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BY EMAIL

Canadian Securities Exchange
100 King St. W., Suite 7210
Toronto, ON M5X 1E1

Attention: Mark Faulkner
Vice President, Listings and Regulation

Dear Sirs/Mesdames:

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

We write in response to your Notice dated December 9, 2021 with respect to the proposed policy amendments by the Canadian Securities Exchange (the "**CSE**"). We have restated your questions in italics for your convenience.

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?*

   Comment

   We believe that the current Policies are adequate and should continue to provide discretion to the Exchange to determine if there is a "normal distribution" across the shareholder base. If a particular number is defined, then companies seeking listing will seek to satisfy that minimum defined number. It is important for the Exchange to maintain its discretion to prevent or defer the creation of shell companies.

   (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?*

   Comment

   Distributions that clearly create the minimum amount of shareholders with the minimum amount of shares should be discouraged. Distributions created by way of spin-offs should be reviewed and discounted or disallowed if the issuer cannot justify the quality of such

distribution. As stated above, if a particular number is defined, then companies seeking listing will seek to satisfy that minimum defined number. It is important for the Exchange to maintain its discretion to prevent or defer the creation of shell companies.

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.*

   (c) *Are the current 10% public float and 150 public holder requirements appropriate and, if not, what are appropriate thresholds and why? b) Are there other factors the CSE should consider in determining the appropriate minimum public float?*

   Comment

   The current 10% public float and 150 public holder requirements are appropriate. The Exchange should have discretion to review the distribution of the float to determine if it is appropriate.

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. While CSE has not proposed any changes to the requirements, we are seeking specific feedback on the following:*

   (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?*

   Comment

   We believe that it would be appropriate to link this requirement to a time period and that three years prior to the date of the application is an appropriate choice.

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

   Comment

   We believe that, while a specified level of expenditures may not always be necessary, it would be a helpful tool in identifying shell companies. However, we also believe that the Exchange should have the discretion to determine if a property is appropriate for listing (i.e., to ensure that it has not been used on other occasions as a listing property, or to permit use of a property that does not meet minimum quantitative criteria but otherwise appears to be an attractive property).

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

   Comment

Considering the cost of exploration, we believe that this number should be higher than $75,000. A higher number may also discourage the creation of mining shells on the Exchange.

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.*

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

   Comment

   As stated above, the minimum budget of $100,000 seems low considering the current costs of exploration.

   (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?*

   Comment

   The Exchange should maintain a minimum expenditure requirement but also be given the discretion to review the commitment by the issuer to the exploration program. A one year prohibition against a change in business or a fundamental change should be implemented and issuers should be required to expend the minimum requirement, unless the partially completed exploration program clearly demonstrates that further exploration is not warranted. This could be monitored by the Exchange in its discretion. The Exchange could also make it a condition of the listing that the issuer meet the minimum expenditure requirement and not change its business within a specified period of time.

   (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?*

   Comment

   We suspect that increasing the prior expenditures and/or phase 1 budget requirements will not prevent or reduce the likelihood of deliberately listing a company to be used as a shell following listing. It would just lead to an increase in the price of a listed shell.

   (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.*

   Comment

The issuer should be required to complete its exploration program and remain a mining issuer for a certain period of time. A one year prohibition against a change in business or a fundamental change should be implemented and issuers should be required to expend the minimum requirement, unless the partially completed exploration program clearly demonstrates that further exploration is not warranted. This could be monitored by the Exchange in its discretion.

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.*

Comment

As the Exchange is a medium for early stage venture companies to get listed and obtain access to capital, there should not be a defined period of operations or level of business activity before a company should qualify for listing. In addition, with the advances in and quickly changing technology, there are many business that are being created that are novel, and accordingly may not have a history of operations.

Similar to the proposed prohibitions above for mining issuers, a one year prohibition against a change in business or a fundamental change should be implemented and companies should be monitored to ensure they are carrying out their stated business plan. The Exchange may also want to implement minimum amount that the issuer has to expend on its stated business plan.

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.*

Comment

Not all share issuances should be reviewed by the Exchange prior to closing. Providing a five day advance notice would provide the Exchange with the necessary time to object to a proposed share issuance. If an approval system is put into place, it would slow down the ability of issuers to complete transactions. The Exchange should be given the discretion to waive the balance of the five day period if it has satisfied itself that there are no concerns with a proposed share issuance. The Exchange should also have the discretion to review and object to any issuance of securities even after such issuance has closed.

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.*

   (a) *Please comment specifically on the proposed thresholds for shareholder approval of a financing, acquisition, or disposition.*

   Comment

Shareholder approval should only be required by NV issuers. Venture issuers are continually raising capital and there is always the chance that a new control person will be created. This creates timing issues for these smaller issuers who are often in need of capital on a timely basis.

In addition, the new five day advance notice requirement will provide the Exchange with time to object to inappropriate share issuances.

(b) Is Exchange approval necessary for significant acquisitions or dispositions? If so, at what threshold should Exchange approval be required?

Comment

Exchange approval is already required for fundamental transactions and transactions that result in a change in business. Accordingly, Exchange approval should not be required for significant acquisitions or dispositions.

With respect to dispositions, most corporate legislation requires shareholder approval for the disposition of the issuer's undertaking or a sale of substantially all of its assets. In addition, there is a large body of case law that provides ample guidance in these situations...

(c) Should there be an explicit requirement for shareholder approval of a new control position?

