

13.2 Marketplaces

13.2.1 Canadian Securities Exchange – Public Interest Rule – Amendments to Policy 4 Corporate Governance and Miscellaneous Provisions – Notice and Request for Comments

CANADIAN SECURITIES EXCHANGE

PUBLIC INTEREST RULE

CORPORATE GOVERNANCE AND EMERGING MARKETS ISSUERS GUIDANCE AND REQUIREMENTS

NOTICE AND REQUEST FOR COMMENTS

Notice 2017-018

October 20, 2017

The Canadian Securities Exchange (“CSE”) is publishing amendments to Policy 4 Corporate Governance and Miscellaneous Provisions (“Policy”) to incorporate existing guidance into the Policy (“Amendments”).

Background

On March 20, 2012, the OSC published the results of the Emerging Markets Issuer Review (“OSC EMIR Report”) in Staff Notice 51-719, which identified material disclosure deficiencies in more than 60% of the issuers. On November 9, 2012 the OSC subsequently published Staff Notice 51-720 – *Issuer Guide for Companies Operating in Emerging Markets* (“OSC EMI Guide”).¹ The OSC EMI Guide does not propose or require the implementation of emerging markets issuer requirements. Rather, the OSC EMI Guide highlights potential areas of risk, identifies key questions that directors and management should address and outlines the expectations of OSC Staff with respect to the existing disclosure regime for reporting issuers.

The CSE views the OSC EMI Guide and the OSC EMIR Report as beneficial guidance to all issuers, not just those with operations in emerging markets, and subsequently adopted the guidance by reference through its publication on May 10, 2013 of Notice 2013-002 – CNSX – Issuer Guidance – Disclosure Obligations (“CSE Guidance Notice”).²

A. Description of the Public Interest Rule

Policy 4

Policy 4 “Corporate Governance and Miscellaneous Provisions” is proposed to be amended.

Directors & Officers

The following new sections codify the CSE’s existing practice of requiring separation of the roles of CEO and CFO, and requirements for management experience and expertise:

- new section 3.5 has been added whereby it will be required that Listed Issuers have a CEO, CFO, and a corporate secretary. The CEO and CFO roles will need to be held by different individuals. There is also a proficiency requirement for CFOs.
- new section 3.6 has been added whereby it will be required that an issuer’s directors, officers and management have adequate Reporting Issuer experience as well as relevant experience and expertise to the issuer’s industry and factors in each jurisdiction within which the issuer operates.

Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets

New section 4 has been added to Policy 4 which provides guidance for issuers with their principal business operations or operating assets in emerging markets based on the OSC EMI Guide.

Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets

New section 5.1 has been added to Policy 4 which requires issuers with principal business operations or operating assets in emerging markets to provide a title opinion or appropriate confirmation and a satisfactory legal opinion that it holds the necessary license, permit, or approvals to operate in the jurisdiction.

¹ http://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20121109_51-720_issuer-guide.pdf.

² <http://thecse.com/en/about/publications/notices/notice-2013-002-cnsx-issuer-guidance-disclosure-obligations>.

New section 5.2 has been added to Policy 4 which requires that all [or the majority] of the members of the audit committee must be financially literate as defined in NI 52-110 *Audit Committees*.

New section 5.3 has been added to Policy 4 which requires disclosure of risks and mitigation steps in the Listing Statement.

B. Expected Date of Implementation of the Proposed Public Interest Rule

The proposed Amendments are expected to be implemented December 4, 2017.

C. Rationale for the Proposal and any Relevant Supporting Analysis

The Amendments codify in the Policy the guidance previously provided in the CSE Guidance Notice, and include additional information consistent with the OSC EMI Guide. Specifically, a more descriptive list of the areas of concern as described in the OSC EMI Guide is included. The Amendments outline common best practice and are currently in effect for other exchanges in Canada (see section G below: “Introduction of a fee model, feature or Rule that currently exists in other markets or jurisdictions”).

