CROSS BORDER SECURITIES UPDATE

March 2006

Inside This Issue:

- **32 Recommendations to Ease Regulatory Burden of MicroCap and SmallCap Companies in the US**
- **Proposal to Ease Deregistration in the US by Foreign Issuers**
- **Short Form Prospectus Now Available to CNQ and TSX-V Listed Companies in Canada**

32 Recommendations to Ease Regulatory Burden of MicroCap and SmallCap Companies in the US

Psst… Have you heard about the Securities and Exchange Commission ("**SEC**") Advisory Committee on Smaller Public Companies ("**SmallCap Committee**")? If you are a reporting issuer under the US *Securities Act of 1933* (the "**Act**") you may want educate yourself about the SmallCap Committee and more importantly weigh in on its proposed recommendations to the SEC. The changes they are recommending could have a significant impact on your future as a reporting issuer in the US.

In March 2005, the SEC established the SmallCap Committee to look at the impact of the Sarbanes-Oxley Act of 2002 ("**SOX**"), and federal securities laws in general on smaller public companies. On September 21, 2005, the SEC adopted two of the recommendations the SmallCap Committee proposed to the SEC regarding microcap and smallcap companies on an expedited basis: (1) postponing for one year the date for non-accelerated filers to begin complying with section 404 of SOX, and (2) amending the periodic filing deadlines of non-accelerated filers.

On February 28, 2006, the SmallCap Committee issued a draft of its final report for public comment. The draft report contains thirty-two recommendations. The 149-page report includes parts on scaling securities regulation for smaller companies, accounting standards, and internal control over financial reporting. Comments will be received until April 3, 2006 and you may want to voice your support. To date the report has received some high profile opposition from the big four accounting firms and former top officials of the SEC and Federal Reserve.

The SmallCap Committee Recommendations

The recommendations are divided into four categories and are as follows:

I. Scaling of the Securities Regulation to Size of Issuer

1. Establish a new system of scaled or proportional securities regulation for smaller public companies using the following six determinants to define a "smaller public company":

    a. the total market capitalization of the company;
    b. a measurement metric that facilitates scaling of regulation;
    c. a measurement metric that is self-calibrating;
    d. a standardized measurement and methodology for computing market capitalization;
    e. a date for determining total market capitalization; and
    f. clear and firm transition rules, i.e., small to large and large to small.

Regulation should be proportional to the size of the company. "Microcap companies" (those companies with under $128 million in capitalization) and "smallcap companies"(those companies with over $128 million and under $787 million in market capitalization) because their equity market capitalization should not be treated the same as be considered for scaled or proportional regulation.

II. Internal Control over Financial Reporting

2. Unless and until a framework for assessing internal control over financial reporting for such companies is developed that recognizes their characteristics and needs, provide exemptive relief from Section 404 requirements to microcap companies with less than $125 million in annual revenue and to smallcap companies with less than $10 million in annual product revenue that have or expand their corporate governance controls that include:

    a. adherence to standards relating to audit committees in conformity with Rule 10A-3 under the Exchange Act;

Continued…

32 Recommendations to Ease Regulatory Burden of MicroCap and SmallCap Companies in the US (continued)

b. adoption of a code of ethics within the meaning of Item 406 of Regulation SK applicable to all directors, officers and employees and compliance with the further obligations under Item 406(c) relating to the disclosure of the code of ethics; and
c. design and maintenance of effective internal controls over financial reporting.

In addition, as part of this recommendation, the SmallCap Committee recommended that the SEC confirm, and if necessary clarify, the application to all microcap companies, and indeed to all smallcap companies also, of the existing general legal requirements regarding internal controls, including the requirement that companies maintain a system of effective internal control over financial reporting, disclose modifications to internal control over financial reporting and their material consequences and apply CEO and CFO certifications to such disclosures. Moreover, management should be required to report on any known material weaknesses. In this regard, the Proposed Statement on Auditing Standards of the AICPA, "Communications of Internal Control Related Matters Noted in an Audit," if adopted by the AICPA and the PCAOB, would strengthen this disclosure requirement and provide some external auditor involvement in the internal control over financial reporting process.