Comment

As there is already legislation in place to monitor and ensure the disclosure of persons who take significant positions in public companies (ie. the early warning disclosure rules and the takeover bid rules), we do not believe that the Exchange should require shareholder approval of a new control position.

Smaller issuers are continually raising capital and there is always the chance that a new control person will be created. This creates timing issues for these smaller issuers who are often in need of capital on a timely basis.

(d) Should there be a requirement for Exchange approval of a new control position?

Comment

As there is already legislation in place to monitor and ensure the disclosure of persons who take significant positions in public companies (ie. the early warning disclosure rules and the takeover bid rules), there should not be a requirement for Exchange approval of a new control position.

Smaller issuers are continually raising capital and there is always the chance that a new control person will be created. This creates timing issues for these smaller issuers who are often in need of capital on a timely basis.

The Exchange may want to consider adopting such approval requirements for only more seasoned issuers, like NV issuers.

(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?

Comment

See response to (d) above. There should not 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, but the Exchange may want to consider such an explicit requirement for only more seasoned issuers, like NV issuers.

(f) Should exchange approval also be required for all transactions that materially affect control?

Comment

Yes, considering that shareholder approval will not be required, Exchange approval should be required for all transactions that materially affect control.

(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?

Comment

Yes shareholder approval requirements should differ depending on offering type. Shareholder approval should not be required for prospectus offerings, or the criteria for shareholder approval of a prospectus offering should be substantively different, as such offerings are reviewed and receipted by the applicable securities commission(s), who can refuse their approval and require changes to address concerns.

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.

Comment

Considering our comments that the issuer should have the discretion to be categorized as a NV issuer, we believe that the shareholder approval thresholds would be appropriate for an issuer that has elected to be a NV issuer.

Exchange approval should not be required provided the five day notice requirement is adopted. This would give the Exchange the required period to object to any such transaction and approval of the shareholders is being sought in any event.

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).

Comment

Corporate legislation and Multilateral Instrument 61-101 already contain disclosure and approval requirements for any significant related party transaction. We believe that these are adequate and see no benefit to Exchange review and approval of such transactions.

If an issuer is contemplating a transaction that is a fundamental change or a change of business, there are already shareholder approval requirements to capture those situations.

The five day advance notice period for share issuances could also apply to related party transactions and the Form 9 could be amended to include disclosure of any such related party transaction. This would give the Exchange the required period to object to any such transaction.

10. *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?*

Comment

There is already legislation in place to address the possibility that a private placement is being undertaken as a defensive tactic and the Exchange should have discretion to object to any private placement. We believe that any shareholder should be free to apply to the applicable securities commission and/or the Exchange to prevent such a private placement from proceeding. Accordingly, Exchange or shareholder approval should not be required for an issuance of shares that appears to be undertaken as a defensive tactic but the Exchange should have the discretion to require shareholder approval or to prevent the private placement from proceeding for good cause shown.

(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)?*

Comment

An issuer should be required to provide the information required by proposed 6.2(4)(b) to the Exchange for all share issuances.

(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?*

Comment

The Exchange should consider whether the proceeds from the private placement are actually required for the issuer's ongoing business, whether the investors with

connections to management have been targeted and whether the private placement is in the best interests of the shareholders.

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.*

Comment

Any shareholder approval requirements mandated by the Exchange should apply equally to all issuers regarding of shareholder approval requirements in applicable corporate law.

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

Comment

The Exchange should not impose a shareholder approval requirement for consolidations. Most provincial corporate legislation already has shareholder approval requirements and the Exchange has the discretion to require an issuer to obtain shareholder approval for a consolidation.

If a consolidation is being conducted in connection with a fundamental change of a change of business, there are already shareholder approval requirements to capture those situations.

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

(a) *The initial and continued listing criteria for the NV Issuers;*

Comment

Subject to the comments below, the proposed initial and continued listing criteria for the NV Issuers are adequate.

(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.*

Comment

The NV issuer requirements should not be a mere copy of the rules of other exchanges. Each new requirement should result in benefits to shareholders.

The Exchange should not impose a majority voting requirement on NV issuers. It is not required in corporate law and should not be required by the Exchange.

(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.*

Comment

We believe the NV issuer category should be at the election of an issuer that otherwise qualifies, and should not be left to the Exchange. If the issuer wishes to take advantage of the benefits of being a NV issuer, then it can apply to the Exchange for such designation. Many issuers choose to remain on a more junior exchange because they are continuously raising capital or are completing a series of acquisitions for a rollup or consolidation strategy.

Securities legislation already adequately governs non-venture issuers and venture issuers and makes that distinction. More senior issuers on more senior exchanges are already subject to the more stringent requirements imposed by applicable securities legislation. It also leads to confusion as NV issuers would still be considered to be venture issuers by applicable securities legislation.

Imposing the additional rules on issuers without their consent imposes additional requirements on venture issuers which are not appropriate and have not been imposed upon them by securities legislation.

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.*

Comment

The OSC EMI Guide, existing continuous disclosure requirements and the current guidance and requirement in Policy 4 are appropriate to address EMIR concerns. The number of these types of transactions has appeared to decrease significantly over the last few years.

If you have any questions or wish to discuss any of the above please contact the writer directly.

Yours truly,

CLARK WILSON LLP

Per: Virgil Hlus

Virgil Z. Hlus*
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** Admitted to practice in: British Columbia; California*