

CSE NOTICE 2017-001

JANUARY 5, 2017

CANADIAN SECURITIES EXCHANGE PUBLIC INTEREST RULE AMENDMENT CONTINUED LISTING REQUIREMENTS NOTICE AND REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

Background

On February 26, 2016, the Canadian Securities Exchange (“CSE” or “Exchange”) published Notice 2016-003 *Request for Comments – Amendments to Policy 2 and Policy 8* (“Initial Listing Amendments”).¹ The Initial Listing Amendments will codify regulatory guidance previously published on January 23, 2015 in Notice 2015-003 *Regulatory Guidance on Plans of Arrangement and Capital Structure* (“Guidance”)² and include new requirements to ensure issuers have achieved appropriate business milestones prior to listing. Furthermore, the Initial Listing Amendments will clarify that the CSE in exercising its discretion in carrying out its listings function, may take into consideration the public interest, including any market integrity issues.

The CSE is now proposing certain continued listing requirements (“CLR”) to further reinforce the policy rationale of the Initial Listing Amendments.

By raising the bar for the CSE’s existing and prospective listed company base, CSE is looking to foster investor confidence in both its listed issuers and the Canadian capital markets. Combined, the Initial Listing Amendments and CLR are expected to improve secondary market liquidity and increase the range of financing opportunities for CSE-listed issuers.

Description of the Proposed Amendments

Policy 2 - Qualifications for Listing

Section 9 “Continuing to Qualify for Listing” includes general requirements for all issuers as well as a specific requirement for issuers with a significant connection to Alberta.

Section 9.1 will be amended to include an additional paragraph referring to the proposed CLR in Policy 2 Appendix A section 2.9. The title “Significant Connection to Alberta” will be added to section 9.2.

A housekeeping correction will be made to 9.2(e) to remove the word “not”.

¹ <http://thecse.com/en/about/publications/notices/notice-2016-003-request-for-comments-amendments-to-cse-policy-2-and-policy-8>

² <http://thecse.com/en/about/publications/notices/notice-2015-003-regulatory-guidance-on-plans-of-arrangement-and-capital-structure>

Appendix A – Equity Securities, Part A will be amended to include the proposed CLR. The CLR will be introduced in new section 2.9 “Continued Listing Requirements”, which will include:

a) Public Distribution. Issuers must have a minimum of 250,000 shares in the public float, representing 10% of the issued and outstanding listed shares, held by at least 150 public holders. As per the exception provided in Policy 9, the minimum number of public shareholders may be less than 150 immediately following a consolidation, provided that it is not less than 100.

b) Financial Resources. Issuers must maintain adequate working capital or financial resources to maintain operations for a period of six months.

c) Assets. There is no prescribed value however the Exchange may determine that a Listed Issuer no longer meets continued listing requirements if the issuer reduces or impairs its principal operating assets or ceases or substantively reduces its business operations.

d) Activity.

For a mining or oil and gas issuer, either:

- 1) For the most recent fiscal year, positive cash flow, significant revenue from operations, or \$50,000 in exploration or development expenditures; or
- 2) For the three most recent fiscal years, an aggregate of \$100,000 in exploration or development expenditures.

For industry segments other than mining or oil & gas, either:

- 1) For the most recent fiscal year, positive cash flow, \$100,000 in revenue from operations, or \$100,000 of development expenditures; or
- 2) For the three most recent fiscal years, either \$200,000 in operating revenues or \$200,000 in expenditures directly related to the development of the business.

Policy 3 Suspensions Halts and Delistings

Policy 3 will also be amended to include new section 5 “Application of Continued Listing Requirements”. A Listed Issuer must meet the CLR to remain listed in good standing. The Exchange may designate an issuer as inactive, assign it to a different industry segment, suspend trading or delist an issuer that does not meet the CLR.

Section 5.1 “Notification” provides for notice to a Listed Issuer in default, and the permitted period for meeting CLR. An Issuer, upon receiving notice from the Exchange that it does not meet a continued listing requirement, will have nine months from the date of the notice to meet the requirement(s). If, after the nine-month period, the Issuer

has not demonstrated to the Exchange that it has met the requirements, the Exchange may:

- a) suspend the Issuer pending delisting in 90 days; or
- b) designate the Issuer as inactive, with relevant disclosure on the Exchange website and a designation on the trading symbol of the issuer.

