

***CICA's IFRS Conference  
for the Junior Oil and Gas Industry***

**Speaking Notes for  
Opening Address by  
Bill Rice, Chair  
Alberta Securities Commission**

The Canadian Institute of Chartered Accountants  
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## **Introduction**

Good Morning.

Thank you to the Canadian Institute of Chartered Accountants for the invitation to speak to you this morning.

I propose to discuss a few different subjects this morning. The first will be, not an argument for or against, but an update on the drive of the federal government to establish a federal securities regulator to replace the Alberta Securities Commission. The second will be the role of professional advisors, and in particular those in the accounting professions, in maintaining the integrity of our regulated disclosure system. The third matter will be a description of a proposed new regime of offering disclosure, continuous disclosure and corporate governance for venture issuers.

## **National Regulator**

The outcome of the debate over Alberta's participation in a federal securities commission has obvious implications for the Alberta Securities Commission. More importantly, I believe it has even greater implications for participants in the Alberta capital market and, in particular, junior issuers in that capital market. I will not use my allocated time today that would argue for retaining provincial jurisdiction and the independence of the ASC, but I will take just a couple of minutes to give you a status report on the federal initiative.

The Hockin Panel, appointed by the federal government in February of 2008, delivered its final report in January of 2009. The report recommended, as intended at its creation, that the federal government pass a federal securities act and establish a federal securities commission. Almost immediately upon delivery of that report, the federal government announced, in its January budget, its intention to draft a federal act and create a transition office to develop a plan for implementation of a federal regime. The sum of \$33 million was allocated to the transition office in that budget.

In July of 2009, the federal government announced that Doug Hyndman, former chair of the British Columbia Securities Commission, and Bryan Davies, chair of the Canada Deposit Insurance Corporation, would lead the federal transition team. It was announced shortly thereafter that Larry Ritchie, former vice-chair of the Ontario Securities Commission, had joined the federal transition team. Then in mid-October it was announced by the federal government that 10 members had been appointed to what is called an advisory committee to the transition team. Each of the Canadian provinces and territories is represented on the committee, excepting Quebec, Manitoba and Alberta.

The last appointments I have been made aware of, but that have not been publicly announced, are of representatives of various securities commissions that are members of the Canadian Securities Administrators, the umbrella group of Canadian securities regulators, to what I understand is to be called the Participating Regulators Committee. Again, Quebec, Manitoba and Alberta are not participants and I am informed that the Chairs of the commissions of the provinces participating are to be directly involved on this committee. I personally was not invited.

Last summer, the Government of Quebec announced that it would contest the constitutionality of the federal intrusion in the Quebec Court of Appeal. In October, the federal government announced that it would seek a ruling from the Supreme Court of Canada on the constitutionality of its effort to take over securities regulation in Canada. The interaction of the Quebec and federal actions have not yet been clarified, nor has the participation by other provinces in the court actions, Alberta potentially being one of them.

In the meantime, the Canadian Securities Administrators are doing their best to act in concert to conduct their regulatory responsibilities across Canada while governments, commissions and individual officers choose or are delegated to one side of the effort or the other.

That is the current lay of the land. If any of you would be interested in hearing more on the subject, I would welcome your inquiry.

### **Role of Accounting Profession**

There are a number of professions that have a significant role to play in the process of disclosure that is the cornerstone of our Canadian securities regulatory regime. Engineers, geologists, lawyers and chartered accountants have particularly important roles in connection with disclosure by oil and gas issuers.

We as securities regulators have a mandate to protect investors and the integrity of the capital markets. Clearly, investors will not participate in the capital markets and issuers will not survive in the capital markets if the industries that the issuers are involved in are not profitable or sustainable or if management teams are not capable. Furthermore, issuers will not be able to raise capital if their business plans are judged to be unattractive or, if attractive, their management teams are judged incapable of carrying them out. However, it is not the job of securities regulators to pass judgment on the viability of the industry, the credibility of the business plan or the competency of management. It is for investors and analysts to make those judgments. It is the job of securities regulators to ensure that the necessary information is available to allow investors and their advisors to make fully informed judgments about their investments.

