Cassels

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Re: Notice 2021-005 - Request for Comments - Proposed Policy Amendments

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This letter is in response to the Request for Comments published by the Canadian Securities Exchange (the "**Exchange**") regarding proposed amendments ("**Amendments**") to its policies and related forms for listed issuers ("**Policies**" and "**Forms**") (the "**Request for Comments**"). The comments below are those of the undersigned and not necessarily those of any other partner or associate of our firm.

Summary of our Comments

We have set out our thoughts on a specific item for which comments were requested as identified in the Request for Comments, being the question regarding Exchange review of all share issuances. Our general comments on the Amendments are also set out below, which include our views on items under Question 7 regarding shareholder approval thresholds.

General Comment

While we generally believe the Amendments, as a whole, provide a number of improvements and update out-of-date aspects of the Policies, we do believe that the overall differences between the Exchange and its competitor marketplaces has narrowed due to, among others, the following: the addition of shareholder approval requirements in a number of circumstances, the requirement to publicly announce share issuances or wait for the Exchange to provide "no objection" before closing an offering or acquisition, ongoing shareholder approval requirements for option plans, and the continuation of very detailed reporting forms. The benefits of a listing on the Exchange and its flexibility appear to be reduced, as many of the policy amendments are beginning to mirror those of the other Exchanges.

Exchange and Shareholder Approvals

> *6. Should all share issuances be reviewed by the Exchange in advance of closing? Other than ensuring price compliance and determining if additional approval or disclosure requirements have been triggered, please comment on which aspects of a proposed financing should be reviewed or approved.*

We are generally supportive of Exchange review of share issuances, provided this does not extend to review of option grants and other equity-based compensation made under an approved plan. We would anticipate that such review would provide assurances that the Exchange considers the terms of convertible, exercisable or exchangeable securities, or other share issuance arrangements, to be acceptable.

The Amendments

The following provides comments regarding certain specific changes to the Policies, with the numbering being the numbering as set out in the amended and restated Policies.

1. **2.12 Treasury Orders**. Please clarify that treasury directions to be provided are for the listed securities only. Reservation orders for convertible or exchangeable securities are not common for issuers with unlimited authorized capital. Please clarify that this is not creating a new requirement for the creation of reservation orders.

2. **2.14 Book-Based System**. Please clarify that the listed securities do not have to be deposited into CDS, just eligible to be. It is stated that they securities must be "eligible for and deposited". Please also note that Section 2.19 appears to cover the same topic. If it is intended to be different, this should be clarified.

3. **4.6(2) Sale of Securities**. Related provisions in Policy 6 should be made to be subject to shareholder approval under Policy 4, to be clear that shareholder approval can be used to engage in otherwise non-compliant issuances. That is, sections 6.2 and 6.3 should state that the minimum price is subject to the shareholder approval requirement in Policy 4.

a. *Please comment specifically on the proposed thresholds for shareholder approval of a financing, acquisition, or disposition?* Please see below.

b. *Is Exchange approval necessary for significant acquisitions or dispositions? If so, at what threshold should Exchange approval be required*? No. See below regarding dispositions. We believe existing Policy 8 is sufficient in respect of acquisitions. We are not aware of any issues raised by shareholders regarding the limited approval requirements under Policy 8.

c. *Should there be an explicit requirement for shareholder approval of a new control position?* No. We believe existing Policy 8 is sufficient in respect of new shareholders. Requiring shareholder approval for a new control person eliminates a key benefit of a listing on the Exchange as it moves towards the approach used on other exchanges. We are not aware of any issues raised by shareholders regarding the limited approval requirements under Policy 8.

d. *Should there be a requirement for Exchange approval of a new control position?* No. We believe existing Policy 8 is sufficient in respect of new shareholders. Requiring Exchange approval for a new control person eliminates a key benefit of a listing on the Exchange as it moves towards the approach used on other exchanges. We are not aware of any issues raised by shareholders regarding the limited approval requirements under Policy 8.

e. *Should there be an explicit requirement for shareholder approval for all transactions that would materially affect control and not just those that create a new control person?* No. We believe existing Policy 8 is sufficient in respect of new shareholders. Requiring Exchange approval for a material affect on control eliminates a key benefit of a listing on the Exchange as it moves towards the approach used on other exchanges. We are not aware of any issues raised by shareholders regarding the limited approval requirements under Policy 8.

f. *Should exchange approval also be required for all transactions that materially affect control?* No. We believe existing Policy 8 is sufficient in respect of new shareholders. Requiring Exchange approval for a material affect on control eliminates a key benefit of a listing on the Exchange as it moves towards the approach used on other exchanges. We are not aware of any issues raised by shareholders regarding the limited approval requirements under Policy 8.

g. *For a sale of securities, shareholder approval is proposed for an issuance meeting the thresholds whether by private placement or prospectus offering. Should shareholder approval requirements differ depending on offering type?* Any limit should be higher or eliminated in the case of a

prospectus offering, including an at the market offering. A prospectus offering cannot be held up to obtain shareholder approval. The market will dictate timing and size and provided Related Parties are not preferred, issuers need to be able to access the markets accordingly.