D. Expected Impact of the Proposed Public Interest Rule on the Market Structure, Members and, if applicable, on Investors, Issuers and the Capital Markets

The Amendments are intended to improve Issuer procedures to mitigate certain risks, and to provide adequate disclosure of those procedures and risks. For Listed Issuers, the impact is expected to be negligible because the CSE has been exercising its discretion to apply most of the principles since the publication of the CSE Guidance Notice. Issuers applying for listing will need to follow the new requirements and be expected to take into consideration the codified guidance.

There is no impact on Market Structure and Members.

Investors will be beneficially impacted with the imposition of higher standards. This will also benefit the Canadian capital markets.

E. Expected Impact of the Public Interest Rule on CSE's compliance with Ontario securities law and in particular on requirements for Fair Access and Maintenance of Fair and Orderly Markets

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

F. Imposed Requirements by the Public Interest Rule on Members and Service Vendors to Modify their Own Systems after Implementation of the Rule, and a Reasonable Estimate of the Amount of Time needed to Perform the Necessary Work, or an Explanation as to why a Reasonable Estimate was not Provided

No technology changes will be required as a direct result of the Amendments.

G. Introduction of a fee model, feature or Rule that currently exists in other markets or jurisdictions

The Amendments are consistent with requirements of other Canadian exchanges, as indicated below.

Requirement	TSX-V	TSX	Aequitas NEO
1. Separate CEO & CFO	Policy 3.1 s. 5.9. ³	Listed Company Manual Part III sections 311, 316, 321.	Listing Manual, Part 10.02(2). ⁴
2. Financially Literate CFO	Policy 3.1 s. 5.8(b)	TSX Staff Notice 2015-001. ⁵ No specific requirement; guidance is provided.	Not Explicit

³ <https://www.tsx.com/resource/en/430>.

⁴ <https://www.aequitasneo.com/documents/en/listings/Aequitas-NEO-Exchange-Listing-Manual-010617-EN.pdf>.

⁵ http://tmx.complinet.com/en/display/display_viewall.html?rbid=2072&element_id=918&record_id=1117&filtered_tag.

Requirement	TSX-V	TSX	Aequitas NEO
3. Emerging markets issuers to provide title opinion or legal opinion	Policy 2.10 s. 4.7. ⁶	TSX Staff Notice 2015-001. No specific requirement; guidance is provided.	Listing Manual. Part II. s. 2.10 Commentary: "The Exchange has not adopted listing requirements or procedures applicable to the listing of securities of Emerging Market Issuers. The Exchange will not accept an application to list securities of an Emerging Market Issuer until such requirements or procedures are adopted and implemented by the Exchange"
4. Describe steps taken to choose external auditor and procedures to ensure audit committee can evaluate audit process	Not applicable – exchange will assess the auditor's qualifications. Policy 2.10 s. 4.4	TSX Staff Notice 2015-001. No specific requirement; guidance is provided.	
5. For an audit committee with the minimum number of directors (3), each must be financially literate.	Policy 2.10 s. 4.2(e)(i) Every member must be financially literate, regardless of committee size.	TSX Staff Notice 2015-001. No specific requirement; guidance is provided.	

H. Comments

Comments on the proposed amendments should be in writing and submitted no later than November 20, 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**.

CSE Policies are available on thecse.com at: <http://thecse.com/support/listed-companies/policies>

Questions about this notice may be directed to:

Mark Faulkner, Vice President Listings & Regulation

Mark.Faulkner@thecse.com, or 416-367-7340

For questions about Policies or listing requirements of the CSE, please contact the Listings & Regulation team at: listings@thecse.com or 416-367-7340

⁶ <https://www.tsx.com/resource/en/1159>.

