Draft Regulations

Securities Act
(chapter V-1.1, s. 331.1, pars. (1), (3), (8), (19), (20), (19.2) and (34), and s. 331.2)

Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations and concordant regulations

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, chapter V-1.1, the following Regulations, the texts of which are published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 90 days have elapsed since their publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations.*

- *Regulation to amend Regulation 41-101 respecting General Prospectus Requirements;*

- *Regulation to amend Regulation 52-110 respecting Audit Committees*.

Draft amendments to the following policy statement are also published hereunder:

- *Amendments to Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations*;

- *Amendments to Policy Statement to Regulation 41-101 respecting General Prospectus Requirements*.

We are also publishing, for information only, blacklined excerpts of Regulation 51-102, Form 51-102F1 Management's Discussion & Analysis, Form 41-101F1 Information Required in a Prospectus, Policy Statement 51-102 and Policy Statement 41-101.

Request for comment

Comments regarding the above may be made in writing by **August 20, 2014**, to the following:

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May 22, 2014

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Draft Regulation to amend *Regulation 51-102 respecting Continuous Disclosure Obligations*

Draft Regulation to amend *Regulation 41-101 respecting General Prospectus Requirements*

Draft Regulation to amend *Regulation 52-110 respecting Audit Committees*

May 22, 2014

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments to:

- Draft Regulation to amend *Regulation 51-102 respecting Continuous Disclosure Obligations* (**Regulation 51-102**),
- Draft Regulation to amend *Regulation 41-101 respecting General Prospectus Requirements* (**Regulation 41-101**), and
- Draft Regulation to amend *Regulation 52-110 respecting Audit Committees* (**Regulation 52-110**) (the **Proposed Amendments**).

We are also publishing for comment proposed changes to:

- Policy Statement to Regulation 51-102 (**Policy Statement 51-102**), and
- Policy Statement to Regulation 41-101 (**Policy Statement 41-101**).

If adopted, the Proposed Amendments would, among other things, streamline and tailor disclosure by venture issuers. They are intended to make the disclosure requirements for venture issuers more suitable and manageable for issuers at their stage of development. The proposals address continuous disclosure and governance obligations as well as disclosure for prospectus offerings.

The text of the Proposed Amendments is published with this notice and is also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca

www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

We are also publishing, for information only, blacklined excerpts of Regulation 51-102, Form 51-102F1 *Management's Discussion & Analysis*, Form 41-101F1 *Information Required in a Prospectus*, Policy Statement 51-102 and Policy Statement 41-101.

Substance and Purpose

The Proposed Amendments are designed to focus disclosure of venture issuers on information that reflects the needs and expectations of venture issuer investors and eliminate disclosure obligations that may be less valuable to those investors. The Proposed Amendments are also intended to streamline the disclosure requirements for venture issuers to allow management of these issuers to focus on the growth of their business, and to enhance the substantive governance requirements for venture issuers.

In particular, the Proposed Amendments would, for venture issuers:

- if the venture issuer does not have significant revenue, allow the requirement for management's discussion and analysis (**MD&A**) for interim financial periods to be satisfied by a streamlined and highly focused report on quarterly highlights
- implement a new tailored form of executive compensation disclosure
- reduce the instances in which a business acquisition report (**BAR**) must be filed
- create a new requirement for audit committees to have a majority of independent members
- amend the prospectus disclosure requirements to reduce the number of years of audited financial statements required for venture issuers becoming reporting issuers and to conform the disclosure requirements to the Proposed Amendments related to continuous disclosure.

In addition, the Proposed Amendments would, for all issuers:

- revise the annual information form disclosure for mining issuers to conform that disclosure to the amendments made to *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (**Regulation 43-101**) in 2011
- clarify the executive compensation disclosure filing deadlines.

Background

The CSA previously proposed new rules and rule amendments designed to streamline and tailor venture issuer disclosure while improving requirements for corporate governance. These proposals contemplated a separate continuous disclosure and corporate governance regime for venture issuers. In July 2011 and September 2012, we published for comment proposed *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers* and related rule amendments (the **Previous Proposals**).

While more comprehensive than the Proposed Amendments, the Previous Proposals contained many of the same key elements, including streamlined quarterly financial reporting, executive compensation disclosure and business acquisition reporting. Support for the Previous Proposals was initially strong; however, support for the September 2012 publication fell significantly and the CSA withdrew its proposal in July 2013. Feedback from the venture issuer community indicated that the benefits from streamlining and tailoring were outweighed by the burden of the transition to a new regime, particularly at a time when many venture issuers were facing significant challenges.

The Proposed Amendments have retained important elements from the Previous Proposals. Rather than implementing them as part of a stand-alone, tailored regime for venture issuers, we now propose to implement them on a targeted basis by amending existing rules.

