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In-House Counsel

Amendments to CNSX Markets Inc. listing policies approved, part one

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(May 26, 2023, 2:07 PM EDT) -- This article addresses various policy issues following the notices of approval for significant changes made by CNSX Markets Inc. (the CSE) approved and published by the Ontario Securities Commission and British Columbia Securities Commission on March 30, 2023, to the CSE listing policies and forms (collectively, the Amendments).

The Amendments became effective on April 3, 2023. The Amendments introduce similar standards for listed companies as those required by the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSXV) and NEO Exchange Inc. (NEO). The Amendments are meant to enhance disclosure, provide consistency in certain administrative and reporting requirements, and governance requirements that are consistent with the policies of other Canadian stock exchanges.

Part: 1: Key changes to CSE Policy 2 – Qualifications for Listings

(a) Eligibility for listing

An issuer intending to apply for listing on the CSE following the filing of a prospectus or by way of the filing of a CSE Form 2A — Listing Statement must first obtain confirmation from the CSE that the eligibility requirements set out in CSE Policy 2 have been met. Once the CSE has completed its review, it will provide confirmation of eligibility or identify any conditions to be met prior to listing, as well as providing confirmation to the securities commission staff that the issuer has in fact applied to and received comments from the CSE.

(b) Float and distribution

In order to demonstrate to the CSE that an issuer of equity securities meets the public float and distribution requirements, it must have a public float of at least 1,000,000 freely tradeable shares, with at least 300 public holders and consisting of at least 150 public holders holding at least a board lot each of the security. The public float must constitute at least 20 per cent of the total issued and outstanding of that security. It should be noted that the 20 per cent public float threshold has been deleted from the substantial float criteria.

(c) Non Venture Tier

The Amendments created a new class of CSE-listed issuer, aimed at larger listed issuers, designated as non-venture issuers (the Non Venture Tier). The qualifying criteria for this distinct tier are intended to be similar to those of the TSX and NEO. Some of the key features of Non Venture Tier

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issuers are as follows: (1) they are required to file an Annual Information Form, (2) they are required to post a quarterly listing statement no later than 45 days from the last day of the relevant quarter (versus up to 60 days for other issuers), (3) they may not sell securities pursuant to an IPO for less than $2 per share or unit (versus $0.10 for other issuers), (4) new security holder approvals will be required for certain sales of securities, restricted securities, acquisitions and dispositions, and (5) there are shorter deadlines for the filing of financial statements. The CSE has already begun reviewing the audited financial statements of its listed issuers that are currently not Non Venture Tier issuers to determine whether they meet the new listing criteria for being included in that new category.

It is noteworthy that the introduction of the Non Venture Tier designation is also intended to address a significant discrepancy in the application of Investment Industry Regulatory Organization of Canada's (IIROC) rules on margin eligibility for listed securities in Canada. There is an expectation that upon implementation of the Amendments, IIROC will confirm margin eligibility for Non Venture Tier issuers which would provide more accessibility of Non Venture issuers to a broader range of institutional investors.

The distinction between venture and non-venture issuers under securities law is determined by the exchange on which an issuer is listed. Previously, this created a potential for "regulatory arbitrage" whereby an issuer could choose to list on the CSE and be subject to less stringent reporting requirements under *National Instrument 51-102 — Continuous Disclosure Obligations*. The introduction of the Non Venture Tier is intended to eliminate the regulatory gap by imposing similar regulatory requirements on senior issuers even when listed on the CSE.

Pursuant to the revised CSE Policy 2, which sets the enhanced standards for non-venture issuers, exchange traded funds and closed end funds, "non-venture issuers" must now meet at least one of the four following tests:

- equity standard: which requires the issuer to have shareholders equity of at least $5,000,000 and expected market value of public float of at least $10,000,000;
- net income standard: which requires the issuer's net income to be at least $500,000 from continuing operations in the last fiscal year or in two of the last three fiscal years, shareholders' equity of at least $2,500,000, and expected market value of public float of at least $5,000,000;
- market value standard: which requires the issuer's market value of all securities, including the class(es) to be listed and any class convertible into the class(es) to be listed, but excluding warrants and options, of at least $50,000,000, shareholders' equity of at least $2,500,000 including the value of any offering completed concurrently with listing, and expected market value of public float of at least $10,000,000; or
- assets and revenue standard: which requires the issuer's total assets and total revenues to be at least $50,000,000 each in the most recent fiscal year or in two of three of the most recent fiscal years, and expected market value of the public float of at least $5,000,000.

(d) Industry-specific requirements for natural resource issuers

The Amendments impose additional standards for mineral exploration issuers. First, an issuer must have title to a mineral property on which there has been at least $150,000 of qualifying expenditures (up from the previous amount of $75,000) in the last 36 months. Second, the issuer must have obtained a National Instrument 43-101 technical report that recommends further exploration on the property, with a budget for the first phase of at least $250,000 (up from the previous amount of $100,000). Third, issuers with a single exploration project must include disclosure of its objectives to pursue additional exploration projects or opportunities. Despite the revised thresholds noted above issuers may still qualify with $75,000 of qualifying expenditures and $100,000 on work programs, subject to additional restrictive escrow requirements.

(e) Builder shares and low-priced shares

For issuers not yet generating revenue from business activities, the CSE will not consider an application where builder shares have been issued for less than $0.005 in the previous 24-month period, which is a departure from the previous threshold of 18 months.

This is the first of a two-part series. Part two will cover corporate governance, miscellaneous provisions and distributions.

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