Appendix A

Blacklined version indicating changes to existing POLICY 4 – CORPORATE GOVERNANCE AND MISCELLANEOUS PROVISIONS	Version indicating changes incorporated
<p>1.2 No single governance structure fits all publicly held corporations, and there is considerable diversity of organizational styles. Each Listed Issuer should develop a governance structure that is appropriate to its nature and circumstances. <u>See section 4 “Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets”.</u></p>	<p>1.2 No single governance structure fits all publicly held corporations, and there is considerable diversity of organizational styles. Each Listed Issuer should develop a governance structure that is appropriate to its nature and circumstances. See section 4 “Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets.”</p>
<p>2.10 For reasons similar to those expressed in paragraph 2.2, the Exchange does not <u>generally</u> consider that it is appropriate to prescribe a higher threshold for Listed Issuers than that prescribed by corporate law or National Instrument 52-110 <i>Audit Committees</i>. However, the Exchange endorses the recommendations and guidelines of 52-110CP. Listed Issuers should consider that placing a greater number or higher percentage of outside or unrelated directors on the audit committee may function as an effective protection of shareholder interests. <u>See section “Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets”.</u></p>	<p>2.10 For reasons similar to those expressed in paragraph 2.2, the Exchange does not generally consider that it is appropriate to prescribe a higher threshold for Listed Issuers than that prescribed by corporate law or National Instrument 52-110 <i>Audit Committees</i>. However, the Exchange endorses the recommendations and guidelines of 52-110CP. Listed Issuers should consider that placing a greater number or higher percentage of outside or unrelated directors on the audit committee may function as an effective protection of shareholder interests. See section “Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets”.</p>
<p><u>3.5 Management</u></p> <p><u>(a) A Listed Issuer must have:</u></p> <p><u>i) a Chief Executive Officer (CEO);</u></p> <p><u>ii) a Chief Financial Officer (CFO); and</u></p> <p><u>iii) a corporate secretary.</u></p> <p><u>(b) The CFO must be financially literate, as defined in NI 52-110, and have experience or knowledge of Canadian corporate governance laws and reporting requirements.</u></p> <p><u>(c) The CEO or CFO may also act as corporate secretary. No individual may act as both CEO and CFO of a Listed Issuer.</u></p> <p><u>3.6 Collectively, an Issuer’s Directors, officers and management must have adequate reporting issuer experience, and experience and expertise relevant to the Issuer’s industry and the languages, customs and laws relevant to the Issuer’s operations in each of the jurisdictions in which the Issuer operates.</u></p>	<p>3.5 Management</p> <p>(a) A Listed Issuer must have:</p> <p>i) a Chief Executive Officer (CEO);</p> <p>ii) a Chief Financial Officer (CFO); and</p> <p>iii) a corporate secretary.</p> <p>(b) The CFO must be financially literate, as defined in NI 52-110, and have experience or knowledge of Canadian corporate governance laws and reporting requirements.</p> <p>(c) The CEO or CFO may also act as corporate secretary. No individual may act as both CEO and CFO of a Listed Issuer.</p> <p>3.6 Collectively, an Issuer’s Directors, officers and management must have adequate reporting issuer experience, and experience and expertise relevant to the Issuer’s industry and the languages, customs and laws relevant to the Issuer’s operations in each of the jurisdictions in which the Issuer operates.</p>
<p><u>4. Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets</u></p> <p><u>The primary focus of the initial and ongoing listing requirements of the Exchange is disclosure. Appropriate guidance about what constitutes meaningful disclosure will help address specific challenges or concerns about listed companies with their principal business operations or operating assets in emerging markets. While relevant to all issuers, the guidance contained in this section is primarily</u></p>	<p>4. Guidance for Issuers with Principal Business Operations or Operating Assets in Emerging Markets</p> <p>The primary focus of the initial and ongoing listing requirements of the Exchange is disclosure. Appropriate guidance about what constitutes meaningful disclosure will help address specific challenges or concerns about listed companies with their principal business operations or operating assets in emerging markets. While relevant to all issuers, the guidance contained in this section is primarily</p>

