



**CORPORATE COUNSEL**

CORPORATE AND SECURITIES LAW

CC Corporate Counsel Professional Corporation  
20 Great Gulf Dr., Suite 14, Vaughan, Ontario, L4K 0K7

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**SENT BY ELECTRONIC MAIL**

Mark Faulkner  
Vice President, Listings and Regulation  
CNSX Markets Inc.  
100 King Street West, Suite 7210  
Toronto, ON, M5X 1E1  
Fax: 416.572.4160  
Email: [Mark.Faulkner@thecse.com](mailto:Mark.Faulkner@thecse.com)

-and-

Market Regulation Branch  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, ON, M5H 3S8  
Fax: 416.595.8940  
Email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

-and-

Larissa M. Streu  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, BC, V7Y 1L2  
Email: [lstreu@bcsc.bc.ca](mailto:lstreu@bcsc.bc.ca)

Dear Sirs/Mesdames:

**Re: Canadian Securities Exchange Notice 2021-005 – Request for Comments – *Proposed Policy Amendments***

Thank you for providing us with the opportunity to comment on the proposed changes set out in Canadian Securities Exchange Notice 2021-005 – Request for Comments – Proposed Policy Amendments (the “**Proposed Changes**”). We appreciate the opportunity to provide this comment letter and hope that our submissions will be of assistance.

Our comments below reflect our professional experience in advising issuers in connection with numerous capital markets transactions, and in particular with issuers across a range of industries seeking listing on

the Canadian Securities Exchange (the “Exchange”). These comments represent the views of certain individual members of our firm and not those of the firm generally or any client thereof, and they are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any of its clients.

### ***General***

We applaud the efforts of the Exchange in undertaking the review and analysis that culminated in the publication of the Proposed Changes. We view the proposals as a positive development and a step towards meeting the challenges faced by the Exchange as it evolves. We have commented on some, but not all, of the Proposed Changes, and are happy to provide more detail or speak with Exchange staff with respect to our comments. Capitalized terms used but not defined herein have the meanings given to such terms in the Proposed Changes.

### ***Establishing a “Senior Tier”***

We support the concept of adoption of a “senior tier”. We believe that this would reflect and be responsive to the evolution of the Exchange over time (i.e., to become a listing venue for not only early-stage businesses but also more established businesses), and would apply more appropriate standards to more mature companies that are listed on the Exchange. We agree with the general regulatory approach and effort to address the potential for regulatory arbitrage where an issuer could choose to list on a venture exchange and be subject to less stringent requirements than are appropriate for its stage of development, and to eliminate a potential regulatory gap by effectively having venture and non-venture issuers listed on the same exchange.

We also note that the Exchange has indicated that it intends to seek changes to the definition of “venture issuer” under securities laws. We feel that careful consideration of the application of this definition and the introduction of differing requirements for different tiers on the Exchange is important, so as to ensure that issuers are not faced with unintended additional compliance burdens in trying to navigate multiple sets of rules that may not be consistent. We also note that the process of finalizing revisions to securities laws can be very lengthy and there is no certainty as to the result.

In addition to the definitional consideration noted above, we emphasize the need to ensure clear guidelines, in order to ensure that unnecessary regulatory burden does not arise as a result of difficulty in determining what set of rules must be complied with (i.e., to not end up with the unintended consequence of becoming logistically burdensome, especially in light of recent securities law reforms to reduce regulatory burden).

We would also be interested in seeing more data regarding what proportion of companies would be moved into the “NV” tier, given the opportunity.

### ***Listing Eligibility***

We support the introduction of an “Eligibility Review” for issuers seeking listing on the Exchange, and agree that this will provide listing applicants with some degree of certainty that Exchange requirements will be met upon completion of a prospectus review or offering. We also support this as a means to provide confirmation to commission staff that an issuer has in fact applied to and received comments

from the Exchange (and will therefore facilitate responses to commission staff's comments on these matters and requests for copies of correspondence with Exchange staff).

### ***Issuers with Little or No Operating History***

We understand that due to one of the Exchange's stated objectives being to provide access to low-cost capital for entrepreneurs or for companies at earlier stages than on other exchanges, there is the potential for issuers to attempt to list a company that meets the basic listing criteria but has no real intention to pursue its stated business objectives (i.e., listing "shell companies").

