February 7, 2022

P R I V A T E & C O N F I D E N T I A L

**VIA EMAIL**

**TO:**

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**AND TO:**

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Dear Sirs/Mesdames,

**RE: CSE Needs Your Help - Request for Comments re: Proposed Changes to Listing Rules**

Please accept the below as our firm's considered response to the six questions posed by the Canadian Securities Exchange (the "**CSE**") during the designated comment period running from December 9, 2021 to February 7, 2022.

**1. Float Requirements – Significant Number Holding Boardlot**

*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?*

**RESPONSE**: Reviewing the shareholder base and considering the underlying distribution is our recommended approach. First, such an approach preserves the flexibility to consider other relevant factors, such as industry sector, issuer's operating history, specialized capital structures, and specialized seed funding methods. Second, such an approach will accord with the tenor of the CSE's current policies, which are relatively flexible compared to other Canadian exchanges.

We recommend that the following factors be considered:

- the extent to which the number of issued and outstanding shares exceeds the minimum number of issued and outstanding shares;
- the presence of a normal distribution based on shareholdings by investors;
- the extent to which shareholders are aware of corporate developments through regular press releases, shareholder meetings, and stakeholder engagement;
- the nature and extent of recent financings and secondary market purchases;
- evidence of broker interest and following;
- the unique aspects of the investment, and whether institutional and retail investors would be willing to trade the stock;
- arrangements with regulated market makers to provide liquidity support;
- the capital structure of the Issuer;
- the source and structure for the seed financing of the Issuer;
- expertise and previous experience of key personnel;
- the current financial conditions in the economy more broadly, and in the sector in which the Issuer operates in particular;
- the industry/sector/expertise breakdown of the public float body, which would allow the CSE to evaluate how much diversity of perspective there is within the body of the issuer's investors;
- the ratio of individuals in relation to institutions, corporations, trusts and other business entities, which would provide a metric of investors' exposure to personal risk;
- the ratio of investors subscribing under sophisticated investor exceptions (such as the accredited investor exception and the business associates exception) in relation to those subscribing under the layperson exceptions (such as the family and friends exception), which would provide a metric of investor sophistication; and
- whether any of the current investors have a history of shareholder activism, allowing the CSE to relax requirements in light of stronger investor oversight.

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?*



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**RESPONSE**: We have concerns about distributions created by stock dividends. We recommend maintaining the existing float requirements and, where a concerning distribution is apparent, analyze such distribution on a case-by-case basis following the principles outlined to our response in 1 a), above. Essentially, we are concerned that the manner of forming distribution could be against the public interest or otherwise diminishing the confidence of the public in the listing process.

**2. Float Requirements – Minimum Float Requirements**

*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?*

**RESPONSE**: The proposed public float requirements for CSE NV Issuers are appropriate. Adopting higher thresholds will likely have little effect on preventing the issues under consideration, and would only impact the ability of legitimate junior issuers to access the market. Adopting more onerous thresholds may also discourage listing on the CSE as opposed to the TSX and NEO.

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

**RESPONSE**: As explained in our response to 1 b), above, the CSE should consider the public float on a case-by-case basis, without a fixed minimum. While there ought to be guidelines, the CSE ought to allow Issuers to make submissions containing relevant details.

**3. Mineral Exploration Projects**

*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.*

*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?*

**RESPONSE**: In our view, a fixed time period is appropriate and three years immediately prior to listing is reasonable.

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

**RESPONSE**: A minimum level of expenditures would unnecessarily restrict the CSE's stated goal of listing early-stage projects, and would disregard other relevant factors, such as the history of the property, robust early exploration results, and significant management experience. Instead, relevant quantifiable measures that could be considered may include:

- Number of management site visits to the mineral property, and other quantifiable metrics that objectively demonstrate awareness and history of management with the project;



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- For companies whose mineral properties are located in foreign jurisdictions, number of employees and amount of expenditure in the foreign jurisdictions as compared to domestic management expenditure; and
- For companies whose mineral properties are located in foreign jurisdictions, the average expenditures for other listed companies in that jurisdiction (on a per jurisdiction basis, since there are ranges of appropriate costs associated with operating in different countries).

