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New Developments in Venture Issuer Reporting

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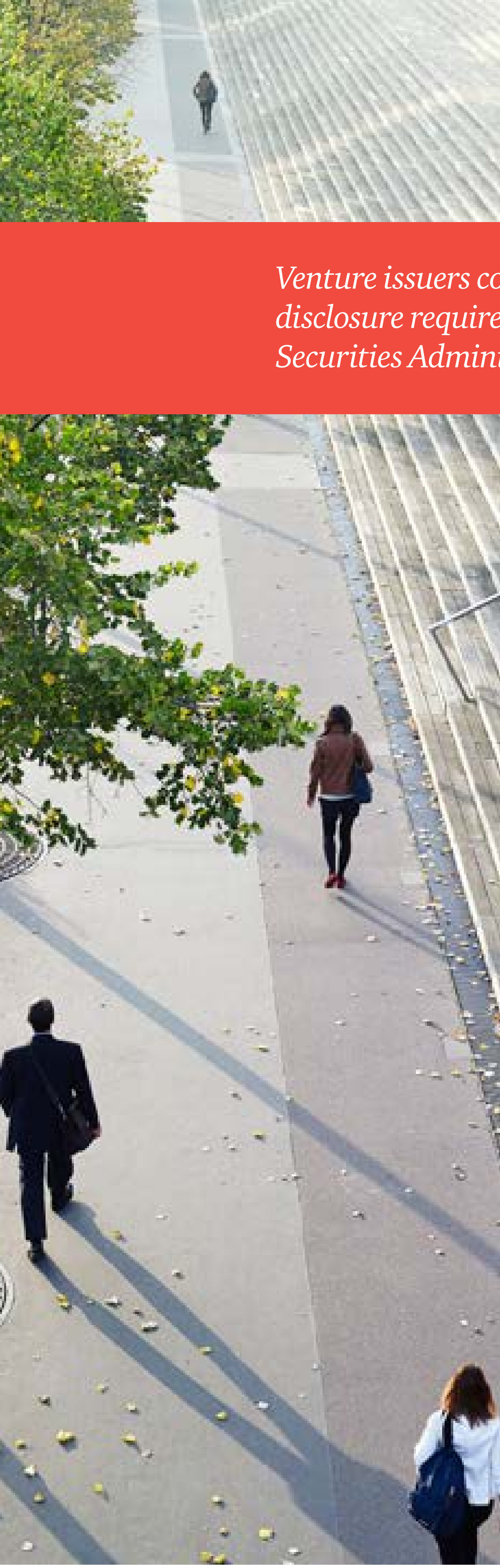

Venture issuers could benefit from significantly reduced continuous disclosure requirements, if new proposals published by the Canadian Securities Administrators (CSA) this May are implemented.

The latest proposals are part of a continued effort by the CSA to balance the needs and expectations of investors for venture issuers' disclosures, while eliminating disclosure obligations that may be less valuable to those investors and to allow management to focus on their business. The proposals also tighten governance rules around audit committee membership. The most significant changes are summarized in this short publication.

What is a venture issuer?

A venture issuer is a reporting issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchanges, a U.S. marketplace, or a marketplace outside of Canada and the U.S. (other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc). For example, issuers that trade only on the TSX-V or CNSE exchanges will qualify as venture issuers.

Financial highlights

Venture issuers without significant revenue are permitted to file an "Interim MD&A – Quarterly highlights" to accompany the financial statements instead of a full interim MD&A. The quarterly highlights are a short discussion of the issuer's operations and liquidity and include a discussion of the material effects resulting from a change in accounting policies in the quarter. The proposals do not change the requirement to file interim financial statements on a quarterly basis.

A venture issuer without significant revenue may choose to continue filing full interim MD&As. Venture issuers that do have significant revenue must continue to file an interim MD&A under the current form.

Significant revenue?

Current regulations do not provide much guidance as to when a venture issuer has "significant revenue". The proposals would add guidance that significant revenue is based on total actual revenue for the year, but is not proposing thresholds for how "significance" is measured in this context.

BAR requirements

Venture issuers are required to file a Business Acquisition Report (BAR) if an acquired business or group of related businesses meet either an "asset test" or an "investment test". The size thresholds of these tests are increased under the proposals, such that a venture issuer would only be required to file a BAR if they meet one of the following:

- Asset test - The venture issuer's proportionate share of the consolidated assets of the business or related businesses exceeds 100 percent of the consolidated assets of the venture issuer.

- Investment test - The reporting issuer's consolidated investments in and advances to the business or related businesses as at the acquisition date exceeds 100 percent of the consolidated assets of the reporting issuer.

Additionally, if a BAR is required to be filed by a venture issuer, the BAR need not include a *pro forma* income statement or balance sheet.

Executive compensation

The proposals include a new, simplified form for executive compensation that may be used by venture issuers (Form 51-102FV6). The simplifications reduce the number of executives for whom disclosure is required to three (CEO, CFO and the next highest paid executive officer), and change the information required for stock-based compensation. Only two years of information will need to be disclosed, compared to the current requirement of three years. Further, the CSA is seeking feedback on whether executive compensation information should be filed within 140 days of the year end, 180 days of the year end for venture issuers or some later date.

Venture issuers have the option to continue to use the current executive compensation form (NI 51-102F6).

Background to the proposals

The CSA first proposed a new, separate, disclosure regime for venture issuers in July 2011 – proposed National Instrument 51-103 (NI 51-103). NI 51-103 would have required only half-yearly reporting (rather than quarterly reporting) and a new format "annual report", encapsulating revised annual continuous disclosure requirements into a single filing document.

After a review of comment letters received on the 2011 proposals, the CSA revised the proposals in September 2012, reinstating quarterly reporting and making a number of other changes. However, after considering feedback on the revised proposals, the CSA determined not to continue with finalizing NI 51-103. These latest proposed amendments to NI 51-102 incorporate much of the same relief that was proposed in 2012, but in the form of amendments to the existing National Instrument, rather than a separate venture issuer regime.

Composition of the audit committee

Under the proposals, venture issuers will be required to have at least three directors that are members of the audit committee, and a majority of the audit committee members must not be an executive officer, employee or control person of the venture issuer or an affiliate to the venture issuer.

Annual financial statements in a prospectus

IPO venture issuers will not have to include the third year back for the income statement, cash flows or statement of changes in equity. Similarly the prospectus will be required to disclose a history of the issuer for only the last two recently completed financial years.

As part of these amendments the CSA has also taken the opportunity to conform disclosure in the Annual Information Form for mining issuers to those made in compliance with National Instrument 43-101, *Standards of Disclosure for Mineral Projects*. These changes would apply to all mining issuers regardless of whether they meet the definition of a venture issuer.

What's next?

The CSA is seeking comments on their proposals by August 20, 2014.

For more information on the proposals or to discuss how they would affect your business please reach out to any PwC contact.