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<p><u>intended for issuers whose directing management is largely outside Canada; and whose principal active operations are outside of Canada, in regions such as Asia, Africa, South America and Eastern Europe.</u></p> <p><u>4.1 Areas of Concern</u></p> <p><u>A listed company with a governance structure that is appropriate to its circumstances would likely have identified and addressed the areas of concern listed in OSC Staff Notice 51-720 – Issuer Guide for Companies Operating in Emerging Markets (“OSC EMI Guide”). This should enable the issuer to provide adequate, meaningful disclosure as described in the OSC EMI Guide. Listed companies are encouraged to review the OSC EMI Guide and assess their own approach to specific risks and tailor both their governance practices and disclosure to address the OSC EMI Guide areas of concern that are pertinent to them.</u></p> <p><u>a) Business and operating environment</u></p> <p><u>An Issuer is required by securities legislation to describe its business and operations. Additionally, the CSE Form 2A – Listing Statement must include, among other things, disclosure about the Listed Company’s principal markets, competitive conditions in the principal markets and geographic areas in which it operates, and economic dependence on significant contracts.¹</u></p> <p><u>¹ CSE Form 2A – Listing Statement, Item 4 Narrative Description of Business</u></p> <p><u>b) Language and cultural differences</u></p> <p><u>In considering the responsibilities of the board of directors as described in section 2.1 of this Policy, the board should include members that have appropriate experience in each market in which the issuer conducts business. This will enable the board to identify specific risks associated with each market so that the governance oversight responsibilities will be met. Reliance on local management may not be appropriate without the provision for additional input from independent sources.</u></p> <p><u>c) Corporate structure</u></p> <p><u>A corporate structure that addresses differing political, legal and cultural realities may be complex and difficult for investors to understand. The complexity of a corporate structure also creates additional risks associated with effective decision making and accurate reporting across the organization.</u></p> <p><u>Disclosure about an Issuer’s corporate structure should:</u></p> <p><u>(i) be clear and understandable;</u></p> <p><u>(ii) explain why the structure is necessary; and</u></p>	<p>intended for issuers whose directing management is largely outside Canada; and whose principal active operations are outside of Canada, in regions such as Asia, Africa, South America and Eastern Europe.</p> <p>4.1 Areas of Concern</p> <p>A listed company with a governance structure that is appropriate to its circumstances would likely have identified and addressed the areas of concern listed in OSC Staff Notice 51-720 – Issuer Guide for Companies Operating in Emerging Markets (“OSC EMI Guide”). This should enable the issuer to provide adequate, meaningful disclosure as described in the OSC EMI Guide. Listed companies are encouraged to review the OSC EMI Guide and assess their own approach to specific risks and tailor both their governance practices and disclosure to address the OSC EMI Guide areas of concern that are pertinent to them.</p> <p>a) Business and operating environment</p> <p>An Issuer is required by securities legislation to describe its business and operations. Additionally, the CSE Form 2A – Listing Statement must include, among other things, disclosure about the Listed Company’s principal markets, competitive conditions in the principal markets and geographic areas in which it operates,¹ and economic dependence on significant contracts.¹</p> <p>¹ CSE Form 2A – Listing Statement, Item 4 Narrative Description of Business</p> <p>b) Language and cultural differences</p> <p>In considering the responsibilities of the board of directors as described in section 2.1 of this Policy, the board should include members that have appropriate experience in each market in which the issuer conducts business. This will enable the board to identify specific risks associated with each market so that the governance oversight responsibilities will be met. Reliance on local management may not be appropriate without the provision for additional input from independent sources.</p> <p>c) Corporate structure</p> <p>A corporate structure that addresses differing political, legal and cultural realities may be complex and difficult for investors to understand. The complexity of a corporate structure also creates additional risks associated with effective decision making and accurate reporting across the organization.</p> <p>Disclosure about an Issuer’s corporate structure should:</p> <p>(i) be clear and understandable;</p> <p>(ii) explain why the structure is necessary; and</p>

