A TAILORED FIT: STREAMLINED DISCLOSURE RULES TO SUIT VENTURE ISSUERS

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Just as the modern business suit has become slim and trim, so too are the disclosure rules for venture issuers changing with the times. Recognizing that venture issuers[1] and their investors have unique needs, the Canadian Securities Administrators (CSA) are streamlining venture issuer disclosure rules. Published for comment in May 2014, the CSA announced last week the *impending implementation of the new rules*. Except as noted below, the new rules go into effect June 30, 2015.The new disclosure rules are the culmination of a process the CSA began in July 2011. The CSA initially employed a bespoke approach, crafting an entirely new national instrument for venture issuer disclosure. However, it later abandoned the initiative, not wanting to burden venture issuers with a new regime in already difficult financial times. As McMillan discussed in a *bulletin* published last May, the CSA instead has opted to take existing disclosure rules in at the sides with more digestible, targeted amendments to various national instruments and companion policies.[2]

In general, the rules will make disclosure obligations in respect of management discussion & analysis (MD&A), executive compensation, business acquisition reports, and prospectuses more suitable and manageable for companies at the venture stage of development. At the same time, they will substantively strengthen corporate governance by requiring venture issuers to have more independent audit committees.

The final amendments do not differ substantially from the May 2014 proposals, but there are some notable differences that will benefit all venture issuers. The key amendments include:

> *1. Quarterly Highlights: All venture issuers may opt to provide their investors with "quarterly highlights" documents for interim financial periods, focused on operations and liquidity, in place of a full MD&A. Under the initial May 2014 proposal, only venture issuers without significant revenue would have been able to issue these highlights. The CSA is now allowing venture issuers to make a 'made-to-measure' decision on whether they will provide quarterly highlights or an MD&A, commenting that venture issuers will likely take into account the size of their operations and the needs of their investors when making this decision.*
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> *The option to provide quarterly highlights will apply in respect of financial years beginning* ***on or***

after July 1, 2015.

2. Executive Compensation Disclosure: Venture issuers may opt to use the new Form 51-102F6V Statement of Executive Compensation – Venture Issuers, which tailors executive compensation disclosure by:

> *a. reducing required disclosure from five to three executives (CEO, CFO, and one additional highest-paid executive officer);*
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> *b. reducing the number of years of disclosure from three to two; and*
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> *c. eliminating the requirement to calculate and disclose the grant date fair value of stock options and other share-based awards in the summary compensation table. Instead, venture issuers can disclose certain information about stock options and other equity-based awards issued, held and exercised.*

The CSA has also relaxed the disclosure of the value of perquisites from the initial May 2014 proposal. There is now a staggered threshold based on the executive officer or director's base salary.

In addition, venture issuers will have 180 days from their financial year-end to file executive compensation disclosure. This new deadline applies in respect of financial years beginning ***on or after July 1, 2015***.

3. Business Acquisition Report (BAR) Disclosure: The significance test for venture issuers to file BARs for acquisitions has been raised from 40% to 100%, reducing the instances where BARs will be required. In addition, BARs filed by venture issuers will no longer need to contain pro forma financial statements.

The CSA had requested comments on whether the significance test for BAR disclosure in information circulars related to and prospectuses used to finance proposed acquisitions should remain at 40%. Ultimately, the CSA decided the significance thresholds should be harmonized at 100% in all cases.

4. General Prospectus Requirements: In addition to the BAR disclosure discussed above, venture issuers are now relieved from certain prospectus requirements. The amendments reduce the number of years of audited financial statements that are required to be disclosed in an IPO prospectus from three to two. Venture issuers are only required to describe two years of their

> *business history, as opposed to three.*
>
> *5. Audit Committees: There will now be a new requirement for venture issuers to have an audit committee consisting of at least three members, the majority of whom must be independent. As there is already a comparable requirement under the policies of the TSX Venture Exchange, this amendment will mainly affect issuers listed on other exchanges - for example, the Canadian Securities Exchange.*
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> *The audit committee composition requirements will apply in respect of financial years beginning* ***on or after January 1, 2016****.*

The final amendments also require non-venture issuers to file statements of executive compensation 140 days from their financial year-end and contain certain housekeeping amendments to Form 51-102F2 *Annual Information Form* to comply with previously enacted mineral project disclosure amendments (affecting venture and non-venture issuers).

Some commenters opposed the amendments out of concern for investor protection. The CSA responded that it believes the amendments strike the right balance between an investor's need for disclosure and the venture issuer's need for a streamlined and efficient disclosure system in the unique Canadian venture market. Running through the CSA's responses to comments received was the common thread that the CSA trusts venture issuers to make appropriate business decisions under this new, more flexible regime, taking their investors into account.

Facing tough economic conditions over the past few years, venture issuers may have felt hemmed in by onerous disclosure requirements that did not suit their needs and the needs of their investors. Ultimately, these new requirements will allow venture issuers to streamline their disclosure, reduce compliance-related fees, and allocate precious resources to the growth of the business, all while strengthening substantive corporate governance for investors.

by David Andrews

[1] Issuers that do not have securities listed or quoted on the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the U.S.

[2] The amendments mostly affect *National Instrument 51- 102 Continuous Disclosure Obligations* and its *companion policy*, *NI 41-101 General Prospectus Requirements* and its companion policy and NI 52-110 Audit Committees.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.