***S. Mark Francis***

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Dear Regulators:

Re: Comment letter on Notice 2021-005, Canadian Securities Exchange, November 9, 2021

**Capacity of Commenter**: While I do consult to CSE for part of my time, and have for over 18 years, I do so as an independent consultant, spending the other part of my time active in the small cap space, including as co-founder of a boutique investor forum (in person and on line), working with a variety of entrepreneurs public and private, participating in the angel investor community, leading a couple of private ventures, and also being CEO of a small reporting issuer. In the past I was active for a decade at the branch level in the Canadian Institute of Mining. My foci are resource and technology issuers, with a side focus on angel deals. In regards to the Investment Industry I am a prior registrant, previously earned the CIM designation, and when a registrant was licensed to trade in equities, options, and futures/commodities, including being one of the first approved for foreign currency options. For the last 15 years my portfolio has consisted primarily of TSXV small cap stocks, investing in in CSE-listed companies only rarely, and then only with approval. Through investor conferences in multiple cities and other activities I likely interact with or consider in the order of 300 public and 100 companies per year.

This experience provides the basis for how and where I see abuses in the small cap markets.

I will address in this comment letter:

- Certain challenges faced by small cap investors
- Alternative mechanisms which would enhance disclosure
- Questions raised in the Notice

**<u>Certain challenges faced by small cap investors</u>**

Ultimately the core of larger and dedicated small cap investors are what guide the market in all but the top end of the market cycles, at which point crowd sentiment generally takes over (and there is no antidote to that).

**Investor Time** is invaluable to us, and we are always doing triage on our time in order to keep ourselves informed on a number of companies, follow perhaps 25 – 50 in detail, and look for new opportunities. Boilerplate, having to look at multiple websites (such as SEDI, SEDAR, company websites, etc.), disclosure clutter, and having to reconstruct complete data from a series of disclosure points are all problematic in this regard. We need to efficiently acquire useful information.

**Available Capital** is vital. For non-revenue companies it is important to be able to easily and regularly find out the most recent working capital and other related positions for companies from the quarterly financial statements. This is vital, for example, to understanding whether a company must do another financing and how soon. Quarterly financial statements are a must, but the MD&As for non-revenue companies are much less frequently read and usually a waste of time.

**Company Leaders** - In small cap investing it is vital to evaluate the company leaders; we are investing in people. There is no regulatory solution for this. Investors have to follow individuals, observe their behaviour and personality in different situations, consider their professional / work history, etc. Impatient investors will simply read the easy disclosure and risk being ill-informed. This has been much harder during COVID lockdown.

**<u>Alternative mechanisms which would enhance disclosure</u>**

**Share issuance rolling log –** It would be a simple matter for companies to post a continuous log of all share and option issuances. While this information could be labouriously gleaned from a serious of financial statements, it would be a simple matter for companies to maintain such a log and to post such on its website and/or on its CSE company quote page. Each time a company issues more shares (or options) that would be added to the bottom (or top) of the log, and notation could be made as to what portion was acquired by insiders. Consideration could be given to requiring this for each company’s own website.

**Insider Holdings and Activity –** SEDI is a pain in the neck, and inexperienced investors almost never use it. Companies could be required to post an up to date log of current insider holdings and recent transactions.

**Explicit IR expenditure disclosure in financial statements** (auditor fee disclosure is required, but for small caps IR expenditures are more likely than auditors being unduly compensated to lead to undue promotion). This would mean that auditors would also concern themselves with ensuring this expenditure line is accurate.

**Website content –** companies posting NRs to their website should have to post all with the exception of the early warning reports, or none. To argue against this, one of the signals that a company is unduly concerned with promotion is when they are selective in posting NRs to their own website, so imposing such a rule might eliminate this signal. Regardless, it would be reasonable to require all companies to post at least the most recent financial statements without simply providing a SEDAR link (ease and simplicity).

**Quarterly CSE listing statements –** Very few investors I speak with use these for investment decisions. These tend to multiply the volume of disclosure postings but not quality of disclosure.

## <u>Questions raised in the Notice</u>

**Question 1**: To qualify in the "count" an investor should have to have made a minimum $250 investment (or in the case of a legitimate Plan of Arrangement a minimum of $250 of value attributed to that investors' equity share of the particular company in question at the time), and at least 50 investors should have invested at least $2,500. Rather than defining the maximum number of minimum board lot shareholders, it would be better to have a minimum number of investors who have to be convinced to invest more substantially. I believe the $2,500 number is the limit in the crowdfunding rules. As an aside, during hot small cap markets the value of an investor as attributed by the valuation of shells can be as much as $1,000 or more. A promoter intent on creating a token listing for use as a shell can even justify providing $200 cash to each of a number of "investors" so that they can "invest".

**Question 2**:

Note that liquidity is driven more by new buying interest and the free float than by the number of shareholders.

Number of shareholders: The number of shareholders is not significant to either liquidity or undue promotion. Liquidity: Requiring an additional 50 minimal threshold investors, even if the threshold were raised, would not meaningfully increase the shares available for trading. If all 50 of those investors, each, say, with $250 invested, were to show up to sell in one week that would represent only an additional $2,500 per day of original investment in available stock for purchase.

Undue Promotion: Groups which profit by running undue promotions rather than building businesses will have little difficulty in gaining an additional 50 investors, and this would barely affect their economics as those 50 investors would likely have less than ½ % of the outstanding shares upon listing (assuming a $2.5m total market cap upon listing).