In the long run, capital markets will be served best, issuers will be given the greatest opportunities to raise capital and investors will be the most willing of participants if offering and continuous disclosure is seen to be fair, balanced, objective, full and understandable, all from the perspective of the investor. I also believe that the reputations of the professions involved will be enhanced if they are seen to be reliable, in the conduct of their professional responsibilities, to ensure that disclosure carries those qualities.

Many will argue that it is naive to suggest that a professional advisor, engaged and paid by the issuer and having had to compete to acquire and hold the business of the issuer, should opt for fair, balanced, objective, full and understandable disclosure from the investor's perspective over that disclosure that is perhaps more flattering of the issuer and its prospects, as long as that more flattering disclosure still complies with the stipulated technical requirements of securities regulations, including GAAP. I would argue in opposition to that position that the damage done to the reputations of the issuer and its professional advisors and to the confidence of investors in the issuer, its professional advisors and the capital markets generally far outweigh the short-term comfort enjoyed by the compromising professional, and I do see the selection of technical compliance over best disclosure as a compromise of professional standards.

The longer I personally am away from being the professional adviser and now on the side of the fence that relies on the professionals, the more important I see to be the role of the professional in protecting the integrity of the whole of our disclosure system. Accountants should, in my view, see their responsibility as that of adding legitimacy to the story of the issuer and not of making favourable marketing pitches.

The place of accountants in contributing to good disclosure by junior oil and gas issuers is extremely important. While the junior issuer is not likely to have a complicated structure or operation, it is probable that management may enjoy a comparatively lower level of experience and budgets may be constrained. The junior issuer likely needs help in determining required disclosure, has less time to focus on it and does not want to be distracted by it. As players in the public markets, junior issuers present particular challenges for regulators for those very reasons.

At the ASC, we are prepared to allocate a disproportionate amount of our time and effort to junior issuers, acknowledging their potential to become significant participants in our capital markets. If we are to continue to devote our resources to these issuers, we will need help from those professionals who practice in the area and hope that they as well have a goal to defend and elevate the integrity of the market. The consequences of deficient or comprised advice include added regulation and costs, a disinclination on the part of the regulators to be patient and positive, and eventual loss of the effectiveness of western Canada's junior market system and its unique opportunities.

### **Venture Company Initiative**

That plea to you as professional advisers to issuers in the junior oil and gas industry leads me then to a major effort on the part of the ASC to enhance the health, reputation and effectiveness of the venture market in Canada.

The ASC has been very supportive over a course of years of the efforts of the CSA to consider proportionate regulation for venture issuers. During this same time we have continued to hear from venture market participants with concerns about the regulatory framework.

Based on our own observations and the market feedback received, we determined that the current approach to venture market regulation could be modified so that it would allow us to better address the needs and expectations of investors in the venture market, enhance governance standards and streamline and tailor the disclosure provided to investors. We believe that by better tailoring our approach to venture market regulation we can not only improve investor protection in that market, but also reduce certain of the regulatory burdens faced by venture issuers.

We have noted that because regulation of the venture market is typically addressed as part of instruments that are designed to regulate all tiers of the equity capital market, venture issuer regulation often tends to be limited to merely exempting or carving venture issuers out of standard regulation. The proportionate regulation analysis in some cases has been limited to an assessment of the cost of imposing the particular proposed rule on venture issuers. Although this is an important step in the analysis, we thought we should go further to consider the extent to which the particular regulatory issue is relevant to the venture market and whether there is an alternative approach that might be better tailored to venture issuer circumstances. Although it may not be reasonable in some cases to subject venture issuers to the same regulation as senior issuers, simply exempting them from the requirements applicable to more senior issuers may not allow us to fully address the investor protection issues in the venture market. We believe more tailored regulation could do so.

