

# Blakes Bulletin

## Securities Regulation

### Securities Authorities Propose Streamlining Venture Issuer Regulation

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The securities regulatory authorities (the Securities Authorities) in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan have recently published Multilateral Consultation Paper 51-403: *Tailoring Venture Issuer Regulation* (the Paper) to determine if there is market interest in streamlining venture issuer regulation. The securities regulatory authorities in Ontario and Quebec are also encouraging their market participants to participate in this consultation.

All proposals described in the Paper are expected to apply to reporting issuers that trade on the TSX Venture Exchange (TSXV) and the Canadian National Stock Exchange (CNSX), as well as other reporting issuers whose equity shares trade over the counter in Canada or on certain international junior markets.

#### RATIONALE FOR PROPOSALS

The Paper notes that the current approach to securities regulation in Canada is largely “one size fits all” and, while the existing rules contain certain exemptions for venture issuers, the venture market has unique characteristics that warrant a tailored approach to regulation. First, venture issuers are less likely to have access to specialized professional support and would benefit from consolidated disclosure documents. Second, disclosure requirements should reflect the unique relevance of certain information to the venture

market investor. And third, the venture market is an important part of the economy that should not be stifled by unduly burdensome compliance requirements.

According to the Securities Authorities, the proposals have been designed to enhance investor protection and reduce regulatory costs for venture issuers.

#### SUMMARY OF PROPOSALS

Introduction of Regulatory Instrument Specific to Venture Issuers. The Securities Authorities have published a sample instrument, applicable only to venture issuers, that would replace the governance and continuous disclosure requirements in several existing National Instruments, namely: 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*.

The Securities Authorities anticipate that the consolidated instrument will reduce costs associated with using specialized compliance advisers due to duplicative provisions and disclosure requirements being eliminated and complex companion policies being replaced with plainly written guidance notes in the body of the instrument. However, the Securities Authorities acknowledge that a shift to a single securities instrument could create an initial learning curve and may complicate the transition for venture issuers to senior markets.

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### Highlights

- The securities regulatory authorities in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan have published a consultation paper, sample regulatory instrument and corresponding forms tailored for venture issuers
- Proposed mandatory annual report for venture issuers would replace many of the existing disclosure requirements under various national instruments
- Deadline for written submissions on the proposals is September 17, 2010

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**Introduction of Required Annual Report.** The proposed rules would require venture issuers to file an annual report. Existing rules allow a venture issuer to file an annual information form (AIF) if such issuer wishes to access the short form prospectus offering system or certain prospectus-exempt offerings. However, there is no requirement to do so. Unlike the existing disclosure framework, the proposed annual report would emphasize forward-looking rather than retrospective disclosure and would only require a two-year business history as compared to the three-year snapshot that is currently required in an AIF.

The annual report would be designed to assist investors by consolidating information into one document containing the material information of the venture issuer. It would combine certain disclosure elements found in the existing AIF, management's discussion and analysis (MD&A), annual audited financial statements, and annual meeting information circular.

The Securities Authorities indicate that items required to be disclosed in the annual report would include:

- *Description of the business.* Venture issuers would be required to briefly describe the material aspects of the venture issuer's business.
- *Comparison of business development expenses vs. executive compensation.* Venture issuers would no longer be required to include this information in an information circular. The method of reporting executive and director compensation would be greatly simplified.
- *Biographical disclosure of executives.* Venture issuers would no longer be required to include this data within an information circular.
- *Material contract summaries.* Venture issuers would be required to describe the purpose for entering the contract and its expected impact on the business.
- *Trading by reporting insiders.*
- *Trading price and volume.*
- *Outstanding securities.*

### ADDITIONAL HIGHLIGHTS

**Replacement of Three- and Nine-Month Interim Financial Statements with Mid-Year Report.** Three- and nine-month interim financial statements and associated MD&A would no longer be required. Instead, venture

issuers would be required to file a mid-year report that includes financial statements and corresponding MD&A. The mid-year report would also require the disclosure of recent insider transactions and material updates about the issuer.

**Enhanced Certifications.** Robust certificates would need to accompany the annual and mid-year reports. The Securities Authorities believe that this enhanced certificate requirement would increase management's attention to the quality of disclosure.

**Enhanced Disclosure Standards.** Directors and officers of a venture issuer would be held liable for authorizing, permitting, or acquiescing to statements made by or on behalf of the issuer that are inconsistent with its most recently filed disclosures, subject to a due diligence defence. This measure is targeted at reducing confusing statements made in forums, such as websites, and where disclosure is not filed with the securities regulatory authorities.

**Enhanced Governance Standards.** The Securities Authorities believe that substantive governance requirements would help ensure proper corporate behaviour in venture markets where pressure from investors, such as institutional investors, is lacking. The following measures are proposed:

- *Enhanced duties of directors and officers.* Directors and officers of venture issuers would be required to act honestly and in good faith with a view to the best interests of the venture issuer (this would be in addition to any similar duties imposed by corporate law). This requirement would be mandated within the instrument, and thus enforceable by securities regulators.
- *Policies to address conflicts of interest and related entity transactions.* Directors of venture issuers would be required to implement policies designed to ensure that they are made aware of and have an opportunity to consider perceived conflicts of interest and each proposed material related entity transaction.
- *Trading policies.* Issuers would be required to implement policies designed to deter persons in possession of undisclosed material information from illegally transacting, or encouraging others to transact in the issuer's securities.

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**Replacement of Business Acquisition Reports with Enhanced Material Change Reporting.** The proposed rules would replace the business acquisition report with material change report-style disclosure for venture issuers. Also proposed would be a new requirement to disclose "Disclosable Events". A "Disclosable Event" would include material related entity transactions and "significant transactions", a term defined to include significant acquisitions, significant dispositions, restructuring transactions as well as the re-filing of documents. Financial statements would not generally be required unless an acquisition was of 100% significance (based on market capitalization) to the venture issuer.

**Simplified Disclosure in Connection with Offerings.** Venture issuers would be able to rely on the proposed mid-year and annual reports to satisfy many of the disclosure requirements found in NI 44-101 – *Short Form Prospectus* and the qualifying issuer offering memorandum exemption under NI 45-106 – *Registration and Prospectus Offerings*.

Also, disclosure requirements would be consolidated for an issuer conducting an initial public offering under NI 41-101 – *General Prospectus Requirements* where such issuer intends to be a venture issuer following the offering. Only the type of reporting required by the annual report would be required in the IPO prospectus instead of the heavier burden imposed by NI 41-101.

### CONSULTATION PROCESS

The Securities Authorities are encouraging market participants to provide input on the proposals outlined in the Paper. Written comments may be submitted in hard copy or electronic form by September 17, 2010. After the consultation, we expect the Securities Authorities to publish a draft multilateral instrument, with another comment period following such publication.

For further details, or if you have any questions concerning this bulletin, please contact [Teresa Budd](#) at 604-631-4258, [Denis Silva](#) at 604-631-4268 or any other member of our [Securities Group](#).

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