bid circular to conform to the

disclosure that would be required of a venture issuer under the revised continuous disclosure and prospectus requirements contemplated above.

The CSA has published for comment proposed amendments to NI 41-101 which clarify that item 32 of Form 41-101F1 does not require financial statements of predecessor entities and primary business acquisitions for certain reporting issuers, but that item 35 disclosure should be provided for these acquisitions. Major acquisitions under the venture issuer regime would be expected to constitute the primary business of a venture issuer, however, we have retained item 35 in the proposed venture issuer long-form prospectus form since certain reporting issuers may be subject to item 35 disclosure for primary business acquisitions. We plan to make corresponding changes to the proposed venture issuer long-form prospectus form to reflect any prospectus amendments that the CSA implements.

Consequential amendments to NI 43-101 are being proposed to introduce the filing of a preliminary short form prospectus as a trigger to file a technical report for venture issuers.

7. Summary of key changes to the current proposals from those outlined in the Consultation Proposals

As a result of the feedback received on the Consultation Paper, we are proposing a number of changes to the Proposed Instrument from what was originally contemplated in the Consultation Proposals. Some of the key changes are identified below.

(a) Replacing the requirement for three and nine month interim financial reports with the option to provide voluntary disclosure

Similar to the Consultation Proposals, the Proposed Instrument eliminates the requirement for venture issuers to file three and nine month interim financial reports and associated MD&A.

In this Notice we wish to emphasize that under the Proposed Instrument venture issuers have the option to elect to voluntarily file interim financial reports and/or MD&A for three and nine month interim periods (Optional Interim Periods). If a venture issuer decides to file interim financial reports for Optional Interim Periods, pursuant to NI 52-107, those interim financial reports would have to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. We are proposing to require that optional interim financial reports be filed within 60 days after the end of the Optional Interim Period. We would also require the issuer to issue a news release disclosing its intent to file optional interim reports and would require the cover page of the annual report to include a statement, in bold text, that the venture issuer intends to file three and nine month interim financial reports. Once an issuer had decided to file interim financial reports for Optional Interim Periods, it would be required to do so for a minimum period of two years. To discontinue filing interim financial reports for Optional Interim Periods, the venture issuer would be required to issue a news release prior to the start of the annual financial period for which the interim financial reports will no longer be filed.

The Proposed Instrument does not require that financial reports prepared for an Optional Interim Period be accompanied by MD&A or a certificate of the CEO or CFO. However, the financial reports and any accompanying discussion, analysis or other narrative would be subject to the

statutory prohibitions against misrepresentations. Interim financial reports for Optional Interim Periods would not be required to be mailed to shareholders.

(b) Duties to act honestly and in good faith and to exercise care, skill and diligence

We are no longer proposing to introduce, into securities law, obligations on directors and officers to act honestly and in good faith and to exercise the care, skill and diligence of a reasonably prudent person acting for a venture issuer in comparable circumstances (similar to those in business corporations law) and the associated governance certification.

Venture issuers will be required to disclose and describe whether their directors and officers are subject to any statutory or contractual requirements that require them, in performing their services as directors and officers, to act honestly and in good faith and to exercise the care, skill and diligence of a reasonably prudent person. If an issuer is subject to similar requirements under an incorporating statute, it would be sufficient to refer to the name of the statute and quote the provisions of that statute. It would not be necessary to summarize general common law obligations.

(c) Material changes and disclosable events

We eliminated the “Disclosable Event” concept. However, one of the elements of the former definition of “Disclosable Event” was a material related entity transaction. Given the prevalence of these types of transactions in the venture market, and investor interest in them, we are proposing to maintain an obligation to report on a timely basis any material related entity transactions. Another element of the definition of Disclosable Event was the refiling of a continuous disclosure document. Although refiling will not trigger a Disclosable Event report, similar to the requirements under NI 51-102, issuers will be required to file a news release in the event of a refiling.