Section 5.2 “Restrictions” will limit certain activity by a company that has been deemed inactive. Specifically, an Issuer that has been deemed inactive and received such notice from the Exchange may not enter into a contract or agreement with any person to provide investor relations services for the issuer without prior approval of the Exchange.

B. EXPECTED IMPLEMENTATION DATE

The proposed amendments are expected to be implemented following the public comment period and OSC approval.

C. RATIONALE FOR THE PROPOSED AMENDMENTS AND RELEVANT SUPPORTING ANALYSIS

CLR are intended to promote investor confidence by providing a threshold below which companies will not qualify for continued listing on an exchange. It is important to recognize, however, that while investors may take comfort in the fact that a company meets specific criteria at the time of investment, they may be otherwise displeased that the same company may be delisted simply for falling below an arbitrary requirement based on, for example, a set market value. The Exchange is proposing certain CLR that are primarily within the control of the issuer, rather than the market at large. For example, the Exchange does not consider it necessary or appropriate to set a single specific market capitalization threshold that would apply to all Issuers, as market factors, commodity prices and general economic factors should not necessarily be the determining factors in whether a company continues to qualify for listing.

a) Public Distribution. Issuers must have a minimum of 250,000 shares in the public float, representing 20% of the issued and outstanding listed shares, held by at least 150 public holders. As per the exception provided in Policy 9, the minimum number of public shareholders may be less than 150 immediately following a consolidation, provided that it is not less than 100. Although a float value was considered, it would be inconsistent with the initial listing requirements that do not include a float value requirement. The requirement for a minimum number of shareholders is intended to facilitate the development of a reasonably efficient price discovery mechanism on the Exchange, which affects both market quality and market integrity. A requirement for a minimum market capitalization or float value for continued listing is a market quality measurement that may create an incentive to artificially support the share price, creating a market integrity issue.

b) Financial Resources. Issuers must maintain adequate working capital or financial resources to maintain operations for a period of six months.

When proposing amendments to the initial listing requirements, the Exchange determined that a twelve month target is reasonable and in line with the stated objective to provide access to capital at an earlier stage. The Exchange is also proposing the elimination of the specific working capital requirement for existing listed companies that are applying to list (i.e. moving from another exchange) without a concurrent or proposed change of business. The Exchange believes that this proposed requirement for working capital or financial resources for a period of six months is consistent with the principles underlying the initial requirements. A specific working capital requirement may create the necessity for an arbitrary capital raise or debt settlement that may not be related to business cycle considerations or the business plan of the issuer.

We remain committed to assisting junior issuers. The requirement on an Issuer to meet specific business milestones or objectives is more under the control of management and may well be less dilutive to shareholders than a requirement to raise additional funds simply to meet an artificially established capital target a specific time.

c) Assets. The Exchange is not proposing a requirement to have a prescribed value of company assets due to the diversity of businesses and stages of development of CSE issuers. The Exchange may determine that a Listed Issuer no longer meets CLR if the issuer reduces or impairs its principal operating assets or ceases or substantively reduces its business operations. Combined with (d), below, this approach ensures that the value of an Issuer's assets may be considered along with its activity in determining whether the Issuer has the resources to continue pursuing its stated business objectives.

d) Activity.

For a mining or oil and gas issuer, either:

- 1) For the most recent fiscal year, positive cash flow, significant revenue from operations, or \$50,000 in exploration or development expenditures; or
- 2) For the three most recent fiscal years, an aggregate of \$100,000 in exploration or development expenditures.

For industry segments other than mining or oil & gas, either:

- 1) For the most recent fiscal year, positive cash flow, \$100,000 in revenue from operations, or \$100,000 of development expenditures; or
- 2) For the three most recent fiscal years, either \$200,000 in operating revenues or \$200,000 in expenditures directly related to the development of the business.

