

## VENTURE LAW CORPORATION

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British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Nova Scotia Securities Commission  
Prince Edward Island Securities Office  
Office of the Yukon Superintendent of Securities  
Office of the Superintendent of Securities, Government of the Northwest Territories  
Legal Registries Division, Department of Justice, Government of Nunavut

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Dear Sirs and Madams,

**Re: Multilateral CSA Notice MI 45-312 –  
Proposed Prospectus Exemption for Distributions to Existing Security Holders.**

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Thank-you for extending the opportunity to comment on *Multilateral CSA Notice MI 45-312 – Proposed Prospectus Exemption for Distributions to Existing Security Holders* (the “**Proposed Exemption**”). This letter is submitted on behalf of the undersigned and Venture Law Corporation.

Venture Law Corporation is a boutique securities law firm in Vancouver, British Columbia focused on the micro-cap and small-cap markets. We act as legal counsel to a number of junior issuers listed on the TSX Venture Exchange (“**TSXV**”) and Canadian Securities Exchange (“**CSE**”).

We support the Proposed Exemption and its goal to expand and expedite capital raising opportunities for small and medium sized enterprises listed on exchanges in Canada. The Proposed Exemption has the potential to assist venture issuers in raising capital more efficiently in Canada. It also has the potential to provide retail investors the opportunity to participate in unit offerings, flow-through offerings and discounted private placement offerings of issuers where they are existing security holders of without having to be an accredited investor.

### Response to Specific Questions

We are providing our comments on the Proposed Exemption in response to the specific questions raised in the request for comments in MI 45-312. Our comments are:

#### *1. If you are a TSXV issuer, will you use the Proposed Exemption?*

Not applicable.

We are not a TSXV issuer, however, based on comments received from clients and non-client issuers, the Proposed Exemption if implemented will be used by venture issuers seeking to raise capital.

#### *2. Should the Proposed Exemption be available to issuers listed on other Canadian markets?*

Yes. All reporting issuers have the same continuous disclosure requirements under Canadian securities laws and should be treated equally. We see no reason to distinguish TSXV issuers and venture issuers listed on other exchanges for eligibility to use the Proposed Exemption.

#### *3. Investors will only be able to invest \$15,000 in a 12-month period unless they obtain advice from a registered investment dealer. Is \$15,000 the right investment limit?*

No investment cap should be imposed. What is the CSA's rationale for imposing a \$15,000 investment limitation? This numerical cap appears to be arbitrary and unrelated to the regulatory reasons for allowing retail investors to acquire an issuer's securities under the Proposed Exemption. According to the TSX Group 2012 MiG Report, the average raise size of a TSXV issuer in 2012 was \$3.2 million. Over 213 existing security holders would have to participate in the offering if each investor was subject to a \$15,000 investment cap. Requiring this number of investors to participate in an offering would make the cost of capital under this exemption much higher than that associated with using the accredited investor exemption. Let each existing security holder determine what they want to invest in an offering under the Proposed Exemption. If the CSA insists on an investment cap, the cap amount should be raised to at least \$100,000 in a 12 month period.

Very few retail investors are likely to participate in any offering by venture issuers in the junior resource exploration sector at this time given current market conditions. We suggest you monitor the use of the Proposed Exemption and adjust the limit based on experience and future market conditions.

***4. In what circumstances would it be suitable for an investor that is a retail security holder to invest more than \$15,000 in a TSXV issuer?***

An investor knowledgeable about the company and its risks should be allowed to decide for his or herself what level of investment is suitable for them.

Micro-cap and small-cap issuers are heavily reliant on friends, family and other associates who may not otherwise meet the definitional requirements of the family, friends and business associates exemption in section 2.5 or the accredited investor exemption of section 2.3 of *National Instrument 45-106 Prospectus and Registration Exemptions*. This is true before and after these issuers list on a public market in Canada. These security holders often have a greater interest in the issuer and believe in management based on personal experience. They are also aware of the heightened risk issuers face in disappearing all together if they are unable to raise the required financing.

***5. Do you agree that there should be no investment limit if an investor receives suitability advice from a registered investment dealer?***

Yes. A registered investment dealer is subject to know your client, know your product and client suitability rules.