(d) Annual report triggering a mining technical report

Mining issuers that file an AIF that contains scientific or technical information that relates to a mineral project on a property material to the issuer must file a technical report unless the issuer previously filed a technical report that supports the scientific or technical information and there is no new scientific or technical information concerning the subject property not included in the previously filed technical report.

Commenters questioned whether the introduction of an annual report with mining disclosure would trigger a technical report filing requirement for venture issuers.

In order to maintain the status quo for venture issuers, we propose that a technical report would be triggered if either of the following two circumstances apply:

1. a venture issuer files a short form prospectus;
2. a venture issuer’s annual report contains disclosure of the type that would trigger a technical report under paragraph 4.2(1)(j) of NI 43-101 (i.e., first time disclosure of mineral resources, mineral reserves or a preliminary economic

assessment or a change to that disclosure, if that change constitutes a material change for the venture issuer).

We are proposing amendments to NI 43-101 to implement this proposal. Under paragraph 4.2(1)(b.1) of NI 43-101, an issuer that is a venture issuer must file a technical report with a preliminary short form prospectus. We have re-introduced this requirement for venture issuers because they will not be required to file a technical report with their annual report under the Proposed Instrument.

(e) Companies with mineral projects

We are proposing to change the annual report disclosure requirements to reflect amendments that have been made to the technical report requirements under NI 43-101. The changes to the technical report requirements became effective June 30, 2011. We are also proposing equivalent amendments to the AIF under NI 51-102.

(f) Material contracts - summaries vs. filing of contracts

The Consultation Proposals required venture issuers to summarize material contracts in their annual reports but not file them. NI 51-102 requires that venture issuers file materials contracts, but does not require venture issuers to provide material contract summaries unless they file an AIF.

We have decided to revert to the status quo, requiring venture issuers to file material contracts but not require material contracts to be summarized in their annual disclosure. Venture issuers would be required to provide a list of the material contracts in their annual report.

(g) Summary of insider trading

We have removed the requirement to provide a summary of insider trading in the annual report. Instead we propose to require venture issuers to disclose each person or company, other than executive officers, that, to the venture issuer's knowledge, is or was, during the last completed financial year a "reporting insider", as that term is defined in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*.

(h) Aggregation of executive compensation disclosure

The Consultation Proposals permitted aggregation of compensation of executive officers, other than the CEO, CFO and any higher paid executive and director compensation.

The Proposed Instrument requires individualized compensation disclosure for the directors and named executive officers or NEOs, (as that term is defined under Form 51-102F6 *Statement of Executive Compensation*) (i.e., individualized disclosure would be required for directors and for the CEO, CFO, and three most highly compensated executive officers, other than the CEO or CFO whose total salary and bonus exceeded \$150,000). We concluded that there was not a sufficiently compelling reason to create different disclosures or thresholds than those set out in Form 51-102F6 *Statement of Executive Compensation*. However, disclosure in respect of these individuals would continue to be the tailored disclosure contemplated in the Consultation Proposals. We clarified that compensation disclosure should be provided for the venture issuer's

two most recently completed financial years and have mandated that the prescribed stock option and compensation securities disclosure must be positioned directly after the compensation table.

(i) Compensation discussion and analysis

We are proposing to enhance the compensation analysis disclosure requirements. For example, we have added requirements to describe and explain significant elements of compensation; we have enhanced the required discussion of performance criteria or goals; and now require disclosure of how each significant element of compensation is determined.

(j) Governance disclosure

Institutional investor representatives expressed apprehension about certain elements of governance disclosure not being provided. In particular, they were concerned that we did not require disclosure of:

1. steps to encourage a culture of ethical conduct,
2. how the board facilitates independent judgement, and
3. how the boards assesses results.

Our initial rationale for excluding these disclosure items was, in part, because we thought that they would be covered by the substantive governance requirements to act honestly and in good faith and to exercise care, skill and diligence of a reasonably prudent person. However, given that the Proposed Instrument eliminates those substantive governance requirements for directors and officers, we have introduced a few additional governance disclosure requirements, particularly addressing the issues referred to above.

