



CLIENT ALERT

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AMENDMENTS TO CANADIAN SECURITIES EXCHANGE POLICIES

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On March 30th, 2023, the Canadian Securities Exchange (the “CSE”) announced that substantial amendments (the “Amendments”) had been made to their policies (the “CSE Policies”), which officially came into effect on April 3rd, 2023. Although the Amendments have an impact on all of the CSE Policies, the focus of this bulletin will be on “Policy 2 - Qualification for Listing” (“CSE Policy 2”), “Policy 4 - Corporate Governance and Miscellaneous Provisions” (“CSE Policy 4”), and “Policy 6 – Distributions” (“CSE Policy 6”). The Amendments should be of particular interest to issuers currently listed on the CSE (“Listed Issuers”) as well as issuers considering listing on the CSE.

Policy 2 – Qualification for Listing

Eligibility Review Process for Listing Applicants

The CSE has implemented an eligibility review process for issuers that intend to apply for listing concurrently with, or shortly after, the filing of a preliminary prospectus with a provincial securities commission. These applicants are now required to obtain confirmation from the CSE with respect to their eligibility. To obtain such a confirmation, the prospective issuer must submit a document with sufficient detail to determine the CSE’s eligibility requirements have been met before proceeding with the listing. In this regard, the CSE accepts, amongst other things, draft prospectuses. For natural resource issuers, a relevant technical report would also be required. Following this submission and the payment to the CSE of a non-refundable fee, the CSE conducts an eligibility review and ultimately confirms the issuer’s eligibility or lack of eligibility.

Non-venture Issuers & the Senior Tier

One of the more noteworthy Amendments in the CSE Policies is the introduction of a new senior tier (the “Senior Tier”) for Listed Issuers that are at a more developed stage. In doing so, the CSE intends to impose enhanced disclosure and governance requirements consistent with the policies that govern senior issuers on other exchanges worldwide. Pursuant to this, the CSE’s aim is to enable access to a range of institutional investors that could not previously trade in “venture” securities. This Senior Tier creates a new segment of Listed Issuers, which the CSE has designated as non-venture issuers (“NV Issuers”).

Beginning in May of 2023, the CSE began reviewing the audited financial statements of certain Listed Issuers to confirm whether they meet the qualifying criteria to be designated as an NV Issuer. Current Listed Issuers will not be designated as NV Issuers, nor will a Listed Issuer be subject to the additional requirements

as an NV Issuer before a review and advance notification from the CSE. Going forward, Listed Issuers will be reviewed annually after filing their audited financial statements, and if applicable, the NV designation would be effective as of the second quarter interim financial statement filings.

In addition to meeting the basic qualifications for listing under CSE Policy 2, NV Issuers must also meet **at least one** of the following four enhanced standards, as outlined in Appendix 2A of the CSE Policy 2:

- **Equity Standard:** Listed Issuers must have shareholders’ equity of at least \$5 million and have an expected market value of the public float of at least \$10 million;
- **Net Income Standard:** The Listed Issuer must have a net income of at least \$400,000 from its continuing operations in the most recent fiscal year or in two or three of the most recent fiscal years. Additionally, the Listed Issuer must have shareholders’ equity of at least \$2.5 million and have an expected market value of the public float of at least \$5 million;
- **Market Value Standard:** The Listed Issuer must have a market value of all securities of at least \$50 million, shareholders’ equity of at least \$2.5 million, and an expected market value of the public float of at least \$10 million; or
- **Assets and Revenue Standard:** The Listed Issuer must have total assets and revenue of at least \$50 million each in the most recent fiscal year or in two of the three most recent fiscal years. Additionally, they must have a market value of the public float of at least \$5 million.

Furthermore, NV Issuers must have a minimum float of \$1 million in freely tradable shares and a minimum of 300 public holders, each holding a “Board Lot”, as that term is defined in the CSE Policies.

The CSE may also, in its sole discretion, designate a Listed Issuer as an NV Issuer if the Listed Issuer is sufficiently advanced for its capitalization or operations, which must also be near the thresholds of at least two of the four aforementioned standards or the CSE determines that it would be in the public interest to do so.

It is also worth noting that “National Instrument 51-102 Continuous Disclosure Obligations” (“NI 51-102”) currently defines a “venture issuer” as any reporting issuer not listed on the Toronto Stock Exchange (the “TSX”), the NEO, or a U.S. marketplace such as the NASDAQ or the NYSE. As a result of the Amendments, NV Issuers that become listed on the CSE would continue to be considered “venture issuers” under securities laws. However, these NV Issuers are now subject to certain

CSE-imposed additional requirements, similar to the NI 51-102 continuous disclosure requirements for non-venture issuers. For example, NV Issuers would be required to file an annual information form within 90 days of their financial year-end and would be required to comply with shorter deadlines to file their interim and annual financial statements as well as accompanying management discussion and analysis.

