

May 10, 2012

## Revised Disclosure Requirements for Venture Issuers

By David J. Lowdon

The Canadian Securities Administrators recently published a proposed new National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers and Related Amendments* (“**NI 51-103**”), which, when implemented, will introduce a new regulatory regime for venture issuers. NI 51-103 is intended to streamline and tailor venture issuer disclosure requirements and replace the governance, disclosure and certification obligations currently mandated for venture issuers under a number of different national instruments..

If adopted, NI 51-103 will introduce a new definition of venture issuer, which excludes debt only issuers, preferred share only issuers and issuers of securitized products. NI 51-103 will also introduce, among other things, the following key concepts in respect of venture issuer governance and continuous disclosure requirements:

1. Requiring an annual report, which will combine disclosure of business governance, executive compensation, audited annual financial statements, associated management discussion and analysis (“**MD&A**”) and CEO / CFO certifications into one document and which must be filed within one hundred and twenty (120) days of the venture issuer’s financial year end.
2. Removing the requirement to include governance and executive compensation disclosure in the venture issuer’s information circular.
3. Allowing voluntary filing of three (3) and nine (9) month interim financial reports and associated MD&A. Venture issuers will no longer be required to file these financial reports and associated MD&A but may volunteer to do so.
4. Requiring a mid-year report that will include a six (6) month interim financial report, associated MD&A and CEO / CFO certifications, which must be filed within sixty (60) days of the end of the mid-year period.
5. Requiring that the majority of the members of the venture issuer’s audit committee not be executive officers or employee of the venture issuer or its affiliates.
6. Requiring enhanced material change reporting, including financial statements for acquisitions that are one hundred (100%) percent significant (based on the market capitalization of the venture issuer), which will replace business acquisition reports.
7. Introducing the obligation to report any material related entity transactions on a timely basis.



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8. Setting out substantive corporate governance requirements relating to conflicts of interest, related party transactions and insider trading. Venture issuers will be required to disclose each person or company other than executive officers that, to the knowledge of the venture issuer, is a reporting insider.
9. Requiring individual compensation disclosure for directors and named executive officers consistent with Form 51-102F6 *Statement of Executive Compensation*, which will be tailored to venture issuers.
10. Introducing an alternate method of mailing annual reports, mid-year reports and information circulars to shareholders through a “notice and access” system.

NI 51-103 also outlines proposals in respect of prospectus and certain exempt offerings, including:

1. Modifying disclosure obligations of venture issuers in connection with the long form prospectus by introducing a new form to be used by venture issuers, which will conform to the disclosure required by the annual report.
2. Requiring only two (2) years of historical financial statements in initial public offering prospectuses rather than the current requirement of three (3) years.
3. Modifying the documents required to be incorporated by reference in the case of short form prospectuses.

NI 51-103, if and when approved, will provide venture issuers and their advisors with a cohesive continuous disclosure framework, which will be quite different from the current disclosure regime for venture issuers. It's not too soon to start planning for this change. Your lawyer can help you with that.

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