

Securities Law Bulletin

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Changes to the Venture Issuer Rules

By: Rebecca Kacaba*

The Canadian securities commissions have implemented a number of changes to the continuous disclosure and governance obligations of venture issuers which came into force on June 30, 2015.¹ Venture issuers in Canada are typically junior public companies with shares listed on the TSX Venture Exchange (TSX-V) or the Canadian Stock Exchange (CSE). These amendments are intended to soften the regulatory disclosure requirements imposed on these venture issuers by achieving a fairer balance between the expense of compliance for these smaller, younger public companies and the interests of the venture issuer investor community at large.

Highlighted here are five important changes:

1. Quarterly Highlights

Venture issuers will have the option to provide quarterly highlights instead of a full interim management's discussion and analysis (MD&A) for financial years beginning on or after July 1, 2015. The new quarterly highlights will involve a brief summary of relevant information regarding the venture issuer's operations, liquidity and capital resources, and an analysis of the issuer's financial condition, including known trends, risks or demands, major operating milestones, commitments, expected or unexpected events, or uncertainties that have materially affected the company's operations.² The quarterly highlights are believed by regulators to meet the needs of investors in smaller venture issuers who do not have significant revenue. For venture issuers with significant revenue, however, the full interim MD&A is still recommended as it allows investors to make

more knowledgeable and informed investment decisions. The new amendments do not define a threshold for the significance of a venture issuer's revenue; issuers are advised to consider their investors' needs and consult with counsel when considering whether to provide investors with the quarterly highlights or full MD&A.

2. Executive Compensation Disclosure

The amendments to NI 51-102 introduce a new Form 51-102F6V for venture issuers, "Statement of Executive Compensation." The number of executive officers required to be included in the compensation disclosure has been reduced from five to three (the Chief Executive Officer, the Chief Financial Officer and the other most highly-compensated individual whose compensation exceeds \$150,000), and the number of years for which the information on executive compensation must be disclosed has been cut from three to two years. Venture issuers are also no longer required to calculate and disclose the grant date fair value of stock options and other share-based awards in the summary of compensation table. These changes to content are in force. The deadline for venture issuers to file executive compensation disclosure has been extended from 140 to 180 days after their financial year-end. Regulators believe 180 days after the financial year-end for venture issuers is a reasonable deadline as the information to be included in the executive compensation disclosure will be available to venture issuers at the time of filing their annual financial statements. Non-venture issuers will be required to file executive compensation disclosure within 140 days of their financial year-end. The new filing deadlines apply for financial years beginning on or after July 1, 2015.

¹ See http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20150409_51-102_csa-notice-amend.htm

² 51-102CP contains more detailed guidance on the requirements for quarterly highlight disclosure. There is also an amended Form 51-102F1 that sets out the requirements.

3. Business Acquisition Reports

A business acquisition report (BAR) must be filed when a venture issuer has entered into a significant acquisition. The threshold at which a BAR is required has been increased by the amendments. Venture issuers will now only be required to file a BAR if they acquire a business or group of related businesses in which their consolidated share, investment or advances are more than 100 per cent of the value of the consolidated assets of the venture issuer prior to the acquisition, rather than 40 per cent. This change is intended to lighten the administrative burden and costs to venture issuers related to completing acquisitions, as BARs typically include substantial disclosure and audited financial statements for the business acquired. BARs filed by venture issuers will also no longer need to include pro forma financial statements.

4. Audit Committee Composition Requirements

The amendments to NI 52-110 changed audit committee composition requirements, which actually impose stricter regulations on venture issuers. Audit committees will now be required to have at least three members, a majority of whom are not executive officers, employees or control persons. The TSX-V already imposes such a requirement for audit committee composition, however, so the new rule will not be burdensome for that group of venture issuers. There are limited exemptions from the audit committee composition requirements for events beyond the control of an issuer and for death, disability or resignation of an

audit committee member. This change is required to be implemented by January 1, 2016 to allow CSE-listed issuers time to locate the necessary individuals for compliance.

5. Reduced Obligations for IPO Prospectus Disclosure

For a venture issuer's initial public offering (IPO) prospectus disclosure, they will now only be required to include audited financial statements for the two most recently completed financial years instead of three years. Non-venture issuers are still required to include three years of audited financial statements. Correspondingly, the description of the business and operating history mandated in IPO prospectuses is only required to be included for the last two completed financial years.

The Corporate Finance Group at Aird & Berlis LLP has extensive experience in advising clients on continuous disclosure and governance obligations. For more information, please contact any member of the Corporate Finance Group. Details can be found on our [Corporate Finance Group web page](#), by clicking on [members](#).

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