Recent amendments to the initial listing requirements include a requirement for a demonstrated history of development consistent with carrying on a business prior to qualifying for listing. The proposed paragraphs (c) and (d), above, are intended to apply more specific criteria to listed companies. While it is the stated intent of the Exchange

to provide access to public capital at an early stage for companies, it is also critical that a listed company continue to demonstrate development or operations once listed. Companies qualify for listing based on a history of operations, or the prospects disclosed in the listing statement. The CLR will build on those initial requirements by requiring that an issuer demonstrate the ability to meet certain operational objectives on an annual basis.

As with the initial requirements, objectives and milestones must be specific to each company. In terms of financial resources, companies will be expected to have the resources to achieve milestones as described in the listing statement and in accordance with section 1.4 of Policy 2.

Policy 3 Suspensions Halts and Delistings

The addition of section 5 to Policy 3 is a consequential amendment to the requirements, describing how the requirements will be applied. The restriction on contracts or engagements for investor relations services is to ensure that the resources of an inactive issuer are directed towards regulatory compliance and business activities.

D. EXPECTED IMPACT OF THE AMENDMENTS ON MARKET STRUCTURE, MEMBERS, INVESTORS, ISSUERS, AND THE CAPITAL MARKET

We expect that the proposed changes to the Policies will encourage the Canadian corporate finance community's willingness to participate in financings for CSE-issuers, and for dealers to participate in both agency and principal trading for CSE-listed companies. These measures should improve secondary market liquidity and increase the range of financing opportunities for CSE-listed issuers.

E. EXPECTED IMPACT ON CSE'S COMPLIANCE WITH ONTARIO SECURITIES LAW (INCLUDING FAIR ACCESS AND MAINTENANCE OF FAIR AND ORDERLY MARKETS)

The proposed amendments are not expected to impact the Exchange's compliance with Ontario securities law, including the requirements for fair access or the maintenance of fair and orderly markets.

F. CONSULTATION

The underlying theme of the proposed amendments has also been discussed with various law firms, issuers, investment dealers, and investors.

G. TECHNOLOGY CHANGES

No technology changes will be required as a result of the proposed amendments.

H. EXISTING RULES IN OTHER MARKETS OR JURISDICTIONS

All other exchanges in Canada have explicit requirements related to continued listing requirements. The proposed requirements are similar in principle, with lower thresholds for junior issuers, as appropriate. One notable difference is the absence of a float value, or market capitalization threshold.

I. APPROVED OF THE PROPOSED AMENDMENTS BY THE CSE BOARD OR A DULY AUTHORIZED BOARD COMMITTEE

The proposed amendments were reviewed and approved by the Regulatory Advisory Committee of the CSE Board.

J. COMMENTS

Comments on the proposed amendments should be in writing and submitted no later than February 6, 2017 to:

Mark Faulkner
Vice President, Listings and Regulation
CNSX Markets Inc.
220 Bay Street, 9th Floor
Toronto, ON, M5J 2W4
Fax: 416.572.4160
Email: Mark.Faulkner@thecse.com

A copy of the comments should be provided to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON, M5H 3S8
Fax: 416.595.8940
Email: marketregulation@osc.gov.on.ca

The text of the amendments is attached in Appendix A.

APPENDIX A

Proposed Amendments to Policy 2 section 9

9 Continuing to Qualify for Listing

9.1 To continue to qualify for listing, a Listed Issuer must meet all of the following requirements:

- a) the Listed Issuer must be in good standing under and not in default of applicable corporate law;
- b) the Listed Issuer must remain a reporting issuer or equivalent in good standing in each jurisdiction in which it is a reporting issuer or equivalent and must not be in default of any requirement of any such jurisdiction;
- c) the Listed Issuer must be in compliance with Exchange Requirements, and the terms of the Listing Agreement;
- d) the Listed Issuer must post all required documents and information required under the Policies of the Exchange;
- e) the Listed Issuer must concurrently post all public documents submitted to SEDAR (unless identical disclosure has ~~not~~ already been posted in an Exchange-specific Form);
- f) if the Issuer is required to submit Personal Information Forms for each Related Person at the time of listing then the Listed Issuer must submit a Personal Information Form for any new Related Person of the Listed Issuer (and if any of these persons is not an individual, a Personal Information Form for each director, officer and each person who beneficially, directly or indirectly owns, controls or exercises direction over 20% or more of the voting rights of such non-individual);
- g) the Listed Issuer must take all reasonable care to ensure that any statement, document or other information which is provided to or made available to the Exchange or posted by the Listed Issuer is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, document or other information-; and
- h) a Listed Issuer with equity securities listed must meet the continued listing requirements described in section 2.9 of Appendix A of this Policy.

