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VIA EMAIL

February 14, 2022

CNSX Markets Inc.
First Canadian Place
100 King Street West, Suite 7210
Toronto, Ontario M5X 1E1

Attention: Mark Faulkner, Vice President, Listings and Regulation

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Attention: Market Regulation Branch

British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia V7Y 1L2

Attention: Larissa M. Streu, Senior Legal Counsel, Corporate Finance

Dear Sirs/Mesdames:

Re: Comments on the Canadian Securities Exchange (the "CSE" or the "Exchange")'s Proposed Public Interest Rule Policy Amendment

We are writing in response to CSE Notice 2021-005 dated December 9, 2021 (the "**Notice**") requesting comments on the Exchange's proposed public interest rule amendments (the "**Amendments**") to the Exchange's policies (the "**Policies**").

We respectfully offer the following comments for consideration by the Exchange, the Ontario Securities Commission and the British Columbia Securities Commission.

Questions 1 & 2 Comments – Shareholder Distribution

Question 1: *The Policies currently provide that the Exchange may not consider the minimum float distribution to be met if a significant number of public holders (of the required 150) hold the minimum number of shares (i.e., the boardlot).*

a) *Should the "significant number" be defined, the minimum number of shares be increased (note that the requirement for a boardlot is standard on Canadian exchanges), or should the Exchange review the distribution to determine if there is a "normal distribution" across the shareholder base?*

Comments: We believe that, in many cases, a boardlot is unlikely to be of sufficient value to incentivise trading. This therefore reduces the likelihood of a liquid market. In our opinion, Amendments which have the effect of increasing the typical value of the securities required to qualify as part of the minimum distribution would help resolve this issue. We would also recommend ensuring that clear Policies are implemented in order to allow issuers to understand what is required and to structure their affairs with a high degree of certainty.

Question 2: *The minimum number of public holders proposed for CSE NV Issuers is the same as NEO and TSX. The current minimum public float requirement is 10% held by 150 public holders, compared with 20% held by 200 (TSX Venture, Tier 2), 250 (TSE Venture, Tier 1). The CSE minimum listing requirements are intended to facilitate listing at an earlier stage.*

a) *Are the current 10% public float and 150 public holder requirements appropriate and, if not, what are appropriate thresholds and why?*

Comments: Aligning the CSE NV Issuer standard with the TSX's requirements seems appropriate. For venture issuers, we believe that raising the threshold to another arbitrary number would have limited (if any) impact on the intended purpose of the proposed amendment. A 10% public float requirement allows more access to capital for venture companies (many of which have a relatively low public float at listing, given escrow and resale restriction requirements) and increasing that amount could have an adverse impact on the accessibility of capital in Canadian venture markets. Some public companies with a public float in the 10% range at listing still have adequate liquidity and distribution despite a low percentage. As discussed in Question #1, the minimum required number of public shareholders (and the board lot requirement) can be ineffective regardless of whether there are 150 public shareholders or significantly more (250, for instance).

Questions 3 & 4 Comments – Mineral Exploration Projects

Question 3: *The "prior expenditures" requirement is intended to demonstrate that a mineral exploration project has sufficient potential to have justified a minimum level of work, or to demonstrate that an issuer is committed to the mineral exploration business. The current requirement is for $75,000 in expenditures in the most recent 3 years, which is lower than the TSX Venture Exchange requirement of $100,000…*

Question 4: *The Exchange's objective is to provide listing to early-stage projects. The minimum budget for a recommended phase 1 program is currently $100,000 which is less than the TSX Venture Exchange requirement of $200,000…*

Comments: We do not believe that changes to the specific prior expenditures or minimum budget thresholds or timelines are, themselves, an effective means of safeguarding against the deliberate listing of a mineral exploration issuer which serves as a shell company. Changes to these threshold values, in our opinion, could have incidental effects on issuers who are seeking to list at an early stage for bona fide purposes (which the CSE is intended for) while simultaneously failing to adequately safeguard against the deliberate listing of shell companies.

Question 5 Comments – Issuers with Little or No Operating History

Question 5: *Should there be a defined period of operations or level of business activity before a company can qualify for listing? Should financial statement history be considered? Are there other factors to consider in order to determine whether a company has an appropriate level of business operations to qualify for listing? If so, please explain.*

Comments: We are of the opinion that imposing a defined period of operations or level of business activity before a company can qualify for listing may have notable incidental effects while not adequately addressing the intended risk areas. In our view, a defined period of operations would create a largely arbitrary barometer for issuers to surpass. The business operations one applicant issuer is able to achieve in six months, for example, may well equate to (or exceed) two years of business operations from another applicant issuer.

We are of the opinion that an applicant issuer's capital structure is a more important consideration for fulfilling the Exchange and regulators' role of investor protection. The Exchange may wish to place more onerous requirements when reviewing the financial statements/capital structures of issuers with more limited operating history (e.g., under one year). However, in our opinion, the length of time of an applicant issuer's operating history, in and of itself, provides limited value for the purposes of enhancing investor protection. In addition, Canadian venture markets provide a unique opportunity for early stage companies globally to access capital through the public markets (rather than through private equity or other more restrictive methods) and imposing a mandatory operating history could have an adverse impact on that unique opportunity and the competitiveness of our marketplace. We also believe that global commerce is at a point where companies can grow faster than ever, so imposing a mandatory operating history at this time would not align with the realities of the current business environment.