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<p><u>(iii) describe the risks associated with the structure and how those risks are managed.</u></p> <p><u>Policy 2 – Qualifications for Listing specifically disqualifies special purpose entities and variable interest entities.</u></p> <p><u>d) Related parties</u></p> <p><u>Disclosure requirements for related party transactions are included in both accounting standards and securities legislation. Business, cultural and legal differences may result in increased risks, especially in cases where the interests of the controlling shareholders do not necessarily align with the interests or expectations of the minority shareholders. The board should have appropriate policies and procedures for the evaluation of related party transactions.</u></p> <p><u>e) Risk management and disclosure</u></p> <p><u>Risk disclosure is an important element of investor protection, and the board should ensure that adequate disclosure is provided of the specific risks of operating in each market in which the Issuer operates. CSE Form 2A – Listing Statement requires full risk disclosure in section 17, as well as reasonable detail and a discussion of any trend, commitment, event or uncertainty that is both presently known and reasonably expected to have a material effect on the Issuer’s business, financial condition, or results of operations.²</u></p> <p><u>² CSE Form 2A – Listing Statement, Item 3.3</u></p> <p><u>f) Internal controls</u></p> <p><u>Appropriate internal controls will provide checks and balances to reduce the risks of inaccurate financial reporting. If there are concerns about the effectiveness of internal controls, or if material weaknesses have been identified, audit committee members should apply greater scrutiny in their reviews. It is also advisable to Listed Companies to disclose known material weaknesses in their risk disclosure if the weakness creates a risk for the company. Disclosure should be adequate for investors to assess the nature and implications of those weaknesses.</u></p> <p><u>g) Use of and reliance on experts</u></p> <p><u>Industry professionals in emerging markets will not necessarily be subject to equivalent rules of conduct as in Canada. The board should evaluate an expert’s credentials and knowledge in the context of what would be acceptable in Canada. If an expert is retained to perform a service or function that could expose the listed company to a disruption in operations or significant liability, the board should determine whether the level of diligence exercised by the expert is adequate. As part of the oversight role, the board should ensure adequate disclosure of an expert’s interests in the Listed Company.</u></p>	<p>(iii) describe the risks associated with the structure and how those risks are managed.</p> <p>Policy 2 – Qualifications for Listing specifically disqualifies special purpose entities and variable interest entities.</p> <p>d) Related parties</p> <p>Disclosure requirements for related party transactions are included in both accounting standards and securities legislation. Business, cultural and legal differences may result in increased risks, especially in cases where the interests of the controlling shareholders do not necessarily align with the interests or expectations of the minority shareholders. 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<p>h) Oversight of the external auditor</p> <p>The auditor's competence, experience and qualifications in the foreign market should be considered by the audit committee. The audit committee should also evaluate the auditor's approach in the areas that present risks specific to the Issuer.</p> <p>4.2 The Role of the Exchange</p> <p>The Exchange considers the guidance in this section to be consistent with existing disclosure requirements for all listing applicants or listed company. Each listed company and applicants are encouraged to closely adhere to the principles set out in the Guide to assist them in meeting their disclosure obligations under securities legislation and Exchange Requirements.</p> <p>4.3 Application of the Guidance</p> <p>a) Original Listing</p> <p>CSE Form 2A – Listing Statement includes specific disclosure requirements concerning risk issues. Section 17 – Risk Factors – includes, in the first 2 sections, some of the common risks that should be described. Section 17.3 specifically addresses “any risk factors material to the Issuer that a reasonable investor would consider relevant to an investment in the securities being listed and that are not otherwise described under section 17.1 or 17.2.” For listing applicants with their principal business operations or operating assets in emerging markets, the OSC EMI Guide areas of concern should be addressed in the context of the guidance provided by OSC Staff.</p> <p>b) Continued Listing</p> <p>All listed companies are reminded that the OSC EMI Guide provides an excellent reference for any questions regarding continuous disclosure requirements, including disclosure in CSE filings. CSE Form 9 – Notice of Proposed Issuance of Listed Securities, and CSE Form 10 – Notice of Proposed Transaction, for example, each include questions that relate to one or more of the OSC EMI Guide areas of concern. A change related to any of these areas could be material information that requires immediate disclosure by news release.</p> <p>5. Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets</p> <p>5.1 An Issuer must demonstrate clear title or right to its assets or operations, and the receipt of the relevant licence or permit required to operate. At the time of listing, the Issuer must provide a title opinion or appropriate confirmation, and a legal opinion that the Issuer has the required permits, licenses or approvals</p>	<p>h) Oversight of the external auditor</p> <p>The auditor's competence, experience and qualifications in the foreign market should be considered by the audit committee. The audit committee should also evaluate the auditor's approach in the areas that present risks specific to the Issuer.</p> <p>4.2 The Role of the Exchange</p> <p>The Exchange considers the guidance in this section to be consistent with existing disclosure requirements for all listing applicants or listed company. Each listed company and applicants are encouraged to closely adhere to the principles set out in the Guide to assist them in meeting their disclosure obligations under securities legislation and Exchange Requirements.</p> <p>4.3 Application of the Guidance</p> <p>a) Original Listing</p> <p>CSE Form 2A – Listing Statement includes specific disclosure requirements concerning risk issues. Section 17 – Risk Factors – includes, in the first 2 sections, some of the common risks that should be described. Section 17.3 specifically addresses “any risk factors material to the Issuer that a reasonable investor would consider relevant to an investment in the securities being listed and that are not otherwise described under section 17.1 or 17.2.” For listing applicants with their principal business operations or operating assets in emerging markets, the OSC EMI Guide areas of concern should be addressed in the context of the guidance provided by OSC Staff.</p> <p>b) Continued Listing</p> <p>All listed companies are reminded that the OSC EMI Guide provides an excellent reference for any questions regarding continuous disclosure requirements, including disclosure in CSE filings. CSE Form 9 – Notice of Proposed Issuance of Listed Securities, and CSE Form 10 – Notice of Proposed Transaction, for example, each include questions that relate to one or more of the OSC EMI Guide areas of concern. A change related to any of these areas could be material information that requires immediate disclosure by news release.</p> <p>5. Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets</p> <p>5.1 An Issuer must demonstrate clear title or right to its assets or operations, and the receipt of the relevant licence or permit required to operate. At the time of listing, the Issuer must provide a title opinion or appropriate confirmation, and a legal opinion that the Issuer has the required permits, licenses or approvals</p>

