

June 19, 2007

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario  
M5H 3S8

Attention: Mr. John Stevenson  
Secretary to the Commission  
Fax: (416) 593-2318  
Email: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria  
C.P. 246, 22 étage  
Montreal, Québec  
H4Z 1G3

Attention: Ms. Anne-Marie Beaudoin  
Directrice du secretariat  
Fax: (514) 864-8381  
Email: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Dear Sirs/Mesdames:

**Re: Response to Request for Comments Regarding Proposed National Instrument 31-103**

I am the President and Chief Executive Officer, and am writing on behalf of, Wellington Financial LP (“Wellington Financial”).

*Wellington Financial*

Wellington Financial is a Toronto-based privately held specialty finance firm in the “venture debt” segment of the venture capital arena, providing operating lines of credit, term, venture and amortizing loans up to \$30 million. Wellington Financial is currently deploying a \$400 million investment program via its third fund, with over \$200 million of committed capital under management. Our limited partners include several of Canada’s largest institutional investors, crown corporations, financial institutions and pension funds.

Wellington Financial has led or participated in over \$200 million of transactions since inception, making it one of the most active funds of its kind in Canada. Wellington Financial has been active in a wide variety of sectors; in the past nine months alone, industry sectors have included security software, healthcare applications service provisioning, immersive theatre entertainment, mobile content applications & distribution, market research and wind power. These representative transactions have financed growth firms based in five different Canadian provinces. Since September 2006, when our third venture debt fund began operation, we have been the most active independent debt fund serving Canadian-based firms, second only to the Fonds de solidarité (FTQ), according to data collected by Thomson Financial.

### *Industry Background*

The importance of venture debt funds to Canadian growth companies should not be understated. The Thomson Financial database statistics demonstrate the important role that debt plays in the Canadian venture capital market. Using data from January 2006-May 2007, three debt funds were among the top six providers of venture capital to Canadian-based firms during that period (debt represented 43.3% of the capital provided by the top six funds):

<b>VC, Venture Debt - Cdn. Companies</b>	
<b>Jan 2006 - May 2007</b>	<b>\$MM</b>
American Capital Strategies	160.0
BDC Subordinate Financing	148.2
BDC Venture Capital	138.2
GrowthWorks	72.1
Wellington Financial	70.3
MMV Financial	64.1
Clarus Ventures	40.7
CDP Capital	40.1
Vengrowth	37.3
FTQ	36.6
<b>Total Industry - Cdn. Companies</b>	<b>2,087</b>

Moreover, venture debt has become an integral part of the North American venture capital market as more than US\$2 billion of venture debt financings closed in 2006, up from US\$434 million in 2002 (*The Wall Street Journal*, February 14, 2007). The Canadian venture debt industry is filling part of the void that has resulted from Canada's diminishing venture equity capital industry.

### *The Proposed Rule*

Wellington Financial is a proud member of the Canadian Venture Capital Association ("CVCA"), and strongly endorses the perspectives articulated in the CVCA's comment letter dated June 19, 2007 concerning proposed National Instrument 31-103 (the "Proposed Rule").

We share the understanding expressed in the CVCA's comment letter that it is not the intention of the Canadian Securities Administrators to regulate active investors such as venture capital

providers by imposing registration requirements on such actors. We strongly believe that that is the proper perspective and would be the appropriate outcome for a number of reasons, most prominently that:

1. Capturing venture capital<sup>1</sup> activity within the ambit of the Proposed Rule is inconsistent with the fundamental animating principle of much of the rule, namely the business trigger. Venture capital firms are oriented, by their nature, to involvement in their investees' business and affairs, through board membership, approval rights, other contractual restrictions, involvement in strategic decisions generally, participation rights in financings and other means. Equally, the nature of venture capital firms' relationships with their limited partners, as outlined in detail in the CVCA submission, is profoundly different from the relationship a traditional investment fund and its investors. The fact that venture capital firms by their nature often invest in "securities," and/or the fact that the interests held by their limited partners may constitute "securities," does not justify the application to this sector of the financial marketplace of regulatory requirements designed to address the businesses of dealing and advising.
2. Consistent with the observations above, the Proposed Rule, in its design, appears to be intended in significant part to address failures in other sectors of the financial marketplace, specifically traditional investment funds (such as Norbourg and Portus). By contrast, the venture capital and private equity markets have been operating strongly in Canada without, to our knowledge, any complaints or failures resulting from the lack of, or that would be addressed by the imposition of, registration requirements to the sector. Moreover, as noted above, the application of dealer requirements (such as the conduct rules) and advisor requirements (such as proficiency requirements relating to investing in securities rather than in venture capital investments in businesses) to venture capital firms would impose regulatory burdens on those actors, which serve critical functions in the development and growth of Canadian businesses, without any apparent benefit (much less a corresponding benefit) in investor protection.
3. Unlike other sectors, the venture capital industry in Canada is – in practice – well monitored and governed by the institutional investor community that serve as the lead investors on each existing and successive fund. These groups would include B.C. Investment Management, The Ontario Teachers' Pension Plan Board, the Ontario Municipal Employees Retirement System, the Hospitals of Ontario Pension Plan, the Caisse de depot et placement du Quebec, the Fonds de solidarité (FTQ), and the CPP Investment Board. The process by which agreements governing the business and affairs of venture capital firms are negotiated with such institutional investors is described in the CVCA letter.

We wish to specifically communicate, as well, our agreement with the CVCA's submission that there must be greater clarity concerning the meaning of the words "active involvement in the management" of investees. Though we recognize that precision may be difficult or impossible to achieve, given the multiplicity of business models operating in the marketplace, but the present ambiguity of the phrase will lead to significant unnecessary costs being borne. In this regard, we endorse the CVCA's proposals as to the meaning of "active involvement in management."

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<sup>1</sup> To be clear, "venture capital" refers to both venture equity and venture debt.

We wish to note, additionally, that no distinction should be drawn between different types of venture capital in any greater clarity provided for the meaning of “active involvement in management.” A venture debt investment is at its core fundamentally similar, and for purposes of the rationale for exclusion of venture capital from the application of the Proposed Rule identical, to a venture equity investment. Both typically involve elements of “active management” such as those described above and/or referenced in the CVCA submission, such as board representation, contractual restrictions and vetoes, and participation rights in future financings, monitoring tools and a direct two-way contractual relationship with the company in question. Structurally, too, venture debt capital is similar in relevant respects with venture equity capital - both generally have priorities relative to founder, friends and family and other earlier stage capital (though venture debt is less dilutive, by nature, to that group), both typically have contractual rights to facilitate active control (a loan agreement or similar in a debt scenario, a shareholders agreement or share attributes in an equity context), and both typically assume a significant degree of involvement. The fact that the nature of the instrument held may be different is not a meaningful distinction, and does not provide a basis to favour one over the other, for purposes of the application of the Proposed Rule.

We thank you for the opportunity to comment. If you have any questions or comments, please feel free to contact me at the address above.

Respectfully,



Mark McQueen  
President and Chief Executive Officer