We have also noted that in some cases there are regulatory issues in the venture market that either do not exist in the senior market, or if they do, are of less concern in the senior market. Perhaps because consideration of venture issuer regulation tends to be addressed as one aspect of other projects, there has not always been a forum for discussion of these issues or an appetite to take them on. Further, because venture issuer investors tend to be smaller retail investors, their concerns tend to be raised in less formal avenues and consequently may be overshadowed by those of the larger, more vocal and more organized institutional investors participating in the senior markets. We believe that tailored

regulation focused on the venture market would better ensure that concerns of venture market investors can be raised and addressed.

Finally, it has seemed to us that the CSA's current approach to proportionate regulation can result in lengthy debates about the appropriateness of subjecting venture issuers to proposed new regulatory initiatives. Although consideration of the implications to venture issuers is necessary, when done as part of a larger project it has had the effect of slowing the policy-making process and perhaps unnecessarily delaying the implementation and application of instruments to more senior issuers – the issuers with respect to whom the particular regulatory concern is often primarily directed.

Consequently, we believe that a different, more tailored approach to venture market regulation could improve investor protection in that market, focus disclosure on matters of relevance and importance to investors, remove certain unnecessary regulatory burden for venture issuers and eliminate certain of the delays in the CSA's policy making process.

### ***Two New Instruments***

The ASC has developed two new proposed national instruments. The provisions in the first instrument, if adopted, would replace both the current governance and the current continuous disclosure rules applicable to venture issuers. The second draft instrument contains various exemptions from the disclosure requirements in both the current prospectus and exempt financing rules, and would allow venture issuers to rely upon the proposed new continuous disclosure regime as the basis for offering disclosure.

By way of broad summary, the proposed new regime streamlines the requirements applicable to venture issuers, states the requirements more plainly, and eliminates duplication and non-essential requirements.

### ***Governance***

As we considered how best to create a regulatory regime for good governance that accomplished our goals of enhancing investor protection, tailoring and streamlining disclosure to the needs and expectations of venture issuer investors and eliminating certain regulatory burdens, it occurred to us that establishing a framework of certain over-arching expectations for venture issuers and their principals could be of considerable assistance. The principles could emphasize desired behaviour, creating a regime that was not as focused on legalistic compliance and loophole mentality and enable us to reduce

the length and degree of prescription. Consequently, the proposal incorporates a number of general regulatory principles, including the following:

- a general disclosure standard,
- the requirement for a reasonable standard of care for directors and officers,
- a duty of good faith required of directors and officers,
- a requirement for directors and officers to disclose to the board conflicts of interest and related party transactions, and for the board to reasonably address those matters,
- a requirement for the venture issuer to address trading by insiders before the issuer has disclosed material information, and
- an expanded certification requirement for directors and officers, reinforcing the disclosure standard and the duties of reasonable care and good faith.

We believe these new requirements would serve to enhance the integrity of the venture market and provide both meaningful and attainable standards. With the introduction of these new substantive governance requirements we would propose to eliminate much of the lengthy governance disclosure for venture issuers that is currently mandated.

We determined we needed a method by which we could obtain the benefits provided by our proposed principles but still provide clarity, and not introduce considerable interpretive burden. What we have endeavoured to do to respond to this challenge is (1) draft the rule in a plain and straightforward manner such that what might otherwise be implicit requirements are explicitly stated, (2) where guidance is necessary, provide it as commentary within the rule or accompanying forms and (3) where possible, provide a description of at least one method by which a venture issuer might comply with the applicable principle. This description in the guidance would be of one method, but not the only method, of possible compliance. For example, the proposal includes a provision outlining steps venture issuers can take to advise their insiders and employees of securities law insider trading prohibitions and to implement specified trading black-out procedures to deter illegal insider trading.

It also includes a provision outlining steps venture issuers can take to address conflicts of interest and related party transactions.