3. Unless and until a framework for assessing internal control over financial reporting for such companies is developed that recognizes their characteristics and needs, provide exemptive relief from external auditor involvement in the Section 404 process to the following companies, subject to their compliance with the same corporate governance standards as detailed in the recommendation above:

    a. Smallcap companies with less than $250 million in annual revenues but greater than $10 million in annual product revenue; and
    b. Microcap companies with between $125 and $250 million in annual revenue.

4. Change the requirements for implementing Section 404's external auditor requirement to a cost-effective standard, which the SmallCap Committee calls "ASX," providing for an external audit of the design and implementation of internal controls.

5. Provide, and request that COSO and the PCAOB provide, additional guidance to help facilitate the assessment and design of internal controls and make processes related to internal controls more cost effective; also, assess if and when it would be advisable to reevaluate and consider amending AS2.

6. Determine the necessary structure for COSO to strengthen it in light of its role in the standard-setting process in internal control reporting.

III. Capital Formation, Corporate Governance and Disclosure

7. Incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K, make them available to all microcap companies, and cease prescribing separate specialized disclosure forms for smaller companies.

8. Incorporate the primary scaled financial statement accommodations currently available to small business issuers under Regulation SB into Regulation S-K or Regulation S-X and make them available to all microcap and smallcap companies.

9. Allow all reporting companies on a national securities exchange, NASDAQ or the OTCBB to be eligible to use Form S-3, if they have been reporting under the Exchange Act for at least one year and are current in their reporting at the time of filing.

10. Adopt policies that encourage and promote the dissemination of research on smaller public companies.

11. Adopt a new private offering exemption from the registration requirements of the Act that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Act's registration requirements. Additionally, relax prohibitions against general solicitation and advertising found in Rule 502(c) under the Act to parallel the "test the waters" model of Rule 254 under that Act.

Continued…

32 Recommendations to Ease Regulatory Burden of MicroCap and SmallCap Companies in the US (continued)

12. Spearhead a multi-agency effort to create a streamlined NASD registration process for finders, M&A advisors and institutional private placement practitioners.

13. Amend SEC Rule 12g5-1 to interpret "held of record" in Exchange Act Sections 12(g) and 15(d) to mean held by actual beneficial holders.

14. Make public information filed under Rule 15c2-11.

15. Form a task force, consisting of officials from the SEC and appropriate federal bank regulatory agencies to discuss ways to reduce inefficiencies associated with SEC and other governmental filings, including synchronizing filing requirements involving substantially similar information, such as financial statements, and studying the feasibility of extending incorporation by reference privileges to other governmental filings containing substantially equivalent information.

16. Allow companies to compensate market-makers for work performed in connection with the filing of a Form 211, with full disclosure of such compensation arrangements.

17. Evaluate upgrades or technological alternatives to the EDGAR system so that smaller public companies can make their required SEC filings without the need for third party intervention and associated costs.

18. Make it easier for microcap companies to exit the *Securities Exchange Act of 1934* reporting system.

19. Increase the disclosure threshold of Act's Rule 701(e) from $5 million to $20 million.

20. Extend the "access equals delivery" model to a broader range of SEC filings.

21. Shorten the integration safe harbor from six months to 30 days.

22. Clarify SOX Section 402 loan prohibition.

23. Increase uniformity and cooperation between federal and state regulatory systems by defining the term "qualified investor" in the Act and making the NASDAQ Capital Market and OTCBB stocks "covered securities" under NSMIA.

24. Clarify the interpretation of or amend the language of the Rule 152 integration safe harbor to permit a registered initial public offering to commence immediately after the completion of an otherwise valid private offering the stated purpose of which was to raise capital with which to fund the IPO process.

IV. Accounting Standards

25. Develop a "safe-harbor" protocol for accounting for transactions that would protect well-intentioned preparers from regulatory or legal action when the process is appropriately followed.

26. In implementing new accounting standards, the FASB should permit microcap companies to apply the same extended effective dates that it provides for private companies.

27. Consider additional guidance for all public companies with respect to materiality related to previously issued financial statements.

28. Implement a de minimis exception in the application of the SEC's auditor independence rules.

29. Together with the PCAOB and the FASB, promote competition and reduce the perception of the lack of choice in selecting audit firms by using their influence to include non-Big Four firms in committees, public forums, and other venues that would increase the awareness of these firms in the marketplace.