(k) Financial statements – filing requirement for major acquisitions

We contemplated, in the Consultation Proposals that if an issuer conducted an acquisition that was 100% significant to the venture issuer, financial statements would be required. Some commenters noted that the Consultation Proposals required venture issuers to provide financial statements for major acquisitions at the same time as the filing of a material change report (within 10 days of the material change). These commenters expressed concern that this was significantly abbreviated from the 75 days allowed for BARs.

Although the material change report would be required within 10 days of the acquisition, we will not require the financial statements to be filed concurrently with the material change report and, consistent with the timing requirements for BARs, will permit them to be filed within 75 days after the transaction.

(l) Significance test

We have maintained the proposed significance test, but introduced an optional significance test which permits significance to be calculated using the acquisition date market capitalization instead of market capitalization at the announcement date.

(m) Confidential material change reports

Similar to the current disclosure regime for venture issuers, the Proposed Instrument will allow venture issuers to deliver confidential material change reports. However, venture issuers will not be permitted to file reports of material related entity transactions on a confidential basis.

(n) Disclosure responsibilities

The Consultation Proposals contained a “General Disclosure Standard” which prohibited venture issuers from making or authorizing the making of oral or written statements that are misleading or false in a material respect. Under that standard, executive officers and directors that authorized, permitted or acquiesced in a contravention could also be held liable.

The Consultation Proposals also contained a requirement that unfiled disclosure, such as that made on a website or in a presentation, be consistent with the disclosure made in filed documents. Some concerns were expressed regarding this provision, including the certainty of it and whether it would be more appropriate to include it in securities legislation as opposed to a rule.

We have removed the general disclosure standard as we determined that this issue was adequately covered in the statutes of Canadian jurisdictions.

(o) Incorporation by reference

The Consultation Paper permitted venture issuers to satisfy certain disclosure obligations by reference to a previously filed document. The Proposed Instrument now requires venture issuers, other than CPCs, to provide any required disclosure directly in the annual report. This is consistent with the objective of the annual report to be the annual disclosure document that venture issuer investors should refer to for complete, concise annual disclosure.

(p) Certification

In the event that a venture issuer chooses to include a full certificate in its annual report, we added requirements that it comply with the relevant provisions of NI 52-109 for issuers filing a full certificate.

8. Proposed legislative amendments

Legislative amendments may need to be sought in some jurisdictions. For example, legislative requirements may be pursued to add an annual and mid-year report and a report of material change, material related entity transaction or major acquisition, except for financial statements associated with a major acquisition, to the core document definition for the purposes of secondary market disclosure civil liability or to provide rule-making authority for certain of the proposed corporate governance requirements.

9. Appendices

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Local Notices and Amendments

In conjunction with the Proposed Materials, certain securities regulatory authorities will amend local securities legislation. These jurisdictions will publish any proposed local changes or other information required by local securities legislation in Appendix H to this notice.

10. Questions on the Proposed Materials

We invite market participants to provide input on the proposed new mandatory regulatory regime for venture issuers outlined in this Notice. In addition to any comments you may have to the Proposed Materials, we have a number of questions on the Proposed Materials where we would appreciate your feedback. We encourage you to provide detailed explanations in support of your answers. We are particularly interested in hearing from those participating in the venture market such as issuers, investors, legal counsel and promoters. We also invite ideas for other possible regulatory reforms directed at the venture market.

Mid-year financial reporting

A key element of the proposal remains the change from quarterly financial reporting to a semi-annual reporting requirement. We also propose creating an option to voluntarily provide quarterly financial disclosures within a prescribed, consistent framework. We received strong feedback both supporting the proposal to eliminate the existing requirement for mandatory first and third quarter reports, as well as feedback voicing concerns. As this continues to be one of the most significant elements of the proposal, we think it is important to seek more detailed formal comment specifically on this issue.