In fact, in some circumstances where there is good share distribution with most investors having made a meaningful investment, the threshold could be reduced to 100 or even 75 investors without compromising market integrity, and for debt instruments as low as 25 investors.

10% Public Float – The abuse tends to occur with very small companies and "tight floats". The answer is not to raise the % public float for all companies, but rather to increase it for those with the very smallest total floats, and to impose a minimum threshold for public / arms-length investor ("public") funds at risk.  $250,000 minimum public (free-trading) float based on the price of the IPO or most recent financing prior to listing ("Most Recent Financing"}, and $200,000 of public or arms-length investor funds suggest themselves.  This would come from 50 public investors putting in an average of $3,000 ($2,500 or more), and the other 100 public investors putting in an average of $1,000 (minimum $250 up to just under $2,500), with ¼ of the $200,000 in funds being placed at a 50% discount to the Most Recent Financing, and ¾ of the $200,000 in funds being placed in the Most Recent Financing.

Note that this dual minimum would mean that if promoters try to carry the Most Recent Financing themselves in order to enhance the "promote", the minimum $$ invested by public investors would mean more dilution earlier for the promoters.

***It should be noted that it is nearly impossible to monitor the complex webs of mutual handwashing amongst the unsavoury promoters and their networks.  They have many techniques and there are no discernible formal arrangements or direct reciprocation.  The only answer for investors in this regard is to spend time evaluating the people who are leading the companies in which they consider investing.***

**Question 3**:

Time Period and amount for prior expenditures – The point should be to prevent token listings to create shells for RTOs, without unduly interfering with the funding of new or newly discovered projects.  Mineral exploration and availability of capital is highly cyclical.  3 years is a reasonable period, and the $75,000 threshold can still be sufficient to identify a worthy new project in certain circumstances, though given inflation an increase to $100,000 might be considered at some point.

**Question 4**:

Minimum program – In many cases there is a binary nature to the phases:  Phase 1 could easily be $100,000 (e.g. detailed airborne geophysical survey) but Phase 2 could easily be $500,000 or more (e.g. a first pass 800 – 1,000 metre drill program in much of Canada's "north", with "north being more than the territories) and the results of Phase 1 could militate against further expenditures on that project relative to the value of spending funds elsewhere.

**Solution to Preventing Token Listings:**  Require that the company spend at least $500,000 in mineral exploration (combining both the listing property(s) and other subsequently acquired property interests) prior to being allowed to change industries, and at least $300,000 of such prior to doing an RTO within the mining industry.

**Question 5**:

Length of Operating History of the Issuer is irrelevant.  In many cases individuals may have been informally collaborating on a technology idea or considering a resource project, or engage in their activities or related activities through other legitimate structures and organizations (not exclusively for-profit corporate). Conversely, unscrupulous promoters can take over a long-standing shell with extensive operating history. Rather, the question should relate to the operating history of the people involved and their degree of industry expertise. Similarly, Changes of Business and wholesale changes of management by an existing issuer within the first 18 months should be more tightly constrained, especially for those companies which were at or near the minimum requirements at time of listing.

**Question 6:**

Venture Companies have to raise capital when it is available, and requiring pre-approval by the exchange (and therefore introducing uncertainty) could become extremely cumbersome in hot markets, as well as not providing net protection to investors while. The alternative would be to escrow all insider shares (insiders both pre and post transaction) until such transaction has been reviewed by the exchange.

**Question 7**:

a. Not sure of the threshold, especially as there is such a range of companies and situations. Sometimes a company has to act quickly to raise capital, and the capital could disappear if the market cools.
b. Do not require exchange approval for such financings, acquisitions, or dispositions when such are consistent with the existing business plan
c. And d, e, f, and g Possibly.

g. A prospectus offering is generally slower in any case.

**Question 9:**

This is difficult; while it is an area open to abuse it is also vital for legitimate companies to execute rapidly on deals. Constraining the good companies would cause significant loss of opportunity for investors.

**Non-venture Issuer Requirements / classification: Non-revenue companies should have higher market cap thresholds prior to being considered for designation as non-venture, as well as an additional threshold.** It is of some concern that companies could be dragged onto the senior board by virtue of overall market activity rather than corporate specific growth, or, for example, by a good discovery, in either case long before the internal management and public disclosure dynamics of the company require change. The TSXV leaves the decision to move to the TSX mainly up to the issuer, and the TSXV has numerous mineral exploration companies with more than \$100m in market cap. For example, during strong metals markets the tide tends to raise all boats, with many exploration stage companies exceeding \$100m mkt cap. Similarly, the market can respond strongly to a few good drill holes, but funding a larger subsequent drill program might simply mean adding an additional rig, a couple of geologists, and some helpers, without changing the degree of corporate complexity. An additional confirmational threshold / test for non-revenue companies might be the size of exploration or R&D expenditures to determine if the company's internal controls need to be more substantive, justifying designation as a non-venture issuer. \$20million of such expenditures in one year or \$30million of such over two years might be an additional useful threshold prior to designating a company as non-venture. This is because in cyclical industries a hot equity market could drive temporary access to capital for project advancement as well as market capitalization, only to be followed by a period when previously active and worthy projects are unable to raise capital for several years.

**Emerging Market Issuer Requirements**

The current requirements are sufficient if properly applied.

Yours truly,

S. Mark Francis, CIM

Advisor to Entrepreneurs, Capital Markets Consultant, Sr. Advisor to CSE