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September 15 2010

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Nova Scotia Securities Commission
New Brunswick Securities Commission
Saskatchewan Financial Services Commission

c/o Denise Weeres
Alberta Securities Commission
400, 300 – 5th Avenue S. W.
Calgary, AB T3B2A6

Re: CSA Multilateral Consultation Paper 51-403, Tailoring Venture Issuer Regulation

We would like to thank the securities regulatory authorities of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan for this opportunity to provide comments on the above-noted Multilateral Consultation Paper.

The Shareholder Association for Research and Education (SHARE) is an advisor to Canadian institutional investors. Since its creation in 2000, SHARE has provided proxy voting and shareholder engagement services as well as education, policy advocacy and practical research on emerging responsible investment issues.

Note that we have not addressed any of the specific questions set out in the Multilateral Consultation Paper. We provide instead our comments on proposals of particular concern to us.

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Duties of directors and executive officers

Of all of the proposals set out in the Multilateral Consultation Paper, the incorporation of the duties of directors and senior officers in securities regulation causes us the most concern.

One of the reasons for this proposal set out in the Multilateral Consultation Paper that we believe has merit is that unlike the obligations set out in corporate statutes which require investors to litigate, violations of the duties would be subject to enforcement by securities regulators.

The difficulty is, however, that the proposed provision would appear to establish a lower standard for the conduct of the directors and executive officers of venture issuers than that currently applies to all issuer under corporate statutes. We note that the obligation set out in the Multilateral Consultation Paper mirrors the corporate law language except that it requires directors and executive officers to "exercise the care, diligence and skill that a reasonably prudent person acting for a venture issuer would exercise in comparable circumstances" (page 14). In a footnote to the relevant text, the participant regulatory authorities note that their intention is "…to differentiate between the standard of care that might be expected of a more senior experienced board" (page15).

Although we are not opposed in principle to distinguishing between venture and non-venture issuers with respect to matters such as, for example, the required scope of public disclosures, we are of the view that tiered requirements with respect to the duty of care established for directors and executive officers are completely inappropriate. An investor should not have to accept that the directors and officers of a TSX Venture issuer are permitted to exercise the lower level of care, diligence and skill of a person who is less reasonably prudent than the directors and officers of an issuer on the Toronto Stock Exchange.

We would support the incorporation in securities regulation of a duty of care for directors and senior issuers that is identical to that set out in section 122 of the Canada Business Corporations Act.

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Non-management requirements for audit committees

We agree that it is important to establish a minimum level of independence for audit committees of ventures issuers. We do not believe that adopting the low standard of independence set out in Canada's corporate statutes is appropriate, however. We would recommend that a majority of the members of the audit committee of a venture issuer be independent as defined in National Instrument 52-110.

Elimination of three and nine month interim financial statements/MD&A

As noted above, we are not opposed in principle to distinguishing between venture and non-venture issuers with respect to the required scope of public disclosures. For better or worse, however, quarterly reporting by issuers and the assessment of these reports by investors is a well-established and expected practice in our financial markets. Deviation from this practice would require a compelling benefit to participants in that market.

The rationale for this proposal set out in the Multilateral Consultation Paper is that "it might free up management time to focus on the critical function of successfully developing the business" (page 13). We would suggest that if an issuer does not have the resources to both develop its business and report its results out to the market at the conventional quarterly intervals, the appropriate course of action would be to delay entry into the public market until it can meet these expectations.

We are pleased to have had an opportunity to provide you with our comments. If you have any questions or comments, do not hesitate to contact the writer.

Sincerely,

Laura O'Neill
Director of Law and Policy