Summary of the Proposed Amendments

1. Amendments exclusively applicable to venture issuers

Amendments to Regulation 51-102

- *Quarterly highlights*: Currently, all issuers (venture and non-venture) are required to file quarterly interim MD&A using Form 51-102F1 *Management's Discussion & Analysis*. We propose to permit venture issuers without significant revenue to fulfil this requirement by preparing and filing a streamlined disclosure document, referred to as "quarterly highlights", in each of their first three quarters. The quarterly highlights consist primarily of a short discussion about the venture issuer's operations and liquidity. Venture issuers permitted to comply with the streamlined disclosure requirements could alternatively choose to comply with the existing interim MD&A requirement. (See Request for Comments below)

- *Business Acquisition Reports*: Currently, all issuers (venture and non-venture) must file a BAR (using Form 51-102F4 *Business Acquisition Report*) within 75 days of a significant acquisition. The BAR must include audited financial statements for the most recent financial year and pro forma financial statements. For venture issuers, an acquisition is "significant" under the current requirements if the asset or investment test specified in Part 8 of Regulation 51-102 is satisfied at the 40% level. We propose to increase the threshold for venture issuers from 40% to 100% (therefore reducing the instances where BARs are required) and eliminate the requirement that BARs filed by venture issuers must include pro forma financial statements. (See Request for Comments below)

- *Executive compensation disclosure*: Currently, all issuers (venture and non-venture) are required to file executive compensation disclosure using Form 51-102F6 *Statement of Executive Compensation* (**Form 51-102F6**).The disclosure requirements that apply to venture and non-venture issuers are nearly identical. We propose a new executive compensation disclosure form for venture issuers (**Proposed Form 51-102F6V**) that would tailor disclosure more specifically for venture issuers and would:

- reduce the number of individuals for whom disclosure is required from a maximum of five to a maximum of three (the CEO, CFO and one additional highest-paid executive officer)
- reduce the number of years of disclosure from three to two
- eliminate the requirement for venture issuers to calculate and disclose the grant date fair value of stock options and other share-based awards in the summary compensation table. Instead, venture issuers would disclose detailed information about stock options and other equity-based awards issued, held and exercised.

Venture issuers would be able to choose whether to comply with Form 51-102F6 or Proposed Form 51-102F6V.

Amendments to Regulation 52-110

- 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. This would not be a new requirement for TSX Venture Exchange listed issuers, which are already required to meet an almost identical requirement under that exchange's policies. (See Request for Comments below)

Amendments to Regulation 41-101

- *Audited financial statements*: The Proposed Amendments would reduce from three to two the number of years of audited financial statements required in an initial public offering (**IPO**) prospectus for an issuer that will become a venture issuer on completion of its IPO.

- *Description of the business and history*: The Proposed Amendments would reduce the requirement to describe a venture issuer's business and its history from three to two years.

- *Conforming to proposed continuous disclosure changes*: The Proposed Amendments would also conform the prospectus disclosure requirements to the corresponding continuous disclosure changes described above by:

    - allowing venture issuers to use quarterly highlights instead of existing interim MD&A in their prospectus

    - allowing venture issuers to comply with executive compensation disclosure requirements using the Proposed Form 51-102F6V in their prospectus

    - only requiring the inclusion of BAR-level disclosure in a prospectus of a venture issuer where the acquisition is significant at the 100% level. (See Request for Comments below)

Venture issuers could still choose to provide prospectus disclosure in accordance with existing interim MD&A and Form 51-102F6.

2. ***Amendments applicable to venture and non-venture issuers***

Amendments to Regulation 51-102

- *Mining issuer disclosure*: The Proposed Amendments include revisions to Form 51-102F2 *Annual Information Form*, to conform to changes made to Regulation 43-101 in 2011.
- *Filing requirements for Form 51-102F6 and Proposed Form 51-102F6V*: The Proposed Amendments contain revised requirements for filing executive compensation disclosure. We propose that:
    - non-venture issuers that are required to file an information circular file Form 51-102F6 not later than 140 days after their most recently completed financial year
    - venture issuers that are required to file an information circular file Form 51-102F6 or Proposed Form 51-102F6V not later than either 140 days or 180 days after their most recently completed financial year (see Request for Comments below)
    - the requirements in section 11.6 of Regulation 51-102 will only apply to issuers that do not have a requirement to send an information circular and do not send an information circular.

Anticipated Costs and Benefits of the Proposed Amendments

We think the tailoring of venture issuer disclosure will enhance informed investor decision making for the venture issuer market by improving the quality of information available to investors while reducing the burden of preparation for venture issuers. For example, we expect that a venture issuer satisfying the interim MD&A requirement by filing quarterly highlights to be able to do so with disclosure no longer than one or two pages in length, which would be tailored to meet the needs and expectations of venture issuer investors. The Proposed Amendments will eliminate some disclosure obligations; however, we think that those eliminated obligations may be of less value to venture issuer investors and that the Proposed Amendments will result in more relevant disclosure for those investors. The resulting streamlined disclosure should also make it easier for venture issuer investors to read disclosure documents and locate key information.

The Proposed Amendments will reduce the length of some disclosure instructions applicable to venture issuers. We expect this to allow venture issuer management more time to focus on the growth of the business.

The Proposed Amendments will also enhance corporate governance by introducing an audit committee independence requirement for venture issuers.

Request for Comments

We welcome your comments on the Proposed Amendments, and the proposed changes to the related companion policies. In addition to any general comments you may have, we also invite comments on the following specific questions:

Questions relating to quarterly highlights

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?

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

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 Regulation 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 Regulation 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.

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?

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?

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?

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?

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?

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. Regulation 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 Regulation 52-110? If so, which exceptions do you think are appropriate?

Please submit your comments in writing on or before August 20, 2014. If you are sending your comments by email, please also send an electronic file containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

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

Deliver your comments **only** to the addressees below. Your comments will be distributed to the other participating CSA.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the website of the *Autorité des marchés financiers* at www.lautorite.qc.ca and the website of the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Contents of Annexes

The following annexes form part of this CSA Notice:

Questions

Please refer your questions to any of the following:

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