30. Formally encourage the FASB to continue to pursue objectives-based accounting standards. In addition, simplicity and the ease of application should be important considerations when new accounting standards are established.

31. Require the PCAOB to consider minimum annual continuing professional education requirements covering topics specific to SEC matters for firms that wish to practice before the SEC.

32. Monitor the state of interactions between auditors and their clients in evaluating internal controls over financial reporting and take further action to improve the situation if warranted.

Where the Focus Is

Commentators and critics have focused on the recommendations of the SmallCap Committee limiting the

continued...

32 Recommendations to Ease Regulatory Burden of MicroCap and SmallCap Companies in the US (continued)

application of SOX to microcap and smallcap companies. As stated previously the big four accounting firms are against the recommendations in this area as are a number of the larger US legal firms and former top officials of the SEC (one being former SEC Chairman Arthur Levitt) and the Federal Reserve (Reserve Chairman Paul Volker).

The proposals under the "Capital Formation, Corporate Governance and Disclosure" caption would have a significant impact on microcap and smallcap companies if adopted by the SEC. Hopefully, these recommendations won't be ignored as the SOX debate heats up.

If you support any of the proposed recommendations of the SmallCap Committee make your voice heard. Those in opposition of these recommendations have money and power on their side. It is only by voicing your support that the SmallCap Committee and the SEC will know that you believe the proposed changes are a good start the importance of small companies in the competitiveness and future of the North American economy.

Cautionary Note

The Small Cap Committee's role is an advisor only to the SEC. The SEC is under no obligation to act upon the recommendations put forward by the Small Cap Committee. You should not assume the SEC will extend its initial waiver to Section 404 of SOX to non-accelerated filers beyond the July 14, 2007 announced on September 21, 2005.

Proposal to Ease Deregistration in the US by Foreign Issuers

On December 27, 2005, the SEC published a new rule regarding the termination of US reporting requirements by foreign private issuers under Section 12(g) US *Securities Exchange Act of 1934* (the "1934 Act"). Rule 12h-6, if adopted, will simplify the process of deregistration in the US by making the expanding the options under which a foreign issuer may terminate its reporting issuer status and truly terminate its status as a US reporting issuer and not just suspending its reporting obligations under section 15(d) of the 1934 Act.

Current Deregistration Rules

Under the current 1934 Act rules, Rule 12g-4 only permits a foreign private issuer to deregister a class of its securities under section 12(g) of the 1934 Act if the subject class is held by less than 300 U.S. residents or 500 U.S. residents for issuers with less than $10 million in assets, as of the end of its last completed fiscal year. This number is to be calculated on a "look through" basis by canvassing the record ownership of brokers, dealers, banks or nominees worldwide and counting the number of separate accounts of customers residing in the US. If the number of US residents is under the given threshold, the issuer may deregister the securities under the 1934 Act. The issuer may also terminate its reporting obligations under the 1934 Act if the securities had not been registered under the US *Securities Act of 1933* (the "Act"). If, however, the issuer has registered securities under the Act, under Rule 12h-3 the issuer may deregister the securities under the 1934 Act but may only suspend, not terminate, its 1934 Act reporting obligations under section 15(d) of the 1934 Act. At the end of each fiscal year the issuer must check to see if the threshold has not been exceeded. The issuer must resume its reporting obligations any time the threshold is exceeded.

Proposed Deregistration Rules

Under proposed 1934 Act Rule 12h-6, a foreign private issuer would be able to permanently terminate either or both:

1. its registration of its securities under Section 12(g) of the 1934 Act and its corresponding section 13(a) reporting obligations; and

2. reporting obligations under section 15(d) of the 1934 Act.

if it meets the following qualitative and quantitative conditions:

Qualitative Conditions

(1) The Two-Year 1934 Act Reporting Condition: The issuer must have been an 1934 Act reporting company for the past two years, has filed or furnished all reports required for this period and filed at least two annual reports under Section 13(a);

(2) The One-Year No Sales Condition: The issuer has not directly or indirectly sold it's securities in the US in either a registered or unregistered offering during the preceding 12 months, other than securities:

- sold to its employees,

- sold by selling security holders in non-underwritten offerings,

- exempt from registration under Section 3 of the Act (except Section 3(a)(10)), or

- constituting obligations having a maturity of less than 9 months at the time of issuance and offered and sold in transactions exempted from registration under Section 4(2) of the Act (i.e., so called "4(2) commercial paper"); and

continued…

Proposal to Ease Deregistration in the US by Foreign Issuers (continued)

(3) The Home Country Listing Condition: The issuer has maintained a listing of the subject class of securities on an exchange in its home country[2] which constitutes the primary trading market for the securities.

