

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 CNSX – Notice 2010-006 – Notice and Request for Comments – Amendments to Policy 2 – Qualification for Listing

NOTICE 2010-006

NOTICE AND REQUEST FOR COMMENTS

AMENDMENTS TO POLICY 2 – QUALIFICATION FOR LISTING

The Board of Directors of CNSX Markets Inc. (the “Board”) has approved amendments to the CNSX Policies (the “Policies”), which are set out below. The amendments to Policy 2 would amend the policy to include certain prospectus-exempt debt securities as eligible for listing, subject to the existing listing requirements in the Policies.

The Board has determined that the proposed amendments to the Policies (the Amendments) described in this notice are in the public interest and has authorized them to be published for public notice and comment. The text of the Amendments to Policy 2 is attached as Appendix A. The Amendments will be effective upon approval by the Ontario Securities Commission, following public notice and comment.

Comments should be made no later than 30 days from the date of publication of this notice and should be addressed to:

Mark Faulkner
Director, Listings and Regulation
CNSX Markets Inc.
220 Bay Street, 9th Floor
Toronto, ON,
M5J 2W4
Fax: 416.572.4160
Email: Mark.Faulkner@cnsx.ca

A copy should be provided to:

Susan Greenglass
Director, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON,
M5H 3S8
Fax: 416.595.8940
Email: Marketregulation@osc.gov.on.ca

November 5, 2010

Background

CNSX Markets Inc. (“CNSX Markets”, or the “Exchange”) operates the Canadian National Stock Exchange (“CNSX” or the “listed market”) and Pure Trading (the Alternative Market), a facility for trading, but not listing, the securities of companies listed on Canadian stock exchanges.

On July 6, 2010, the Ontario Securities Commission (“OSC”) issued an order (“Restated Order”) pursuant to section 21 and section 144 of the *Ontario Securities Act* varying and restating the recognition order (Previous Order) of CNSX Markets dated May 7, 2004, as amended.

CNSX Markets is proposing amendments to Policy 2 that reflect the recently published amendments to Appendix C of the Restated Order, extending eligibility for listing to certain prospectus-exempt debt securities.

I. Rationale

The prospectus-exempt debt securities that CNSX Markets seeks to list are currently distributed to the public in Canada under the exemptions set out in the Restated Order, following which the securities are freely traded over-the-counter with settlement through FundServ. The issuers are not subject to listing scrutiny, or the continuous disclosure requirements of a reporting issuer. Listing these securities will create an open and transparent, exchange-traded market, an area in which Canada lags behind other leading securities markets. The recent amendments to the eligibility criteria in CNSX Markets’ recognition order were intended to complement the previous amendments to CNSX Policies, which included new, specific requirements for debt securities. The intention of the Policies is to provide a platform for trading debt securities that meet the eligibility criteria in a regulated exchange environment rather than over-the-counter.

The prospectus exemption for government debt securities has been in place for many years. The exemption for debt securities of financial institutions that meet the securities law requirements has also been in place for a considerable period of time. This includes banks – including Schedule II banks – that are regulated by the Office of the Superintendent of Financial Institutions Canada (“OSFI”).

Issuers of these securities will automatically become reporting issuers in Ontario by listing the debt securities on CNSX, and will then be subject to the normal continuous disclosure regime applicable to all reporting issuers, subject to any relief that may be granted by the OSC.

The OSC published for comment CNSX Markets’ application for a variation and restatement of the Previous Order on May 14, 2010. The published materials included the new provisions for prospectus-exempt debt (the Provisions) in an amended Appendix C – Eligible Issuers. No comments were received.

Amendments to Policy 2, including listing and disclosure requirements for listed debt securities, were made effective June 25 following publication for comment and Commission approval on June 15, 2010. No comments were received.

II. Description of Amendments

With the addition of two categories of prospectus-exempt debt, the Amendments to eligibility provisions in Policy 2 will mirror the language contained in the Restated Order. The current eligibility criteria described in Policy 2 are as follows:

1.1 *To be eligible for listing an Issuer must:*

- a) *be a reporting issuer or the equivalent in a jurisdiction in Canada; and*
- b) *not be in default of any requirements of securities legislation in any jurisdiction in Canada.*

CNSX Markets’ Recognition Order, Appendix C – Eligible Issuers, approved July 6, 2010, includes two additional categories of eligibility:

1. *Subject to section 2 below, only an issuer that:*

- (a) *is a reporting issuer or the equivalent in a jurisdiction in Canada; or*
- (b) *is proposing to list debt securities issued or guaranteed by a government in Canada that are exempt from the prospectus requirements under clause 73(1)(a) of the Act; or*
- (c) *is proposing to list debt securities issued or guaranteed by a financial institution that are exempt from the prospectus requirements under clause 73(1)(b) of the Act; and*

Other Information

(d) *is not in default of any requirements of securities legislation in any jurisdiction in Canada,*

is eligible for listing. However, if an issuer is eligible for listing under paragraph (b) or (c) above, CNSX may only list debt securities of the issuer that are contemplated by those paragraphs unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.