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<p><u>to carry out its operations in each relevant jurisdiction.</u></p> <p><u>5.2 Audit Committee</u></p> <p><u>In addition to the guidance in section 2.7 and requirements of NI 52-110 <i>Audit Committees</i>, the majority of the members of an Issuer’s audit committee must be financially literate as defined in NI 52-110 <i>Audit Committees</i>, subject to a minimum of three financially literate members.</u></p> <p><u>Disclosure in the Listing Statement must include a summary of the steps taken in selecting an external auditor and the procedures in place to ensure the audit committee can effectively evaluate the audit process.</u></p> <p><u>5.3 Risk Disclosure and Mitigation</u></p> <p><u>Disclosure in the CSE Form 2A – Listing Statement must address and adequately explain the risks and the reasonable steps taken, consistent with the OSC EMI Guide, to mitigate these risks.</u></p>	<p>to carry out its operations in each relevant jurisdiction.</p> <p>5.2 Audit Committee</p> <p>In addition to the guidance in section 2.7 and requirements of NI 52-110 <i>Audit Committees</i>, the majority of the members of an Issuer’s audit committee must be financially literate as defined in NI 52-110 <i>Audit Committees</i>, subject to a minimum of three financially literate members.</p> <p>Disclosure in the Listing Statement must include a summary of the steps taken in selecting an external auditor and the procedures in place to ensure the audit committee can effectively evaluate the audit process.</p> <p>5.3 Risk Disclosure and Mitigation</p> <p>Disclosure in the CSE Form 2A – Listing Statement must address and adequately explain the risks and the reasonable steps taken, consistent with the OSC EMI Guide, to mitigate these risks.</p>