### ***Continuous Disclosure***

The new draft instrument also addresses continuous disclosure by venture issuers. Under the new instrument, venture issuers would be required to prepare an Annual Report which would be their core disclosure document. The Annual Report would be similar to a combination of an annual information form (AIF), management's discussion and analysis (MD&A), and annual audited financial statements. It would also include the corporate governance and executive compensation disclosure typically found in an information circular. However, we have endeavoured to reduce the duplication that currently exists among the various documents such that, despite the fact that venture issuers are not currently required to file an AIF, the Annual Report would actually introduce very few new requirements beyond those already required of venture issuers. In particular, many of the requirements which on first blush may appear new are already addressed by the current MD&A and information circular requirements applicable to venture issuers.

Venture issuers would also be required to provide a Mid-Year Report consisting primarily of MD&A and financial statements.

One of the more significant changes under the proposed new rule would be the elimination of 3 and 9 month interim financial statements and related MD&A. After considering the regulatory regimes for issuers in other markets where first and third quarter financial statements and related MD&A are not required, and having regard to the disclosure that is provided through material change reporting, including our proposed enhancements in those areas, we concluded that we could recommend requiring only annual and mid-year financial statements and associated MD&A. We acknowledge that such changes diverge from current standards in Canada but note that they would only put Canadian venture issuers on a regulatory playing field more comparable to publicly traded issuers – even senior issuers – in Australia, the U.K., and Europe.

We have also proposed some disclosure enhancements in the Annual Report and Mid-Year Report beyond that currently required, including disclosure of insider trading and more prospective MD&A disclosure. In addition, both documents would require a disclosure and integrity certification. The certification contemplates the 'bare certificate' currently required of venture issuers under NI 52-109 that certifies as to the absence of a misrepresentation and the fair presentation of the disclosure, but would go further to require the CEO, CFO and two directors to confirm that the directors and officers have acknowledged their fiduciary duties and standard of care obligations.

We would propose to change the mailing requirements such that, other than the proxy form (i.e., the voting form), mailing would only be required upon request. The proxy form would include a statement as

to where the Annual Report and information circular could be found. Although we would eliminate the mailing requirement for the information circular, we anticipate that some issuers may nevertheless be required by applicable corporate law or constating documents to mail the information circular. Consequently, we would streamline the information circular, removing most of the disclosure not strictly necessary in respect of the matters to be acted upon at a securityholder meeting. All other disclosure would be moved to the Annual Report. By reducing the size, we believe that printing and mailing costs for those issuers that must mail the information circular could be reduced.

Under the new instrument, the business acquisition report requirement and the associated financial statement requirement would be eliminated. We would propose instead to rely largely on material change reporting and would provide additional guidance on the type of information that should be disclosed.

We would also create a new requirement to report not just material changes but as well “Disclosable Events”. A Disclosable Event would include certain significant acquisitions, dispositions, restructurings and related party transactions. In the event of such a transaction, a reporting requirement would be prescribed regardless of whether the issuer has concluded that the transaction is material. However, the type of disclosure would be similar to that required now with a material change report. In contrast to the current business acquisition reporting requirements, financial statements would be mandated only if the acquisition were of 100% significance (based on market capitalization) to the venture issuer. We anticipate that in most cases Disclosable Events would be considered material changes but have introduced the new term to provide additional guidance for venture issuers as to when disclosure is expected and what disclosure should be provided.

### ***Offerings***

The second instrument we have drafted is a proposed offering rule intended to permit venture issuers to use the proposed new continuous disclosure I have just described as the base disclosure by which they would comply with:

- National Instrument 44-101, the *Short Form Prospectus* rule,
- the qualifying issuer offering memorandum exemption under National Instrument 45-106 *Registration and Prospectus Exemptions*, and
- the TSX Venture short form offering document exemption under National Instrument 45-106 *Prospectus Exemptions*.

In addition, the instrument would contain various proposed exemptions that would be available to an issuer that is conducting an initial public offering under National Instrument 41-101 *General Prospectus Requirements*, permitting the issuer to essentially provide the type of disclosure to be required in an Annual Report under the new continuous disclosure instrument in lieu of the disclosure currently required by NI 41-101.

