

CANADIAN SECURITIES EXCHANGE
PUBLIC INTEREST RULE AMENDMENT
POLICY 6 DISTRIBUTIONS
NOTICE AND REQUEST FOR COMMENTS

November 29, 2018

POLICY 6 DISTRIBUTIONS

Description of the Public Interest Rule

Background

The Canadian Securities Exchange (CSE or “Exchange”) is proposing amendments (“Amendments”) to Policy 6 - *Distributions* that will introduce a requirement for resale restrictions on securities issued pursuant to a specific prospectus exemption. National Instrument 45-106 *Prospectus Exemptions* (“NI 45-106”) includes subsection 2.24 *Employee, executive officer, director and consultant* (“s. 2.24”). While shares issued pursuant to s. 2.24 are subject to a seasoning period described in National Instrument 45-102 *Resale of Securities*, the seasoning period has passed if the issuer has been a reporting issuer for at least 4 months. As a result, shares issued under the s. 2.24 exemption are often freely trading. The CSE has identified instances of what it considers inappropriate use of s. 2.24 that have resulted in excessive dilution and increased selling pressure on listed securities. Improper use of the prospectus exemption under s. 2.24 may be subject to regulatory action by securities regulatory authorities.

Details of the Changes

Policy 6 *Distributions* would be amended by adding, in the General section, additional language to s. 1.4 to require a 4 month hold period on all shares issued pursuant to the s. 2.24 exemption regardless of whether the seasoning period applied. Resale restrictions must also be disclosed in a news release describing the share issuance.

The Amendments are listed in Appendix A to this Notice.

Expected Date of Implementation of the Proposed Public Interest Rule

The Amendments will be made effective following OSC approval.

Rationale

In June 2018 CSE became aware of a potentially inappropriate use of s. 2.24 in connection with a private placement financing of a CSE-listed company. The Exchange halted trading in the shares of the company to prevent further sales and to confirm the number of freely trading shares of the issuer. A review of the use of s. 2.24 in that financing and of other similar transactions by listed companies led to additional halts and restrictions, and the development of the proposed Amendments.

The British Columbia Securities Commission announced on November 26, 2018 that its Executive Director had temporarily prohibited¹ a group of purported consultants (“Group”) from buying or selling the securities of 11 companies listed on the CSE, alleging that they participated in a scheme abusive to the capital markets.

The Executive Director alleges that members of the Group purchased \$17.9 million worth of securities in four companies, following which the companies returned \$15.3 million to the members, who then sold the securities into the market, netting approximately \$6.2 million.

The Amendments will provide clear guidance on the CSE’s position on the appropriate use of the s. 2.24 prospectus exemption, and significantly reduce the potential for the misuse of the exemption.

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

The Amendments will provide guidance on the CSE’s position on the use of the s. 2.24 prospectus exemption, and significantly reduce the potential for abuse. There will be no material impact on market structure, members, issuers or investors. The Amendments are intended to foster investor confidence and market integrity. Issuers will need to ensure the appropriate hold period is observed through legends on certificates or otherwise.

Expected Impact of the Public Interest Rule on CSE’s Compliance with Ontario Securities Law

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.

Imposed Requirements by the Public Interest Rule on Members and Service Vendors

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

Introduction of a Fee Model, Feature or Rule that Currently Exists

The Amendments are consistent with the requirements of other exchanges in Canada, but with additional restrictions. The TSX Venture defines an “Exchange Hold Period” that will be required in certain circumstances. It applies to officers, directors and promoters, but excludes employees and consultants unless the shares are issued at a price that is discounted from the market price by more than 10 percent.

Comments

The CSE is requesting comments on the proposed amendments, in particular:

The proposed amendments will require prior approval from the Exchange to issue shares under s.

¹https://bcsc.bc.ca/Enforcement/Notices_of_Hearing_and_Temporary_Orders/PDF/2018_BCSECCOM_369/

2.24 without a hold period. Will the requirement for Exchange approval adversely affect the use of that exemption?

Comments should be in writing and submitted no later than January 3, 2019 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, 22nd Floor
Toronto, ON, M5H 3S8
Fax: 416.595.8940
Email: marketregulation@osc.gov.on.ca

Questions

Questions about this Notice or CSE Policy may be directed to Listings@thecse.com or:

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

Appendix A

Blacklined version indicating changes to existing POLICY 6 – DISTRIBUTIONS	Version indicating changes incorporated POLICY 6 – DISTRIBUTIONS
<p>1. General</p> <p>...</p> <p>1.4 In addition to the requirements of this Policy, Listed Issuers must comply with applicable requirements of securities and corporate law for any distribution of securities. In particular, Listed Issuers should refer to National Instrument 45-101 <i>Rights Offerings (NI 45-101)</i>, for rights offerings, National instrument 45-106 <i>Prospectus Exemptions (NI 45-106)</i> for exempt distributions and National Instrument 45-102 <i>Resale of Securities (NI 45-102)</i> for restrictions on resale of securities.</p> <p><u>a) In addition to any applicable resale restrictions under securities legislation, for any securities issued under the prospectus exemption in section 2.24 of NI 45-106 (Employee, executive officer, director and consultant) the Exchange requires the securities to be subject to a hold period of 4 months commencing on the date of distribution of the securities unless written approval to issue the securities without the hold period is obtained from the Exchange.</u></p> <p><u>b) In determining whether the hold period will be required, the Exchange will consider such things as the relationship between the Listed Issuer and the individual or entity receiving shares, the price per security, number of securities to be issued, the value of the transaction, and any other factors the Exchange considers relevant to the decision.</u></p> <p><u>c) A news release announcing a financing or issuance of securities must include a description of any resale restrictions, or lack thereof, on the securities to be issued.</u></p>	<p>1. General</p> <p>...</p> <p>1.4 In addition to the requirements of this Policy, Listed Issuers must comply with applicable requirements of securities and corporate law for any distribution of securities. In particular, Listed Issuers should refer to National Instrument 45-101 <i>Rights Offerings (NI 45-101)</i>, National instrument 45-106 <i>Prospectus Exemptions (NI 45-106)</i> for exempt distributions and National Instrument 45-102 <i>Resale of Securities (NI 45-102)</i> for restrictions on resale of securities.</p> <p>a) In addition to any applicable resale restrictions under securities legislation, for any securities issued under the prospectus exemption in section 2.24 of NI 45-106 (<i>Employee, executive officer, director and consultant</i>) the Exchange requires the securities to be subject to a hold period of 4 months commencing on the date of distribution of the securities unless written approval to issue the securities without the hold period is obtained from the Exchange.</p> <p>b) In determining whether the hold period will be required, the Exchange will consider such things as the relationship between the Listed Issuer and the individual or entity receiving shares, the price per security, number of securities to be issued, the value of the transaction, and any other factors the Exchange considers relevant to the decision.</p> <p>c) A news release announcing a financing or issuance of securities must include a description of any resale restrictions, or lack thereof, on the securities to be issued.</p>