Special Purpose Acquisition Corporations

Formerly classified as a “junior exchange,” the CSE now includes listing requirements for special purpose acquisition corporations (each, a “**SPAC**”). The specific listing requirements for a SPAC can be found in Appendix 2C of CSE Policy 2. The most significant of these requirements are highlighted below:

- **Initial Public Offering** (an “**IPO**”): The SPAC must raise a minimum IPO amount of \$30 million through the sale of shares or units.
- **Ineligibility:** An issuer is not eligible for Listing as a SPAC if it is carrying on an active business, or if it has entered into a binding acquisition agreement for a “Qualifying Acquisition”, as that term is defined in the CSE Policies.
- **Jurisdiction:** The jurisdiction of incorporation for the Listed Issuer must be acceptable to the CSE, even if it is a jurisdiction outside of Canada.
- **Capital Structure:** In addition to meeting the CSE’s standards, listed securities, apart from builder shares, must have:
 - *A redemption feature* – permits holders, in the event that a qualifying acquisition is completed, to elect that each share held be redeemed for an amount at least equal to the aggregate amount remaining in the escrow account divided by the number of shares outstanding (excluding builders shares); and
 - *A liquidation feature* – provides holders, for each share held, if the qualifying transaction is not completed within the permitted time, an amount equal to the aggregate amount remaining in the escrow account divided by the number of shares outstanding (excluding builders’ shares).
- **Prohibition of Debt Financing:** The SPAC cannot obtain any form of debt financing.
- **Float and Distribution:**
 - i. There must be at least 1 million freely tradable securities held by public holders;

- ii. the aggregate market value of the securities held by public holders must be at least \$30 million; and
 - iii. there must be at least 150 public securities holders, each holding at least one Board Lot.
- **IPO Pricing:** The minimum IPO price for the SPAC’s shares or units is \$2.00.

The CSE’s view is that these requirements ensure that SPACs meet the criteria for listing on the CSE while promoting transparency and protecting investors throughout the listing process. It’s important to note that the CSE has retained the discretion to approve or reject a SPAC listing application based on a public interest assessment.

Policy 4 - Corporate Governance, Security Holder Approvals, and Miscellaneous Provisions

Pursuant to the Amendments, CSE Policy 4 – *Corporate Governance and Miscellaneous Provisions* has been renamed “*Corporate Governance, Securityholder Approvals, and Miscellaneous Provisions.*” Accordingly, the scope of CSE Policy 4 has been expanded to mandate that Listed Issuers obtain security holder approval for certain transactions, as discussed further below:

Sale of Securities:

Proposed securities offerings by NV Issuers now require majority approval from security holders in the following circumstances:

- If the number of securities to be issued exceeds 25% of the NV Issuer’s currently outstanding securities; and
- If the securities are issuable to a “Related Person”, as that term is defined in the CSE Policies, when combined with the securities issued to such Related Person through private placements or acquisitions in the last 12 months, exceed 10% of the total number of the NV Issuer’s securities or votes outstanding.

Security holders must also now approve proposed securities offerings by Listed Issuers who are not designated as NV Issuers in the following circumstances:

- If the securities offering is accompanied by a new Control Person, as that term is defined in the CSE Policies, approval is required from security holders representing 50% of the total number of securities or votes outstanding; or
- If the issuance exceeds 100% of the securities or votes outstanding.

Security holder approval is now also required for all Listed Issuers where the security's issuance price is lower than the current market price, less the "Maximum Permitted Discount", as that term is defined in the CSE Policies. Furthermore, if the Listed Issuer or the CSE determines that the issuance will materially affect control of the Listed Issuer, security holder approval for the issuance will be required.

Security holder approval of an offering may not be required under the following circumstances:

- The Listed Issuer is facing serious financial difficulties;
- The Listed Issuer has reached an agreement to complete an offering;
- There is no participation by any Related Person in an offering; and
- The Listed Issuer's independently comprised audit committee, or a majority of its independent directors, determine that an offering is in the best interests of the Listed Issuer, is reasonable, and it is not feasible to obtain security holder approval or complete a rights offering to existing security holders on the same terms.

A Listed Issuer using the above exemption must issue a news release five (5) days in advance of a securities offering stating that it is not their intention to hold a security holder vote, which also fully explains why the Listed Issuer qualifies for the exemption.

Acquisitions and Dispositions:

Security holders of Listed Issuers are now required to approve an acquisition under the following conditions:

- If the number of securities to be issued exceeds 50% of the total outstanding securities and is accompanied by the creation of a new Control Person;
- If the total number of securities to be issued is more than 100% of the Listed Issuer's outstanding securities; or
- If the acquisition would, as determined by the Listed Issuer or the CSE, materially affect control of the Listed Issuer.