Questions 6-10 Comments – Exchange and Shareholder Approvals

Question 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.*

Comments: We believe that an important distinction must be drawn between issuances performed in the course of a financing and those issued in the course of an acquisition.

In our opinion, shares issuances which occur during the course of an acquisition are notably more susceptible to abuse than those in connection with a financing. Financings are typically more simple, straightforward transactions with less potential avenues for exploitation. Acquisitions, however, can present legitimate risks to investors and, in our opinion, should be more closely monitored by Exchanges and regulators.

Other than ensuring price compliance and determining if additional approval or disclosure requirements have been triggered, we are of the opinion that no further aspects of a proposed financing should be reviewed or approved by the Exchange. Requiring the Exchange's review for every share issuance, in our opinion, would be inappropriate as it would likely have significant incidental effects on issuers in terms of time and cost while providing limited benefit to investor protection.

It may be appropriate, however, to impose more stringent oversight on shares issuances proposed in connection with a potential acquisition. The Exchange may wish to consider requiring disclosure of specific information in advance of a closing of share issuances related to an acquisition. For example, the Policies could list a number of specific circumstances or transactions which may trigger such advanced notice, thereby requiring issuers involved in such transactions to disclose the relevant information to the Exchange and/or investors with enough advanced notice for meaningful review and consideration. The Exchange may require news releases of specific information, or otherwise require the Exchange's approval before proceeding with certain issuances/transactions. In doing so, issuers engaging in more routine or risk-averse transactions (such as basic financings) are not unduly hindered by the Policies whilst the Exchange and regulators may simultaneously enhance their levels of oversight and protection of investors.

Question 7: *For an Issuer that is not an NV Issuer, the proposed thresholds for sales of securities and acquisitions include two tests – one requiring a change of control, the other an absolute threshold of 100% of the securities outstanding. Security holders must approve a disposition that is more than 50% of the assets, business or undertaking of the Listed issuer…*

Comments: Dilution is a common occurrence in venture markets and we submit that a dilution threshold without a change of control trigger does not have sufficient investor protection benefit to warrant the associate increased time, cost and deal risk. Provided that the shares being issued within appropriate pricing mechanisms and, if issued to insiders, following appropriate securities laws with respect to the protection of minority shareholders, we believe that the decision to undertake such a transaction should be left to the board of directors and shareholder approval if required by the corporate law or the issuer's constating documents. Again, the pricing and insider participation factors can be covered with the notice/form requirements.

Similarly, we do not do not think a shareholder approval requirement for dispositions is justified. We note that Canadian corporate laws require shareholder approval for dispositions of all or substantially all of the assets or undertaking of an issuer. If such a requirement is imposed, we recommend that the Exchange provides clear guidance with respect to how it will interpret "assets, business or undertaking". There is a significant amount of uncertainty with respect to how those items are viewed in each circumstance, which leads to transaction inefficiency.

In summary, in our view additional requirements for shareholder approval should not be imposed on issuers that that are not an NV Issuers.

Question 8 Comments

Sale of Securities - shareholder approval would be required for an issuance (fully diluted) of 25% of the total number of securities or votes outstanding (non-diluted) for an NV Issuer…

For Acquisitions and Dispositions, securityholders of Listed Issuers other than investment funds must approve an acquisition if a Related Person of an NV Issuer of a group of Related Persons of an NV Issuer has a 10% or greater interest in the assets to be acquired and the total number of securities issuable (calculated on a fully diluted basis) are more than 5% of the total number of securities or votes of the NV Issuer outstanding (calculated on a non-diluted basis); or the total number of securities issuable (calculated on a fully diluted basis) is more than:

1) *25% of the total number of securities or votes of the Listed Issuer outstanding (calculated on a non-diluted basis) for an NV Issuer…*

Question 8: *Please comment on the proposed shareholder approval thresholds for the proposed NV Issuers, specifically whether shareholders should approve a new control position and whether Exchange approval is also necessary.*

Comments: We believe that the Amendments' proposed shareholder approval thresholds for the proposed NV Issuers are overly onerous.

As discussed in the Notice, the Exchange and regulators primarily serve an investor protection role. In our opinion, NV Issuers, which are typically larger and more established issuers than non-NV Issuers, present a decreased risk to investors as compared to non-NV issuers. To therefore require more stringent thresholds for NV Issuers than non-NV Issuers, in our opinion, has limited investor or market protection rationale.

Conversely, such stringent NV Issuer thresholds present a potentially significant time and deal risk for NV Issuers. NV Issuers looking to complete a transaction, as well as their respective counterparties, must consider the risks associated with such thresholds when contemplating a deal. In our opinion, such increased time and approval risks and the various stakeholder considerations rooting therefrom would put NV Issuers at a competitive disadvantage.