4. **4.6(2)(a)(i) Sale of Securities**. The limit of 25% for NV Issuers is too low, in particular as it's a fully-diluted number. Many issuers continue to be in growth phase with access to capital being important. A limit such as this is effectively 12.5% on a full unit offering. Requirements such as this could result in issuers choosing speed and certainty and thus accessing debt capital where equity would have been the better choice for all stakeholders. Or issuers may have to "leave money on the table" to achieve speed and certainty. The Exchange should be not be attempting to match the requirements of the TSX or the NEO. NV Issuers on the Exchange will still be looking for a stock exchange that provides the flexibility and pragmatism that the Exchange has been known for.

5. **4.6(2)(a)(iii) Sale of Securities**. This 10% limit alone would be preclusive to many issuers wanting to "graduate" to become NV Issuers. Many are dependent on Related Parties to support their financings or have or seek strategic partners that have negotiated or may seek participation and anti-dilution rights that could be put at risk under a provision such as this. For issuances that are brokered offerings, where Related Parties will be buying less than 20%, issuers should be able to proceed with financings without going to shareholders, provided that pricing policies are met. The Exchange should be not be attempting to match the requirements of the TSX or the NEO, or go beyond those of the TSX Venture. NV Issuers on the Exchange will still be looking for a stock exchange that provides the flexibility and pragmatism that the Exchange has been known for.

6. **4.6(3) Acquisition and Dispositions.** The limits here are too low. We believe existing Policy 8 is sufficient in respect of acquisitions. Requiring Exchange approval for acquisitions as set out here eliminates a key benefit of a listing on the Exchange as it moves towards the approach used on other exchanges. We are not aware of any issues raised by shareholders regarding the limited approval requirements under Policy 8.

7. **4.6(3)(b) Acquisition and Dispositions**. Any requirement for shareholder approval of a disposition should be left to applicable corporate law. Provided the issuer continues to meet listing requirements, the decision to dispose of assets is one best left for directors in the discharge of their fiduciary duties. In addition, in this section, it is unclear how an issuer would calculate 50% of their business or 50% of their business undertaking (or what "undertaking" is intended to mean).

8. **4.6(7) Related Party Transactions**. Please clarify that the formal valuation exemption available to issuers not listed on specified markets is not being removed through this amendment.

9. **4.6(8) Consolidations**. Please clarify that the approval is that of the holders of the listed security, not security holders generally.

10. **6.2(4) Private Placements**. At the time of price protection, much of this required information may not be known. While some say items intended, (e) for example requires structure, type and issue price and exercise price. Paragraph (e) should permit this to be estimates, expected or ranges. Price protection will often be sought before marketing of a financing has begun or when book building is continuing, or when negotiations have not been concluded on the terms of other forms of share issuance. In addition, paragraph (b) should be other than the proposed issuance of securities, which is consistent with the other sections in the Policies on pricing.

11. **6.2(7) Private Placements**. It appears that the complete Table 1B is now being posted and will be public. The instructions on the form are the same, but the policy was changed to “post” from “provide. Please correct to clarify that the full Table 1B need not be posted.

12. **6.3(b) Acquisitions**. It is not clear how confidential price protection in the Acquisitions section be reconciled with section 6.2(4) that says the issuer has to confirm there is no undisclosed Material Information. Should be other than the acquisition and the proposed issuance of securities, which is consistent with the other sections in the Policies on pricing.

13. **6.5(5) Security Based Compensation Arrangements**. We did not locate the new proposed Form 11, but recommend providing for other Awards to be listed in the form and removing the listing of details of existing stock options, which contains a great deal of confidential/personal information.

14. **6.7(1) Issue Price and Exercise Price**. It appears that the additions here are intended to remove the ability to issue standalone warrants. If so, this is a significant issue for many issuers. The ability to issue these warrants is a significant benefit to being listed on the Exchange. And issuers use them. They are used as payments to parties that are not eligible for options or as a commitment fee, to settle disputes, as non-convertible debt sweeteners, as consideration for amendments to debt or waivers of default, and in a variety of other scenarios. All such scenarios might otherwise require cash payment or shares for debt issuances, rather than an instrument that could result in cash to the issuer. This will have a significant impact on cash challenged issuers and on the attractiveness of the Exchange. Issuers listed or listing on the Exchange do so as it is a stock exchange that is known for providing flexibility and pragmatism not available on other exchanges. In addition, issuers have arranged their affairs in light of this ability, entering into agreements to issue warrants in the future (at market prices in the future) in exchange for significant benefits to the issuer. Issuers have ordered their affairs on the basis that warrants are permitted and this change will upend those arrangements. At the very least, the Exchange will need to grandfather any existing arrangements.

15. **6.8 Control Block Distributions**. It is unclear how a listed issuer can be expected to police sales by a control block holder. Unless it has obtained contractual rights in respect of disposition by a specific shareholder the listed issuer has no ability to influence sales by a shareholder that it is otherwise permitted to make over the Exchange. Likewise, it is unclear how would you enforce these requirements of the Policies against a seller that is not a member of the Exchange. A dealer member that has notice of a control position may be able to comply, but we would expect that this is not always known, in particular for a shareholder that may be able to use offshore investment banks to route order over the CSE.

16. **Form 9**. Consider incorporating the letters regarding receipt of proceeds on a private placement or assets in an acquisition directly into the Form 9.

We trust that our comments will be of assistance to the in your ongoing efforts to update the Policies. Should you wish to discuss any of these comments with us, please do not hesitate to contact Greg Hogan at (416) 860-6554, or by e-mail at ghogan@cassels.com, or Jeff Durno at (604) 691-6105, or by e-mail at jdurno@cassels.com.

Yours very truly,

(Signed) "Greg Hogan" and "Jeff Durno"