For greater certainty, we are not proposing any one of the foregoing quantifiable measures as dispositive. Instead, they should be looked at to supplement the mineral property expenditures and other relevant factors.

As further alternative, in the event that an issuer is unable to meet the $75,000 prior expenditure requirement, it may be prudent to require a larger recommended work program (for example, $500,000). This would necessitate raising additional capital, which may deter "shell-making" listings. To more directly address this danger, the CSE may consider supplementing the larger work program with undertakings to complete key milestones in it, failure of the completion of which would result in sanction.

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

**RESPONSE**: The current $75,000 minimum is an appropriate sum and consistent with the CSE's stated goal of listing early-stage projects. A larger sum could be unnecessarily restrictive for legitimate issuers.

**4. Mineral Exploration Projects**

*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?*

**RESPONSE**: The current $100,000 minimum is an appropriate sum for the reasons we note in our response to 3c) above.

*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?*

**RESPONSE**: See our response to 3b) above.

*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?*

**RESPONSE**: As outlined in our responses above, increasing numerical requirements without more analysis would be unnecessarily restrictive while simultaneously not addressing the root of the problem. We instead suggest adopting a more holistic approach to reviewing the affairs of the company.

*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*



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*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.*

**RESPONSE**: Our response to the general points helping to address the issue of shell companies are found below. However, there are some additional controls that may be introduced for mineral issuers in particular. One such factor we propose is prior management experience. If management of the issuer has successfully developed a mineral property past the exploration stage, this would serve as a compelling sign that this issuer is not intending to use the company as a shell. If the issuer's management includes a group of such individuals, all of whom worked together on a property that was taken past exploration, this factor should be especially persuasive.

**5. Issuers with Minimal or No Operating History**

*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. 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.*

**RESPONSE**: In light of the objectives stated above, we believe the CSE should introduce additional protections to respond to the dangers of "shell companies" and other similar entities aimed at preserving capital rather than creating value. While we do not recommend rigid requirements and mandatory minimums, we do propose the following procedural elements:

a) adopt a regime similar to the one employed by the TSXV: Bulletin Notice to Issuers re History of Operations and Validation of Business (June 21, 2018); and

b) request undertakings for the completion of specific business milestones. These undertakings may be proposed by the issuer, with the issuer submitting a form/letter detailing how they are aimed at advancing towards an active business being achieved. The CSE may then approve, amend, or request particulars of such undertakings. If an issuer fails to achieve these goals, they will have to explain this to the CSE's satisfaction, failing which the issuer may face sanctions such as delisting.

**6. Exchange and Shareholder Approvals**

*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.*

**RESPONSE**: We do not think all share issuances ought to be reviewable before closing. The current securities regime established by the CSA adequately protects investors through mandatory disclosure,



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requirements for shareholder approval, etc. For example, MI 61-101 imposes stringent requirements for issuers engaging in related party transactions, which are viewed as inherently more likely to give rise to investor protection concerns. Further, reviewing every securities issuance would be more onerous than the TSXV's policies, which do not mandate a review of expedited acquisitions before closing, even if the acquisition is made in exchange for an issuer's shares and/or warrants. Introducing reviews of all securities issuances would add substantial administrative and legal expenses and make the CSE a less viable option for early-stage issuers. This would in turn subvert the CSE's stated goal of listing early-stage companies, since early-stage companies would be disproportionately burdened by these additional fees.

**7. Other Comments**

In our view, the proposed shareholder approval for a dilution of 25% or greater upon an issuance of securities for CSE NV issuers is problematic. This rule mirrors a similar 25% TSX rule, and would not encourage earlier senior tier listing that the CSE strives for. Issuers routinely cite the 25% TSX rule as a reason to remain on the TSXV. Introducing this rule would discourage CSE issuers to apply for listing on the CSE NV.

Yours very truly,

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