

## Corporate Securities Law

August 31, 2011

### Proposed Governance and Disclosure Requirements for Venture Issuers

In July 2011, the Canadian Securities Administrators published for comment a new governance and disclosure regulatory regime for issuers with securities listed on venture exchanges, such as the TSX Venture Exchange and the Canadian National Stock Exchange in Canada. The proposal, which is open for comment until October 27, 2011, has been designed to (i) streamline and tailor disclosure requirements to balance the ability of venture issuers to manage those obligations with the needs and expectations of their investors, and (ii) consolidate the bulk of the requirements applicable to venture issuers in a single instrument, National Instrument 51-103 *Ongoing Governance and Disclosure Requirements For Venture Issuers*.

Specifically, the new national instrument is intended to:

- simplify the disclosure regime applicable to venture issuers;
- reduce disclosure redundancies;
- focus on disclosure requirements of more value to investors in the space; and
- enhance governance standards.

#### Highlights of the Proposal

##### *Changes to Continuous Disclosure Requirements*

Features of the proposed new continuous disclosure regime include the following:

- Annual Report – Within 120 days from financial year-end, a venture issuer would be required to file a comprehensive annual report that would combine in one document business, governance and executive compensation disclosure, audited annual financial statements, associated MD&A and CEO / CFO

certifications. This would consolidate and replace current annual financial disclosures, certain compensation and governance disclosure currently required to be disclosed in management information circulars and the annual information form requirement (which currently must only be filed by venture issuers that wish to be eligible to file a short-form prospectus).

- Mid-Year Report – Within 60 days from each mid-year period, venture issuers would be required to file a mid-year report that includes a six month (unaudited) interim financial report, associated MD&A and CEO / CFO certifications. Venture issuers would no longer be required to file interim financial statements, MD&A and CEO / CFO certifications on a quarterly basis.
- Material Change, Related Entity Transaction, and Major Acquisition Reporting – Venture issuers would have a single form on which to report material changes, related party transactions and major acquisitions. The financial reporting relating to business acquisitions would be similar to that currently required under the business acquisition reporting rules, but would only be triggered by larger acquisitions (i.e. those acquisitions where the consideration paid by the venture issuer is 100% or more of the market capitalization of the venture issuer).
- Delivery of Continuous Disclosure Documents – Mailing of disclosure documents would no longer be mandatory. Instead, venture issuers would only be required to physically deliver disclosure documents upon request.

##### *Enhanced Governance Responsibilities*

The proposal introduces new substantive corporate governance requirements for venture issuers. Pursuant to these new requirements, venture issuers would be required to:

- develop policies and procedures to address conflicts of interest and related party transactions;
- develop policies and procedures to reduce the risk of insiders trading when in possession of material undisclosed information (consistent with the guidelines for all reporting issuers presently in place);

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- ensure that the audit committee is composed of at least three directors, a majority of whom are not executive officers or employees of the venture issuer (under current rules venture issuers are exempt from the audit committee independence requirements); and
- provide enhanced corporate governance-related disclosure.

## *Changes to Prospectus Requirements*

The proposal includes a number of amendments to both the long-form and short-form prospectus rules applicable to venture issuers in order to simplify the regimes and streamline them with the other proposed disclosure requirements. For example, under the proposed amendments, venture issuers would only be required to include two years of audited annual financial statements in a long-form prospectus, as opposed to the three years that are required under the current regime. In addition, all venture issuers that have filed the new annual report would be eligible to file a short-form prospectus.

Please contact any member of the Goodmans Corporate Securities Group to discuss the implications of these proposed regulations.