

Business

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

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(May 29, 2023, 1:29 PM EDT) -- The first article in this two-part series addressed the 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. Our first article covered the key changes to CSE Policy 2, the qualifications for listings. This article will cover corporate governance, miscellaneous provisions and distributions.

Part 2: Key changes to CSE Policy 4 — Corporate Governance and Miscellaneous Provisions

(a) Security holder approvals — general requirements

Prior to the Amendments, CSE policies required shareholder approval for a limited subset of transactions. Under the Amendments, there are several transactions that will now require securityholder approval including certain financings, acquisitions and dispositions. The Amendments are intended to be consistent with the other Canadian stock exchanges. The new requirements for securityholder approval may be satisfied by a written resolution signed by security holders holding more than 50 per cent of the securities having voting rights.

(b) Significant change — security approval

Non-Venture Tier issuers must obtain securityholder approval for a proposed securities offering (other than an offering by way of prospectus) if the number of securities issuable in the offering is more than 25 per cent of the total number of securities or votes outstanding. In addition, Non-Venture Tier issuers must obtain securityholder approval if the securities issuable to a related party, when aggregated to the securities issued to such related party in private placement or acquisition transactions completed in the previous 12-month period, is more than 10 per cent of the total number of securities or votes outstanding.

For not Non Venture Tier issuers, securityholder approval is required if the issuance of securities in an offering: (i) is greater than 50 per cent of the outstanding securities and a new control person is created; or (ii) if the issuance is great than 100 per cent of the securities or votes outstanding.

In addition, securityholders of an issuer must approve (i) certain acquisition transactions, (ii) if the transaction price per security is lower than the market price less the maximum permitted discount, or (iii) if the issuer or the CSE otherwise determine that the offering will materially



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Dom Mannella affect control of the issuer.

(c) Rights offering

Securityholder approval is required where securities offered by way of rights offering are offered at a price greater than the maximum permitted discount to the market price. Securityholder approval for a rights offering is not required where independent directors have determined that the rights offering, including the pricing thereof, is in the best interests of the issuer, and is reasonable in the circumstances.

(d) Security based compensation arrangements

The Amendments have imposed securityholder approval requirements and additional filing, posting and reporting requirements similar to requirements of other stock exchanges with respect to security-based compensation arrangements, including securityholder approval every three years for "rolling" security-based compensation plans.

(e) Majority voting policy

The CSE has adopted new requirements regarding majority voting policies similar to those that already exist on the TSX. Pursuant to the new requirements, each director of a Non-Venture Tier issuer must be individually elected by a majority of the votes cast with respect to their election, other than at contested meetings.

Part 3: Key Changes to CSE Policy 6 – Distributions

(a) Private placements

The Amendments have removed the minimum offering price requirement and permit issuers to complete a private placement at a price lower than \$0.05 if: (i) the proposed price is not less than the 20-day volume weighted average trading price less permitted discount; (ii) the proceeds will be used for working capital and/or settlement of a bona fide debt; and (iii) certain basic information about the offering is provided to the CSE. In addition, an issuer must issue a press release announcing its intention to complete a private placement at least five business days prior to closing. The following basic information must be provided to the CSE when the price reservation request is submitted: (1) name and trading symbol; (2) anticipated insider participation; (3) confirmation that there is no undisclosed material information; (4) intended use of proceeds; (5) structure of the financing; and (6) any other information that may be relevant.

(b) Normal course issuer bids

The Amendments have introduced new reporting requirements and specific trading restrictions and allowances that are consistent with other exchanges, with certain allowances for block purchases permitted only to Non-Venture Tier issuers.

Conclusion

The Amendments were designed to clarify CSE policies and bring them in line with the policies of other Canadian stock exchanges. We expect that the Amendments will provide clarity in the policy application of the CSE, which is advantageous to both issuer and investors.

This article provides a summary of the many changes set out in the Amendments. Issuers should contact Fogler, Rubinoff LLP to discuss how the changes may impact their operations and/or proposed transactions.

This is the second of a two-part series. Read the first article: Amendments to CNSX Markets Inc. listing policies approved, part one.

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