From a regulatory perspective, the rationale for creating a semi-annual filing regime includes the following:

- many financial regulatory regimes outside North America follow a semi-annual schedule of financial reporting, such as the United Kingdom, Australia, Hong Kong and South Africa, though none of these jurisdictions have a regime that requires quarterly reporting for one segment but semi-annual reporting for another segment;
- the feedback we received during the consultation phase indicates that investors in venture companies place a great deal of value in the issuer's management, concepts, direction and plans and they are interested in significant corporate developments that are addressed through non-financial statement disclosures;
- issuers must comply with material change reporting; and
- other aspects of this proposal are intended to provide disclosure that addresses key areas of investor interest.

The following questions ask how the removal of mandatory first and third quarter financial statement reporting would affect investor protection and capital-raising.

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?
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?
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.
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?
5. If you currently invest in issuers in jurisdictions that prescribe semi-annual reporting, please explain why you are comfortable doing so, particularly if you oppose the elimination of mandatory first and third quarter financial statements.
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?

Other financial statement requirements

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?
- 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?
- 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?
 - 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.

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?
 - a. If you think that control persons should be added, explain why.
 - b. If you do not think that control persons should be added, explain why.
- 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.

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.

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?

Further comments invited

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.

11. Cost Benefit Analysis

In addition to the request for comments set out in this notice, the CSA will also conduct a cost benefit analysis. We will contact various market participants including venture issuers and investors to request participation in completing a survey to assist in this process. If you would be interested in participating, please contact:

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Economist
British Columbia Securities Commission
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(604) 899-6538 or 1-800-373-6393
slo@bcsc.bc.ca

12. Comments and Submissions

To respond to the questions in this notice you must submit your comments in writing by October 27, 2011. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address your comments to all of the CSA members as follows:

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

Please send your comments only to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Please note that comments received will be made publicly available and posted at www.albertasecurities.com and <http://www.bcsc.bc.ca/> and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

13. Questions

Please refer your questions to any of the following:

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Appendix A

Venture Market Characteristics²

- **Common characteristics of venture market investors**
 - proportionately more likely to be retail investors with small positions,
 - limited (but growing) institutional involvement,
 - because of fewer institutional investors, shareholder influence on management may differ from that in the senior market,
 - founders and management are frequently the largest shareholders with controlling interest,
 - more likely to have prior experience in the venture issuer's industry or with its management,
 - limited analyst coverage and fewer research reports (although increasing) place a greater burden on investors and dealers to do their own research and follow developments,

- **Venture issuer investor interests and expectations**
 - more likely to expect a dramatic growth strategy,
 - less likely to expect dividend payments, or long-term, steady appreciation,
 - recognize that smaller, developing issuers have a high failure rate, but invest with the understanding that greater risks may bring greater rewards,
 - more likely influenced by material news releases than historical financial statements,
 - interested in intended milestones and performance relative to milestones,
 - more interested in the amount directors and management have invested in the venture issuer – their “skin-in-the-game”,
 - particular interest in the relationship between management compensation compared to amounts of capital spent on business development,
 - particular concern about discretionary expenditures and the issuer's “burn-rate”,

² These points are based on anecdotal information taken from consultation with venture issuers and various other market participants.

- particular interest in the details of related party transactions,
- interest in trading by directors and officers in the venture issuer's securities,
- **Common characteristics of venture issuers**
 - tend to have small internal staffs and proportionately smaller scale operations,
 - limited segregation of duties even as between directors and officers,
 - more likely to invest based on management and management's ideas and the anticipated future prospects,
 - more limited financial resources,
 - resource exploration and technology research and development companies,
 - may have no foreseeable prospects of generating significant revenue,
 - may rely for a prolonged period on financing to fund development and meet operational requirements,
 - financing windows are shorter and smaller and there is less competition for their funding,
 - smaller financings, proportionately fewer shareholders with significant positions and less analyst following all tend to create generally reduced trading liquidity,
 - limited financial resources can
 - make it more challenging to hire staff dedicated to securities regulatory compliance matters,
 - make the cost of professional and technical advisers proportionately more expensive,
 - increase reliance on stock-based compensation,
 - increase reliance on stock as a form of currency for acquisitions,
 - the combination of limited financial resources and the statistically greater risk of business failure can make it more difficult to attract and compensate experienced and independent directors and management.