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AVOCATS - LAWYERS

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Éric Archambault
T +1 438 843 8978
eric.archambault@langlois.ca

BY E-MAIL

Mr. Mark Faulkner
Vice President, Listings and Regulation
CNSX Markets Inc.
100 King Street West, Suite 7210,
Toronto, ON, M5X 1E1

Subject: Comments on the proposed amendments to the Canadian Securities Exchange's policies pursuant to Notice 2021-005 dated December 29, 2021

Dear Mr. Faulkner:

We received and reviewed with real interest the notice 2021-005 dated December 29, 2021 from the Canadian Securities Exchange (the "CSE") which calls for comments on the CSE's proposed amendment to its policies. Please find for your consideration our comments to the issues described below. Please note that those comments do not reflect the opinion from our clients which may differ. Also, those comments are made as of the date hereof and that we may change our views without notice if circumstances are changing.

Policy 2 –Appendix A – Equity Securities

Share Distribution

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?*

We should not define "significant number". We believe the liquidity of a market does not start at a specific number of public holders and the Exchange should keep its discretion and experience to detect a sceem distribution. If we provide a number, we may still have cases where the issuer may arrange the distribution solely to fit the requirements.

Nevertheless, should the "significant number" be defined, we would propose that public holders holding the minimum number of boardlot represent no more than around 40 % of the required number of public holders (150).

b. *Are there specific types of distributions, that should be discouraged, discounted, or disallowed when considering if the float requirements have been met, and if so, could this be achieved through changes to the number of holders and minimum number of shares?*

As per the previous answer, we do not believe a change to the numbers could avoid any arranged distributions. We believe the most suitable distributions would be as diverse as possible. The Exchange should assess all the circumstances that may be available such as the time at which shares were bought, etc.

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?*

   We believe the liquidity of a market does not start at specific numbers of public holders. Nevertheless, we believe the minimum number of public holders proposed for CSE NV Issuers should be the same as NEO and TSX in order to have the same base of comparison for the investors.

   b. *Are there other factors the CSE should consider in determining the appropriate minimum public float?*

   We believe the CSE should keep an ultimate discretion in determining the appropriate minimum public float and consider all the circumstances surrounding an issuer. For instance, the fact that shares are held through a broker or an investment funds may reduce the liquidity of a market as their manager may follow their internal investment policies in their decision. Even if you have several individual shareholders, in fact those brokers and funds will take the same decision for all of their clients.

Mineral Exploration Projects

3. The Exchange is not currently proposing to change the minimum listing requirements for mineral exploration issuers. The Amendments include additional guidance and restrictions to discourage the deliberate listing of "shell companies", similar to the guidance provided in CSE Notice 2020-007 – Guidance – Continued Listing Requirements.

   We are generally in agreement with the current requirements (time period; level of expenditures) and the CSE's thresholds. However, the outcomes of those thresholds should not exclude mineral projects which may nevertheless present a great potential. In the assessment of the quality of a project, we may introduce comparative geological data and expenditure incurred of other mineral projects within the same geographic area of the issuer's projects.

   We believe the already existing oppression remedy provided in most of the corporations business acts in Canada should be enough to protect investors expectations and interest and avoid, if oppressive, the deliberate listing of "shell companies".

   Nevertheless, we believe a correct way to reduce such deliberate listing of "shell companies" may be to strength the existing section 1.9 of *Policy 8 – Fundamental Changes,* specifically for mining issuers or to all issuers, by increasing the period (currently 12 months) into which no change of business can occur unless the Issuer obtains the approval from the majority of the minority shareholders or to prohibit such change of business without any exceptions during that period.

   a. *The time period – is it appropriate to link this requirement to a time period? If so, is 3 years appropriate, and should the time period be immediately prior to listing/applying to list?*

   b. *Is a specific level of expenditures necessary, or should other quantifiable measures be introduced?*

   c. *Should the minimum requirement for prior expenditures be higher than $75,000, and why?*

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.

   Our general comments at item 3 is applicable to that set of questions also. Our main concern and advise is that the outcomes of any thresholds should not exclude mineral projects which may nevertheless present a great potential.

   a. *Is the current CSE minimum budget for future work in this requirement appropriate? Why or why not?*

b. *Is the approach appropriate, or could an alternative approach provide comfort regarding the potential of a mineral exploration project and the issuer's commitment to exploration?*

c. *Would increasing the prior expenditures and/or phase 1 budget requirements prevent or reduce the likelihood of deliberately listing a company to be used as a shell following listing?*

d. *As noted above, the Exchange seeks to limit or prevent the deliberate listing of a mineral exploration company for the purpose of using it as a shell company rather than pursuing the business of mineral exploration. Are there any additional controls or restrictions that will discourage this deliberate practice, such as suspension/delisting? Please note there is similar discussion and request for comment below for issuers other than mineral exploration companies.*

Issuers with Little or No Operating History

5. The Exchange does not have and is not proposing a program similar to the TSX Venture Exchange Capital Pool Company program. One of the stated objectives of the CSE is to provide access to low-cost capital for entrepreneurs, or for companies at earlier stages than on other exchanges. This may facilitate the inappropriate strategy of listing a company that meets the basic listing criteria with no real intention to pursue the stated business objectives. Further to the CSE Listing Guidance, the Exchange is proposing additional requirements and guidance as to when the Exchange will exercise its discretion and object to a transaction. It has always been the Exchange's position that with proper disclosure, early-stage companies can be listed companies. The role of the Exchanges, Market Regulator and securities regulators should be investor protection, not investment protection.

    a. *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.*

    The listing of issuers with little or no operating history shall be assessed by the exchange as hole taking into consideration all of the surrounding circumstances which. To that effect, we believe appropriate that the financial statement history should be considered along with the other factors such as the fact that the products or services provided by the issuer are novel or the background of the directors and officers, etc.

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 do not believe all issuances to be reviewed in advance; it shall have exceptions. For instance, if the transaction is at arms length, in the ordinary course of the business of the issuer, does not create a new controlling shareholder, is not part of a series of transaction which would constitute a material change to the business of the issuer, etc., no advance notice should be required.

As a closing comment, we wish to bring to your attention that it seems to have a discrepancy in *Policy 4 Corporate Governance, Security Holder Approvals and Miscellaneous Provisions* with respect to the timing of the press release to announce a reliance on the serious financial difficulty exemption (seven Trading Days at Section 4.6(1)(c) VS five days at Section 4.6(2)(c)).

Should you require further information or if we can be of any assistance in this matter, please do not hesitate to contact the undersigned.

Langlois Lawyers, LLP

Éric Archambault

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c.c. Market Regulation Branch, Ontario Securities Commission;
Mrs. Larissa M. Streu, Senior Legal Counsel, Corporate Finance,
British Columbia Securities Commission