No other amendments to any Policies are proposed at this time. Recent amendments to Policy 2 include provisions and requirements that will apply to all debt securities regardless of the category of eligibility for listing. Prospectus-exempt debt issuers will be generally subject to the same initial listing requirements as other debt issuers under CNSX Policies.

III. Consultation and Review

Recent amendments to the Policies, published and approved, were implemented specifically to accommodate the listing of debt securities (see CNSX Notice 2010-003 *Policy and Rule Amendments*). The recognition order changes were subject to a full public consultation as well, however the addition to Policy 2 of the eligibility provisions in Appendix C was not possible until that publication and subsequent Commission approval.

IV. Comparable Rules

National Instrument 21-101 Marketplace Operation does not specify the types of securities permitted to be listed on an exchange. NI 21-101 does list the "Securities Permitted to be Traded on an ATS" as follows:

- (a) exchange-traded securities
- (b) corporate debt securities
- (c) government debt securities
- (d) foreign exchange-traded securities.

Neither the TSX nor the TSX Venture Exchange have explicit eligibility criteria for prospectus-exempt securities. The recognition orders for TMX Group exchanges do not specify eligibility criteria for listing.

TSX Eligibility for Listing

Sec. 305.

Prior to filing a listing application, the Exchange recommends that prospective applicants obtain a preliminary opinion as to the eligibility of the listing. The Exchange will provide a confidential opinion based on informal discussions and a review of the applicant's recent financial and business information.

TSX Venture Exchange Policy 2.1 Initial Listing Requirements

An Issuer seeking to list only securities which are not common shares or equivalents should consult with Exchange staff and schedule a pre-filing conference. Applications to list securities other than common shares or equivalents will be considered on a case-by-case basis.

V. Impact

No technological changes will be required as a result of the Policy amendments. Issuers that list prospectus-exempt securities on the Exchange will become reporting issuers in Ontario, and will be subject to continuous disclosure obligations unless relief is granted by the Ontario Securities Commission.

Symbols will be assigned in accordance with the Universal Market Integrity Rules ("UMIR"). Pursuant to UMIR Part 6.4 *Trades to be on a Marketplace*, subject to certain exemptions, participants may not trade in listed debt securities by means other than the entry of orders on a marketplace. While there may be an initial requirement for increased supervision of trading until participants are fully aware that the issues are listed securities, the result will be a visible, regulated market for such securities.

VI. Alternatives

As these amendments are consequential to those made to the recognition order, we did not consider alternatives.

VII. Public Interest Assessment

In accordance with the "Rule Review Process" set out in Appendix B of the CNSX Markets Inc. Recognition Order, the changes include amendments that are classified as "public interest ". The Amendments will be effective following public notice, a comment period, and OSC approval. Further housekeeping or consequential amendments may be required following the comment period and will be published upon approval of the Amendments.

VIII. Questions

Questions about this Notice should be directed to Mark Faulkner, Director, Listings & Regulation at 416.572.200 x2305 or Mark.Faulkner@cnsx.ca.

IX. Attachments

The text of the Amendments, shown as blacklined text, is attached as Appendix A. A clean version is attached as Appendix B.

Appendix A

Text of Proposed Amendments

Policy 2

Qualification for Listing

1.1 ~~To be eligible for listing an Issuer must~~ Only an issuer that:

- (a) ~~be~~ is a reporting issuer or the equivalent in a jurisdiction in Canada; ~~or~~ and
- (b) ~~is proposing to list debt securities issued or guaranteed by a government in Canada that are exempt from the prospectus requirements under clause 73(1)(a) of the Act; or~~
- (c) ~~is proposing to list debt securities issued or guaranteed by a financial institution that are exempt from the prospectus requirements under clause 73(1)(b) of the Act; and~~
- (bd) ~~is~~ is not be in default of any requirements of securities legislation in any jurisdiction in Canada,
is eligible for listing. However, if an issuer is eligible for listing under paragraph (b) or (c) above, CNSX may only list debt securities of the issuer that are contemplated by those paragraphs unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.

In addition, an issuer that is a reporting issuer in a jurisdiction in Canada solely as a result of BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets* (or any successor rule) or any similar rule that may be made by a securities regulator or securities regulatory authority in Canada is not eligible for listing unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.

Appendix B

Text of Proposed Amendments

Policy 2

Qualification for Listing

1.1 Only an issuer that:

- (a) is a reporting issuer or the equivalent in a jurisdiction in Canada; or
- (b) is proposing to list debt securities issued or guaranteed by a government in Canada that are exempt from the prospectus requirements under clause 73(1)(a) of the Act; or
- (c) is proposing to list debt securities issued or guaranteed by a financial institution that are exempt from the prospectus requirements under clause 73(1)(b) of the Act; and
- (d) is not in default of any requirements of securities legislation in any jurisdiction in Canada,

is eligible for listing. However, if an issuer is eligible for listing under paragraph (b) or (c) above, CNSX may only list debt securities of the issuer that are contemplated by those paragraphs unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.

In addition, an issuer that is a reporting issuer in a jurisdiction in Canada solely as a result of BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets* (or any successor rule) or any similar rule that may be made by a securities regulator or securities regulatory authority in Canada is not eligible for listing unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.