Quantitative Conditions

An eligible foreign private issuer must also meet one of the following benchmarks:

(4) Public Float and Trading Volume Benchmark: Foreign private issuers who are also well-known seasoned issuer as defined under Rule 405 of the Act ("WKSI") may terminate its obligations as long as it meets either one of the following benchmarks:

(5) Trading Volume Benchmark: (1) The U.S. average daily trading volume of the subject class of securities has been no greater than 5% of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, and (2) the U.S. residents held no more than 10% of the issuer's worldwide public float[3] at a date within 60 days before the end of that same period; or

(6) Public Float Benchmark: U.S. residents held no more than 5% of the worldwide public float of the issuer's equity securities held by non-affiliates for which there is a reporting obligation at a date within 120 days before the filing date of the Form 15F (described below), regardless of U.S. trading volume.

If the issuer is not a WKSI, it may only terminate its obligations if U.S. residents held no more than 5% of the worldwide public float of the issuer's equity securities held by non-affiliates for which there is a reporting obligation at a date within 120 days before the filing date of the Form 15F (described below), regardless of U.S. trading volume.

(7) Alternate Record Holder Counting Benchmark: If an issuer cannot meet the Public Float or Trading Volume Benchmark, but satisfies the other qualitative conditions of the rule, can still terminate its 1934 Act obligations under proposed Rule 12h-6 if the class of securities is held of record by less than 300 persons on a worldwide basis or less than 300 U.S. residents at a date within 120 days before the filing date of the Form 15F to deregister.

Debt Securities Registrants

Under proposed Rule 12h-6, a foreign private issuer may terminate its 1934 reporting obligations under Section 15(d) of the 1934 Act with respect to a class of debt securities if it meets the following conditions:

(1) Section 15(d) Reporting Requirement: The issuer has filed or furnished all required reports under Section 15(d), including at least one annual report pursuant to Section 13(a) of the 1934 Act; and

(2) Record Holder Counting: Record Holder Counting: At a date within 120 days before the filing date of the Form 15F, the class of debt securities is held of record by less than 300 persons on a worldwide basis or by less than 300 persons resident in the U.S.

Counting Method

Under proposed Rule 12h-6 foreign private issuers would be allowed to:

Limit its inquiry regarding the amount of securities represented by accounts of customers resident in the U.S. to brokers, dealers, banks and other nominees located in (1) the U.S., (2) the foreign private issuer's jurisdiction of incorporation, legal organization, or establishment and, (3) if different, the jurisdiction of the foreign private issuer's primary trading market; and

- rely in good faith on the assistance of an independent information services provider that in the regular course of business assists issuers in determining the number of, and collecting other information regarding, their shareholders.

New Form 15F

Under current 1934 Act rules, a foreign private issuer would have to file a new Form 15 with the SEC certifying that it meets the conditions for ceasing its 1934 Act reporting obligations. This filing would automatically suspend the issuer's reporting obligations. The suspension becomes a permanent termination if the SEC does not object within 90 days after the filing. The final rule may include an ability to accelerate the a permanent termination under Form 15F.

Notice Requirement

Proposed Rule 12h-6 requires a foreign private issuer to publish a notice in the US to disclose its intent to terminate its 1934 Act reporting obligations no later than 15 business days prior to filing its Form 15F. A copy of the notice must also be filed under Form 6-K before, or at the time of, filing the Form 15F or as an exhibit to the Form 15F.

Rule 12g3-2(b)

Proposed Rule 12h6, will allow any foreign private issuer that terminates its 1934 Act obligations under proposed Rule 12h-6 would automatically qualify for the Rule 12g3-2(b) exemption. Rule 12g3-2(b) permits an issuer to avoid registration under Section 12(g) of the 1934 Act. If a foreign private issuer wishes to maintain this exemption, it is must provide material home country documents in English under Rule 12g3-2(b) on its website or through an

continued…

Proposal to Ease Deregistration in the US by Foreign Issuers (continued)

electronic information delivery system that is generally available to the public in its primary trading market. This exemption would remain effective as long as the issuer complies with the availability of information requirement of the proposed rule, or until either the issuer registers a new class of securities under Section 12 of the 1934 Act or incurs reporting obligations under Section 15(d) of the 1934 Act with respect to securities that were not the subject of the deregistration.