We are of the opinion that there exists no sufficient investor or market protection rationale for the Exchange to implement more shareholder approval requirements upon NV Issuers than non-NV Issuers, and we believe they should not be implemented .

Question 9: *While disclosure obligations are intended to provide specific detail with respect to related party transactions, there may be additional benefit to a requirement for Exchange review or approval. Please comment on the appropriate level of review by the Exchange in determining whether the consideration appears fair, and whether the other party has title to the relevant asset(s).*

Comments: We believe that a review of consideration/valuation and title would be useful in some transactions where related parties are receiving (directly or indirectly) a substantial proportion of the consideration from the issuer. However, in our experience, exchanges can require this too broadly (where related parties have too little of an economic interest to be of any concern). If such a requirement is being proposed, there should be a reasonably high threshold (e.g. common control on both sides of the transaction, or the issuer has completed several related party transactions in a 12-month period (which can be monitored with notice/form filings)) to trigger this type of requirement and avoid related party abuse, as securities laws already provide certain mechanisms for the protection of minority shareholders.

Question 10: *In Policy 6, existing sect 2.4 has been amended to clarify that a financing must close within 45 days unless an extension is granted, and to include additional information that must be provided when requesting price protection. Several of the items reflect existing practice, and two additional items require that the issuer provide an indication of anticipated insider involvement, and disclose any significant information not already included, such as: "any upcoming shareholders meeting for which a record date has been or is shortly expected to be determined, any pending mergers, acquisitions, take-over bids, changes to capital structure or other significant transactions, and any details regarding potential dissident shareholders and/or proxy contests."*

Existing section 2.5 has been amended, in addition to housekeeping changes, to include a new requirement that "a Listed Issuer must announce an intention to complete a private placement at least 5 business days prior to closing." This disclosure requirement will provide opportunity for any party, including the Exchange or a Securities Regulatory Authority, to object in circumstances such as those described in the amended section 2.4 that may or may not have been disclosed. The proposed policies also include a general requirement for shareholder approval where, in the opinion of the Exchange, the Transaction would "materially affect control of the issuer." (4.6(1)(h)). The disclosure necessary for the Exchange to make this determination must be provided by an Issuer requesting confidential price protection as per proposed 6.2(4)(b) with respect to control, and 6.2(4)(f) with respect to relevant information.
The purpose of the additional disclosure is to assist the Exchange in determining whether a private placement may be undertaken as a defensive tactic.

a) *Should Exchange or shareholder approval be required for an issuance of shares that appears to be undertaken as a defensive tactic?*
b) *Should an issuer be required to provide the information required by proposed 6.2(4)(b) to the Exchange for all share issuances, or should it be included in the public notice required 5 days in advance of closing, as required in proposed 6.2(5)?*
c) *In the application of (a) and (b), what factors, should the Exchange consider when determining whether to deny an Issuer from undertaking a financing?*

Comments: We believe that an issuance of shares that appears to be undertaken as a defensive tactic should be governed by applicable corporate and securities laws and any intervention should be the purview of the court or securities commission. We do not think the Exchanges is the appropriate forum for these matters. However, it may be appropriate for the Exchange to impose additional disclosure requirements that would apply to these types of proposed issuances, so that the market is well informed of the circumstances and stakeholders are given an opportunity to pursue a remedy in court or from a securities commission, if warranted.

Questions 11 & 12:

11. Companies incorporated in certain jurisdictions may not have any shareholder approval requirements under corporate law. Please comment on whether it is appropriate to include shareholder approval requirements that are not included in corporate law.

12. If the Exchange implements a shareholder approval requirement for consolidations, should all Listed Issuers be subject to the same requirement?

Comments: If the Exchange imposes a shareholder approval requirement for consolidations, it would likely be most practical to keep the requirements consistent between Exchange listed issuers and listed issuers on other venture and senior exchanges respectively.

Question 13: *The Exchange is seeking public comment on:*

a) *The initial and continued listing criteria for the NV Issuers;*
b) *The reporting requirements for NV issuers, including the financial statement reporting requirements and the exemption from filing a CSE Form 7 Monthly Progress Report.*
c) *Note that the Exchange proposes to introduce the NV requirements irrespective of changes to the definition of "venture issuer" in securities law. Please describe any concerns in having both venture and a tier or category similar to non-venture issuers listed on one exchange.*

Comments: We note our concern that Exchange issuers may not be able to choose to remain a venture issuer, if it is determined they meet NV Issuer listing requirements. It may have an adverse impact on venture markets (by limiting the number of Canadian exchanges on which issuers can list as venture issuers) if issuers do not have the discretion to "opt in" to NV Issuer treatment.

Question 14: *Please comment on whether the OSC EMI Guide, existing continuous disclosure requirements and the current guidance and requirement in Policy 4 are appropriate to address EMIR concerns, or whether additional prescriptive requirements should be proposed by the Exchange.*

Comments: We don't believe any additional prescriptive requirements should be proposed by the Exchange.

Please do not hesitate to contact the undersigned should you have any questions relating to any of the foregoing.

Yours truly,

DuMOULIN BLACK LLP

Per: 

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