Despite concerns with this practice, we do not believe that there should be a defined period of operations or level of business activity before an issuer can qualify for listing. We feel that the determination of what would be an appropriate threshold for either of these criteria runs the risk of being arbitrary and/or of inconsistent utility across different industries. Rather than setting specific thresholds, we believe that factors such as the issuer's period of operations/operating history and level of business activity, as well as other factors such as the history and experience of management and the board, should be considered together on a case by case basis and in conjunction with other factors that are relevant to the particular issuer. We agree with the Exchange's approach to the initial listing requirements and feel that these are very appropriate in light of its stated business objectives and, absent specific concerns with any of the current minimum listing requirements, we support keeping those requirements in place, along with a disclosure-based approach that allows potential investors to understand the stage of operations and financial position of the issuer.

However, we also agree with the proposed changes to Exchange Policy 8 with respect to the review of fundamental changes and change of business transactions, to discourage the potential for listing of entities that are effectively shell companies. Ultimately, it is difficult for Exchange staff to determine whether there is a bona fide intention to pursue a specific business and the reality is that early-stage businesses often do not succeed. Further, as noted above, it is difficult to set an objective threshold in terms of a period of operations or level of business activity, and we note that this could also vary depending on industry, and imposing too many industry-specific requirements could become unwieldy and run the risk of becoming qualitatively inconsistent. We believe that the Exchange should, however, exercise discretion and take active steps to address apparent investor protection concerns which would include, but not be limited to, listing of shell companies. However, we note that this is somewhat of an inconsistent treatment between the various exchanges considering the CPC program that the TSX Venture Exchange offers, whereby they are specifically permitted to list shell companies. It would be more appropriate to permit listed shells on the Exchange with specific criteria and constraints – like a CPC, SPAC or G-Corp.

We also note that issuers are required to meet the continued listing requirements of the Exchange on an ongoing basis. Current Exchange policies provide guidance on certain circumstances in which the Exchange may determine that an issuer no longer meets the continued listing requirements, which include (but are not limited to) instances where the issuer reduces or impairs its principal operating assets, or ceases or substantively reduces its business operations. However, we note that in exercising this discretion, the Exchange should also consider that early-stage issuers sometimes fall on financial hardship or that, for instance, a mining venture does not work out and as such management may pivot in order to preserve shareholder value for the investors – and such pivoting should not be punished.

To summarize, we believe that maintaining the existing listing requirements and ensuring appropriate disclosure both at the time of listing and on an ongoing basis (which listed issuers are also subject to as reporting issuers so there is transparency going forward) is appropriate given that it is difficult to predict what companies are not going to succeed or fulfill their business objectives, and factors such as length of operating history do not necessarily assist in this determination.

### ***Proposed Changes Specific to Mining Issuers***

We understand that the Exchange is not currently proposing to change the minimum listing requirements for mining issuers. We agree with the Exchange's approach and recommend that changes not be made to the thresholds and listing requirements relating specifically to mining issuers without feedback from the mining industry in order to better understand the impact that specific changes (i.e., to the three year time period or the \$75,000 minimum requirement for prior expenditures, and/or the minimum \$100,000 threshold for Phase I expenditures) would have on the ability of issuers to meet the minimum listing requirements. In particular, we feel that the introduction of any other quantifiable measures should be done only in consideration of industry feedback and a clear understanding of what the impact of such changes would be.

### ***OSC EMI Guide***

We do not feel that any further prescriptive measures (including additional listing requirements or otherwise) should be introduced in respect of issuers that have operations in emerging markets and support the continuation of a disclosure-based approach to address concerns with emerging market issuers. We believe that the guidance set out in the OSC EMI Guide should be used as a standard for emerging markets disclosure. However, in reviewing any emerging markets disclosure, Exchange staff should ensure that such disclosure is tailored to the specific issuer, industry and jurisdiction, and where concerns have arisen regarding any particular emerging market jurisdiction, specific and enhanced disclosure should be considered.

Thank you for the opportunity to comment on the Proposed Changes. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond. Please direct any inquiries to [msokalsky@corpcounsel.ca](mailto:msokalsky@corpcounsel.ca) or (416) 519.6886.

Yours very truly,

*"Melanie Sokalsky"*

Melanie Sokalsky  
Partner, CC Corporate Counsel Professional Corporation