Short Form Prospectus Now Available to CNQ and TSX-V Listed Companies in Canada

National Policy 41-101 *Short Form Prospectus Distributions* and its associated form and companion policy (together "**NI 41-101**") became effective in all Canadian provinces and territories on December 30, 2005. NI 41-101 expands the number of issuers who may use the short form prospectus regime to include a greater number of reporting issuers in Canada. It also amends the disclosure and other requirements of the short form prospectus regime to bring it into line with other recent policy initiatives.

Expanded Eligibility

NI 41-101 simplifies the basic qualification requirements and eliminates former threshold requirements. Under the new rule an issuer will be eligible to use the short form prospectus regime if it meets the following requirements:

- it must be a reporting issuer and SEDAR filer in at least one jurisdiction in Canada;
- it must have securities listed and posted for trading on the TSX, TSX-V (Tier 1 or Tier 2) or the CNQ;
- it must have filed a current Annual Information Form ("**AIF**"), current annual financial statements and all other required continuous disclosure documents;
- it must not have ceased its operations and its principal assets must not be comprised solely of cash, cash equivalents or its exchange listing (in other words, it is not a shell company or a capital pool company); and
- it must have filed a one-time notice of intention to be qualified to file a short form prospectus at least 10 business days prior to filing its first preliminary short form prospectus.

Each issuer who has a current AIF on December 29, 2005 under Current NI 44-101 will be deemed to have filed a notice on December 14, 2005 declaring its intention to be qualified to file a short form prospectus.

Alternative qualification criteria are available for issuers of: approved rating non-convertible securities; guaranteed non-convertible debt securities, preferred shares and cash-settled derivatives; guaranteed convertible debt securities or preferred shares; and asset-backed securities.

New Short Form Prospectus

The new short form prospectus is based on the continuous disclosure filings of the reporting issuer filed pursuant to National Instrument 51-102 – Continuous Disclosure Obligations. The new form includes expanded disclosure over the old form with regards to the information included on the cover page and information provided regarding: over-allotments; compensation and options granted to underwriters; use of proceeds; earnings coverages ratios; recent or proposed significant acquisitions; debt; earnings coverage ratios; among other items.

The issuer is no longer required to file an auditor's comfort letter regarding unaudited financial statements with the final short form prospectus. However, NI 44-101 still requires the delivery to the applicable securities commissions, concurrent with the filing of the pre-short form prospectus, an auditor's comfort letter if the audited financial statements included in the preliminary short form prospectus are accompanied by an unsigned audit report.

NI-44-101 also eliminates the requirement to make all material contracts available for inspection during the distribution period. This change reflects the fact material documents are now required to be filed on SEDAR and therefore available for public inspection on a continuous basis.

Solicitation of Expression of Interest

NI 44-101 extends the period during which the pre-marketing of a bought deal can occur from two business days to up to four business days following the execution of an enforceable agreement between the issuer and the underwriters.

continued…

The information in this newsletter is of a general nature only about recent developments of interest to our clients. You are encouraged to contact legal counsel before acting on any information provided.

Author Alixe Cormick has assisted small and micro cap companies through each stage of their growth from inception to graduation to junior and more senior trading forums.

VENTURE LAW CORPORATION
618 - 688 West Hastings Street
Vancouver, British Columbia, V6B 1P1
Phone: 604-659-9188
Fax: 604-659-9178
Web: www.venturelawcorp.com

The information in this newsletter is of a general nature only about recent developments of interest to our clients. You are encouraged to contact legal counsel before acting on any information provided.

	Author Alixe Cormick has assisted small and micro cap companies through each stage of their growth from inception to graduation to junior and more senior trading forums.

VENTURE LAW CORPORATION
618 - 688 West Hastings Street
Vancouver, British Columbia, V6B 1P1
Phone: 604-659-9188
Fax: 604-659-9178
Web: www.venturelawcorp.com