



**KPMG LLP**  
Bay Adelaide Centre  
Suite 4600  
333 Bay Street  
Toronto ON  
M5H 2S5

Telephone (416) 777-8500  
Fax (416) 777-8818  
[www.kpmg.ca](http://www.kpmg.ca)

**SENT BY ELECTRONIC MAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Securities 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

Ashlyn D' Aoust,  
Legal Counsel, Corporate Finance  
Alberta Securities Commission  
Suite 600, 250-5<sup>th</sup> Street SW  
Calgary, Alberta T2P 0R4  
E-Mail: [ashlyn.daoust@asc.ca](mailto:ashlyn.daoust@asc.ca)

Anne-Marie Beaudoin,  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montreal, Québec H4Z 1G3  
E-Mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

November 28, 2012

Dear Sirs/Mesdames:

**Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Ventures Issuers* and Related Amendments**

This letter is in response to the Request for Comment published at (2012) 35 OSCB (Supp-4) concerning proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* and related amendments.

As indicated in our first response letter we generally support the direction the CSA has taken in the proposed materials to recognize venture issuers distinct from non-venture issuers.

We have a few comments set out below under the following headers

- Material change reports for related party transactions
- Issuers quoted in the U.S. over-the-counter market
- Major acquisitions
- Change of auditor

#### **Material change reports for related party transactions**

The proposed rule requires that upon the occurrence of a material related entity transaction or once a decision to implement a material related entity transaction is made either by the board of directors or by senior management who believe that confirmation of the board of directors is probable, that a news release is filed. By the 10<sup>th</sup> day after the event, Form 51-103F2 must either be filed or a press release available containing that same information.

We believe the rule should require that in the case that the board does not approve the transaction that material change disclosure occur again. The CSA responded to our previous comment on this matter that “We are of the view that a subsequent decision of the board not to approve a material related entity transaction would be a material change requiring material change disclosure and therefore an additional requirement is not necessary.” We believe that if the CSA is not explicit in their rule making, then issuers may not apply this appropriately. At a minimum, we believe guidance should be added to the Companion Policy to address this matter.

#### **Issuers quoted in the U.S. over-the-counter markets**

Can the CSA please explain the logic of why an Ontario only issuer that trades in the U.S. Over-the-Counter Market would be eligible to apply NI 51-103 but an Ontario issuer that also trades in another province would not be eligible to apply NI 51-103? NI 51-103 has incremental disclosures specifically desirable for smaller issues and now these will not be required for securities that are more widely traded.

## Major acquisitions

If a major acquisition has occurred subsection 23(3) requires interim financial reports. It was not clear whether this interim financial report should be accompanied by a notice indicating that an interim review was not performed, if that is the case. We suggest that such a notice should be required and recommend that this requirement be made explicit.

We also noted that the guidance under 23(2) refers issuers to NI 52-107 and the requirements for “major acquisitions.” We suggest that the terminology in NI 52-107 should be used when making such a cross reference being “acquisition statements” and then indicate that this guidance is applicable for “major acquisitions”.

## Change of auditor

The guidance with respect to change of auditor notices in Section 37 is not sufficiently precise. The predecessor auditor will not be able determine whether the notice fairly and fully provides the necessary information. Further, the lack of precision may result in non-material facts being disclosed and we do not believe that disclosure beyond that which is required today is necessary.

We believe the rules should be amended or guidance should be added to the rules which would align these more closely to the existing requirements in NI 51-102. For example, it should be clear that a difference of opinion may arise over numerous matters; however, the CSA only requires differences to be reported that could impact the audit report or interim review report (for example, when a modified opinion or modified communication or similarly when a qualified or adverse report or disclaimer would be appropriate).

Paragraph 37(2)(d)(iii) indicates issuers should report “a consultation, unresolved issue or any other reason unrelated to the content or presentation” of the financial statements. This would mean that consultations related to the financial statements which were an important factor in the decision would not be reported such as a consultation related to the application of accounting principles or scope restrictions. We believe the existing guidance in NI 51-102 should be retained.

We do not agree that matters unrelated to the financial statements should be disclosed in the change of auditor notice. This may require personality conflicts or disputes over fees to be reported. If it is the intent of the regulator that such matters which are incremental to the required disclosures in NI 51-102 be disclosed, then we suggest that explicit examples of what should be captured by “other reasons” be provided in the guidance.

Thank you for the opportunity to comment on NI 51-103 and related amendments. Should you wish to discuss our comments in more detail, we would be pleased to respond.



*November 28, 2012*

Yours truly,

A handwritten signature in black ink, appearing to read 'L Moschitto'.

Laura Moschitto  
Partner, KPMG LLP  
(416) 777-8068



*November 28, 2012*