We considered whether or not to create a stand-alone offering regime for venture issuers and issuers intending to become venture issuers. Although we see benefit to a stand-alone governance and continuous disclosure regime, because it would allow us to better streamline, simplify and tailor the requirements applicable to venture issuers, we did not think the benefits in the offering context would be as extensive. Prospectus offerings present circumstances where all issuers need to engage professional advisers, so there is less likelihood that venture issuer management, in the context of a prospectus offering, would be dealing with interpretation issues without the advice of advisers. Further, there are many more provisions in the prospectus and exempt offering instruments that do not deal with disclosure – the principle target of our proposed revisions – but rather more procedural matters such as definitions, applications, certificates, amendments and pricing. We saw that a separate offering regime would require duplication of these requirements without offsetting benefit.

### ***Venture Issuers Definition***

This proposal is intended to apply to “venture issuers”, defined as those issuers listed on the TSX Venture Exchange or the Canadian National Stock Exchange as well as any issuers that trade on certain other identified markets such as London’s AIM or over-the-counter and that do not also trade on a senior market such as the TSX, Nasdaq, the New York Stock Exchange or the London Stock Exchange. There are approximately 2260 issuers currently listed on the TSX Venture Exchange and approximately 100 trading on the Canadian National Stock Exchange. There are also various other venture issuers trading on other junior markets such as London’s AIM or over-the-counter, for example on the U.S. OTC Bulletin Board. Accordingly, we estimate that this proposal would apply to approximately 2500 issuers in Canada.

### ***Summary***

As described, the proposal we have developed involves the creation of a governance and continuous disclosure (CD) regulatory regime that is tailored to better address the needs and expectations for venture market investors and to recognize the resource constraints of venture issuers. The proposal also involves introducing various accommodations to certain of the offering regimes – whether by prospectus or a prescribed exempt offering document – allowing venture issuers to use the proposed new CD regime as the basis for prospectus and exempt offering disclosure. Under the draft instrument, the proposed

new continuous disclosure could be incorporated by reference into a short form prospectus, a TSX Venture Exchange short form offering document or an offering memorandum for a qualifying issuer as prescribed under National Instrument 45-106 *Prospectus and Registration Exemptions*. In the case of an IPO, the long form prospectus form would be varied to conform to the continuous disclosure regime tailored for the venture market.

We believe a separate regime adopted specifically for the venture market would facilitate an improved focus on the venture market – as compared to the current “carve-out” model. We believe that the proposal would offer a more cost-effective alternative to the current regulatory regime, one that is better tailored to reflect the needs and expectations of venture issuer investors, the challenges faced by venture issuers and the associated regulatory concerns.

We hope to publish a consultation paper in the very near future seeking comment from venture market issuers, investors and their respective advisors. Alberta and British Columbia are leading the initiative, assisted by Saskatchewan, Manitoba, New Brunswick and Nova Scotia. The commissions of Ontario and Quebec will not participate and, accordingly, the project will not be labelled as a CSA project.

This is not an initiative by which the ASC or the other participating commissions are seeking better tools for regulation. We have worked to develop what we believe to be an improvement in the regulatory regime for the benefits of all participants in the venture issuer market. If the participants themselves tell us that the proposals are not actually helpful or not worth the disruption of change, we will accept that evaluation and move on; but we do hope that we will receive some considered input. Following the publication of the consultation paper, we would schedule discussion sessions to encourage necessary feedback. As a generality, feedback from the venture issuer community is not easy to come by and we appreciate we will likely have to push for it. We will be very grateful to receive your input.

I have covered three subjects: the future of an independent securities commission in Alberta; your responsibilities as professional advisors to those making public disclosure; and the prospect for a discrete securities regulatory regime for venture issuers. I believe these matters are of significance to your practices and I hope that you will individually and as a group give them some thought.

Thank you.