In accordance with the Amendments, Listed Issuers are also generally required to receive the approval of security holders for a disposition of all, or substantially all of, the assets, business or undertaking of a Listed Issuer. Security holders of NV Issuers must approve an acquisition if:

- A Related Person of an NV Issuer holds an interest of 10% or greater in the assets to be acquired, and the total number

of securities issuable exceeds 5% of the total securities or votes of the NV Issuer; or

- The total number of securities issuable exceeds 25% of the total securities or votes of the NV Issuer.

Rights Offerings:

If a rights offering is made at a price that exceeds the Maximum Permitted Discount to the market price, security holder approval is now required. However, security holder approval is not necessary for a rights offering if the audit committee, or a majority of its independent directors, have determined that the rights offering is in the best interest of the Listed Issuer and is reasonable in the circumstances.

Other Transactions Requiring Security Holder Approval:

The amendments to CSE Policy 4 also require security holder approval for other items, which include:

- The adoption of or amendments to security-based compensation arrangements;
- The adoption of or amendments to any shareholder rights plans;
- Related party transactions, as that term, is defined in the CSE policies; and
- Consolidations if: (i) the consolidation ratio is greater than 10 to 1; or (ii) when combined with any other consolidation in the previous 24 months that shareholders did not approve, the consolidation ratio is greater than 10 to 1.

Majority Voting Policy

NV Issuers are now required to adopt a majority voting policy for the election of directors, and each director of an NV Issuer must now be individually elected by a majority of votes cast in such an election. This is similar to the majority voting requirements that are set out for issuers listed on the TSX.

Policy 6 - Distributions

Pursuant to the change of name for CSE Policy 6 from "CSE Policy 6 – Distributions" to "CSE Policy 6 – Distributions and Corporate Finance", the scope of CSE Policy 6 has been expanded to require public disclosure for acquisitions and private placements, as well as outlining what will now be required for confidential price reservation submissions.

Private Placements

The Amendments have introduced exceptions to the minimum private placement security price requirement of \$0.05. Listed

Issuers now have the flexibility to complete a private placement at a price lower than \$0.05 if: (i) the proposed price equals or exceeds the twenty (20) day volume-weighted average price for the previous 20 trading days, as determined by the CSE; (ii) the proceeds from the private placement will be put toward working capital or a bona fide debt settlement; and (iii) the following detail, as outlined in section 6.2(4), is submitted to the CSE in a confidential price reservation request:

- Name and trading symbol;
- Anticipated insider participation;
- Confirmation that there is no undisclosed material information;
- Intended use of proceeds;
- Structure of the financing; and
- Any other relevant information.

A Listed Issuer must provide public notice of their intention to complete a private placement at least five (5) days in advance. Furthermore, a Listed Issuer's confidential price protection will expire after 45 days if the private placement does not close unless security holder or CSE approval is required or the CSE has consented to an extension.

Acquisitions

In the case of an acquisition where a Listed Issuer relies on confidential price protection, the requirements outlined in section 6.2(4) apply, similar to private placements as mentioned above. As is the case with private placements, Listed Issuers must also provide public notice of their intention to complete an acquisition at least five (5) days in advance. If the CSE does not object within this five (5) day window, the Listed Issuer may proceed with closing the acquisition.

Security-Based Compensation Arrangements

Under Section 5 of CSE Policy 6, formerly known as "CSE Policy 6 – Incentive Stock Options," revised filing and reporting requirements have been implemented to align the CSE's approach more closely with other Canadian stock exchanges. Notably, the Amendments introduce "evergreen" or "rolling" plans, which mandate that a Listed Issuer obtain security holder approval every three (3) years in order to continue granting awards. If security holders do not approve the resolution for plan renewal, the CSE stipulates that a Listed Issuer must immediately cease granting awards under that plan.

Conclusion

The Amendments represent significant change at the CSE and more closely align the CSE Policies with those of other stock exchanges in Canada and globally. Introducing the Senior Tier offers benefits not previously available to Listed Issuers, such as better access to institutional investors. Some of the other changes brought forth by the Amendments will provide financing flexibility for Listed Issuers while also ensuring that security holder interests can be protected.

If you have any questions concerning the above, please get in touch with Andre Poles at apoles@dickinson-wright.com or Geoffrey Farr at gfarr@dickinson-wright.com. The authors gratefully acknowledge the assistance of associate Griffin Peloso, and summer student Julia Freedman, in the preparation of this bulletin.

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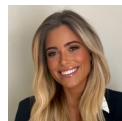
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