The Proposed Exemption should be expanded to allow investors to rely on the suitability advice of an exempt market dealer as well as a registered investment dealer when investing more than a stated limit. There is no reason to limit suitability advice under the Proposed Exemption to registered investment dealers only. Exempt market dealers are required to provide suitability advice in connection with all other private placement exemptions, including those involving the private placement of treasury securities by reporting issuers. Allowing exempt market dealers to provide suitability advice in addition to registered investment dealers may also help limit or control the costs these parties will impose when involved in these types of transactions. Brokered-private placements have fallen out of favour in recent years due to excessive fees.

***6. Do you agree that being a current security holder of an issuer enables an investor to make a more informed investment decision in that issuer?***

Yes. Retail investors invested in the company are more likely to have read the public disclosure documents of the issuer versus potential investors recently introduced to the issuer. Current security holders also have watched the issuer's stock trading activity in the market place, and often seek and talk to management at investment shows and other settings. Existing security holders in general are informed investors.

***7. What is the appropriate record date for the exemption? Should it be one day before the announcement of the offering or should it be a more extended period? If you think it should be a more extended period, what would be the appropriate period of time?***

Record dates serve several purposes. There is no reason to extend the record date beyond one day before the announcement. This would then tie into the pricing policy of the TSXV and CSE. There are other means to catch and correct any perceived abuses in the private placement process without restricting the ability of issuers to efficiently raise capital by imposing an extended record date period.

*8. We are currently proposing that the exemption be subject to the same resale restrictions as most other capital raising exemptions (i.e., a four month restricted period). However, there are some similarities between the proposed exemption and the rights offering exemption, which is only subject to a seasoning period.*

- *Do you agree that a four month hold period is appropriate for this exemption?*

Yes. The policy behind imposing a hold period is it prevents issuers from circumventing the registration requirement for public offerings by selling securities in a private placement to an individual with the understanding that the individual will immediately resell the securities to the public.

Under the Proposed Exemption, existing security holders who participate in an issuer's private placement are put on equal footing to accredited investors and investors acquiring the issuer's securities under other available exemptions under *National Instrument 45-106 – Prospectus and Registration Exemptions* by imposing a four month hold period.

The Proposed Exemption does not require an issuer to provide potential investors with an offering document such as a rights offering circular or a rights offering prospectus which justifies using a seasoning period versus hold period when a rights offering is conducted.

- *Should we require issuers to provide additional continuous disclosure, such as an annual information form?*

No. The need to file an annual information form is one reason the short form prospectus and offering memorandum exemption for qualifying issuers is not used by venture issuers. If an annual information form is required the Proposed Exemption will not be widely used or used at all by venture issuers.

- *If we were to consider a seasoning period for this exemption, should we consider some of the restrictions that apply under a prospectus-exempt rights offering, such as “claw-backs” limiting insider participation?*

No comment since we do not support a seasoning period.

- *If securities offered under the exemption were only subject to a seasoning period, would there be a greater need to ensure investors are made aware of and have an opportunity to participate in the offering?*

No comment since we do not support a seasoning period.

*9. We have not proposed any conditions regarding the structure of the financing, i.e., minimum or maximum price, maximum dilution, or period in which an offering must be completed. We contemplate that the proposed financing would be conducted under the standard private placement rules of the TSXV which, among other things, allow pricing at*

*a discount to market price. Is this appropriate or are there structural requirements that we should make a condition of the exemption?*

The Proposed Exemption should be allowed to be conducted under the standard private placement rules of the exchange on which the securities are traded. This class of investor, existing security holders of the issuer, should be treated identical to other investors in a private placement. No additional terms and conditions regarding the structure should apply.

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As discussed above we strongly support the CSA's implementation of the Proposed Exemption with the understanding that it is provided to all venture issuers and not just TSXV issuers. We also strongly encourage the Ontario Securities Commission and the Newfoundland Labrador Financial Services Regulation Division join the CSA participating jurisdictions in adopting the Proposed Exemption. The capital raising exemptions in Canada must be harmonized to ensure issuers and investors have the same opportunities wherever they reside.

If you have any questions regarding our views, please contact the undersigned.

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Per:

Alix B. Cormick

c:

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