9.2 Significant Connection to Alberta

Each Listed Issuer that is not a reporting issuer in Alberta must:

- a) assess whether it has a significant connection to Alberta;
- b) upon becoming aware that it has a significant connection to Alberta as a result of complying with section 9.2 a) above or otherwise, immediately notify the Exchange and promptly make a *bona fide* application to the Alberta Securities Commission to be deemed to be a reporting issuer in Alberta (a Listed Issuer must become a reporting issuer in Alberta within six months of becoming aware that it has a significant connection to Alberta);

- c) assess, on an annual basis, in connection with the delivery of its annual financial statements to securityholders, whether it has a significant connection to Alberta;
- d) obtain and maintain for a period of three years after each annual review referenced in this section, evidence of residency of their registered holders and beneficial holders; and
- e) if requested, provide to the Exchange evidence of the residency of its non-objecting beneficial owners (as defined in National Policy 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* or its successor instruments).

9.3 Where it appears to the Exchange that an Issuer making an application for listing has a significant connection to Alberta, the Exchange will, as a condition of its acceptance or approval of the listing application, require the Issuer to provide evidence that it has made a *bona fide* application to the Alberta Securities Commission to become a reporting issuer in Alberta.

Proposed Section 2.9 of Appendix A to Policy 2

Appendix A

Part A

2.9 Continued Listing Requirements

In addition to the general requirements in Policy 2 Section 9.1, a Listed Issuer with equity securities listed must meet the specific criteria set out below on an annual basis:

a) Public distribution

(i) minimum of 250,000 shares in the public float;

(ii) 10% or more of listed shares in the public float;

(iii) at least 150 public securityholders each holding one board lot of freely trading shares, subject to the exception provided in Policy 9 that would permit no less than 100 public securityholders immediately following a consolidation;

b) Financial Resources

Adequate working capital or financial resources to maintain operations for a period of 6 months.

c) Assets

No prescribed requirement however the Exchange may determine that a Listed Issuer no longer meets the continued listing requirements if the Issuer:

(i) reduces or impairs its principal operating assets; or

(ii) ceases or substantively reduces its business operations.

d) Activity

(i) For a mining or oil and gas issuer, either:

- 1) For the most recent fiscal year, positive cash flow, significant revenue from operations, or \$50,000 in exploration or development expenditures; or
- 2) For the three most recent fiscal years, an aggregate of \$100,000 in exploration or development expenditures.

(ii) For industry segments other than mining or oil & gas, either:

1) For the most recent fiscal year:

a) Positive cash flow;

b) \$100,000 in revenue from operations;

c) \$100,000 of development expenditures

or

2) For the three most recent fiscal years, either \$200,000 in operating revenues or \$200,000 in expenditures directly related to the development of the business.

Proposed Amendments to Policy 3

Policy 3

5. Application of Continued Listing Requirements

A Listed Issuer must meet Exchange Requirements to remain listed in good standing. The Exchange may designate an issuer as inactive, assign it to a different industry segment, suspend trading or delist an issuer that does not meet Exchange Requirements.

5.1 Notification

An Issuer, upon receiving notice from the Exchange that it does not meet a continued listing requirement, will have nine months from the date of the notice to meet the requirement(s). If, after the nine-month period, the Issuer has not demonstrated to the Exchange that it has met the requirements, the Exchange may:

a) suspend the Issuer pending delisting in 90 days;

b) designate the Issuer as inactive, with relevant disclosure on the Exchange website and a designation on the trading symbol of the issuer.

5.2 Restrictions

An Issuer that has been deemed inactive and received such notice from the Exchange may not enter into a contract or agreement with any person to provide investor relations services for the issuer.