February 7, 2022

BY EMAIL

CNSX Markets Inc.
Ontario Securities Commission
British Columbia Securities Commission

c/o

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

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON, M5H 3S8
marketregulation@osc.gov.on.ca

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
lstreu@bcsc.bc.ca

Dear Sirs/Mesdames:

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

We are writing in response to Notice 2021-005 - Request for Comments -Proposed Policy Amendments (the "**Proposed Amendments**") posted by CNSX Markets Inc. (the "**CSE**" or the "**Exchange**"). We commend the CSE for its initiative and the thoughtful approach to updating its current policies and related forms ("**Policies**" and "**Forms**") in an effort to attract quality, early-stage issuers to list on the exchange which is evidenced by the Proposed Amendments. We recognize that in preparing the Proposed Amendments, the CSE must balance the competing priorities of investor protection against the significant cost and burden of compliance imposed on reporting issuers in Canada under National Instrument 51-102 *Continuous Disclosure Requirements* and bringing these interests into alignment with the Proposed Amendments.

In response to the above-noted request, we are pleased to provide the following comments for your consideration.

Capitalized terms used and not otherwise defined herein have the meaning ascribed thereto in the Proposed Amendments.

RESPONSES TO QUESTIONS INCLUDED IN THE PROPOSED AMENDMENTS

Questions relating to Listing Criteria

Mineral Exploration Projects

3(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?

We are of the view that three years is fine, subject to discretion by the Exchange in certain circumstances, as valid work may have been completed by an issuer in a down market and discretion should be given depending on market climate. Accordingly, a time period would negate those efforts and would not prove conducive to that issuer.

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

We are of the view that $75,000 in expenditures is reasonable and there is no need for it to be amended. We also point out that the actual investment in a given qualifying property will in most cases be far in excess in the $75,000 of qualifying expenditures given that qualifying expenditures cannot include general and administrative costs, land maintenance, property acquisition costs or payments, staking, investor or public relations, non-domestic flight expenditures or taxes.

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

The requirement is sufficient. A $75,000 expenditure is not insignificant and should be sufficient to complete an initial property review, determine prospectivity and confirm merit, and develop an exploration plan. Increasing this amount to $150,000 as set by other stock exchanges would not significantly enhance investor protection but would require arbitrary additional spending to qualify for listing. Much more significant expenditures than $75,000 or $150,000 is required on a given property prior to determining whether a potential deposit exists, and $75,000 is sufficient for that initial review.

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

Please see 3(b) above. We believe the current minimum budget provides for sufficient spending on a property for initial exploration. To require additional funds to be expended on a work program would be arbitrary and may result in funds being spent which are unnecessary in the context of a property. In addition, additional spending hurdles may prevent prospective early-stage properties from being explored. Additional financing requirements may also inadvertently require uncalled for dilution for prior shareholders before initial exploration work can be completed and results published.

4(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?

The minimum expenditures approach is sufficient to provide conform.

4(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?

Please see 4(b) above.

4(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.

77 King Street West, Suite 2905, Toronto, ON M5K 1H1
T: 416.777.7300 F: 416.777.6199 info@foundationmarkets.com www.foundationmarkets.com

While we agree that the intention should be stated, there should not be a requirement for unallocated capital to be applied in some guess work amount. Having a statement to some effect is not wrong, but, if an issuer has an asset and as it advances wants to attract other properties, it should state that, but that should not be added to the budget, or the requirement of a statement that an actual acquisition will occur. While it's understood that the Exchange is seeking to limit the creation of shells, a vehicle with a single property should not be considered shell creation and any rules seeking to limit same be used discretionarily and taking the start-up nature of an issuers business into consideration. Accordingly, issuers should have flexibility to create value while not being constrained by a statement that would not allow them to do so.

Issuers with Little or No Operating History

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.

No. Given the Exchange fosters novel and disruptive companies we believe this would prove detrimental to fostering capital raising for such novel and disruptive companies. Moreover, novel, and disruptive businesses tend to have varying levels of business activity unakin to other start-ups as their business models vary widely (e.g.: psychedelics company vs. food distribution) and therefore should be considered to qualify for listing by the Exchange on a case-by-case basis rather than a pre-defined period or requisite level of business activity.

Questions relating to 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.

No, there should be no requirement to notify the Exchange of every share issuance. This obligation would be cumbersome and bureaucratic and would run counter to the Exchange's reliance approach to securities law compliance.

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

The proposed thresholds are appropriate and, we believe, correspond to existing Exchange requirements.

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

We are of the view that current requirements concerning significant acquisitions and dispositions such as those set forth in Policies 7 and 8, respectively, are sufficient and where any ambiguity exists, issuers should defer to securities laws (e.g.: MI 61-101 -*Protection of Minority Security Holders in Special Transactions*) to supplement any additional conditions regarding approval requirements and additional obligations.

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

No. We suggest that a written resolution or consent by a majority of shareholders would serve sufficient in such circumstances to approve a new control person. Accordingly, approval should be required only where a new control person is created due to or in connection with an acquisition.

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

No, we see no reason for Exchange approval in such circumstances.

77 King Street West, Suite 2905, Toronto, ON M5K 1H1
T: 416.777.7300 F: 416.777.6199 info@foundationmarkets.com www.foundationmarkets.com

7(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?

No, this would significantly increase costs for acquisitions. We believe the cost will outweigh the benefit. Board fiduciary obligations should be sufficient to protect minority shareholders.

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

We do not see what benefit would be provided by requiring Exchange approval for such transactions. Such a requirement will add costs without fundamental benefit.

7(g). For a sale of securities, shareholder approval is proposed for an issuance meeting the thresholds whether by private placement or prospectus offering

The shareholder approval requirement should not be required in the case of financial distress of the issuer merely because insiders are participating. If an issuer is in financial distress, insiders are the most likely investors. Furthermore, non-insider investors may not be comfortable in participating in such a financing where insiders are not participating and adding a shareholder approval requirement may make the financing impractical for an issuer in distress.

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).

We believe the current reliance model works well and requiring Exchange review or approval would just add costs without significant benefit.

10(a). Should Exchange or shareholder approval be required for an issuance of shares that appears to be undertaken as a defensive tactic?

Yes, we believe Exchange or shareholder approval is appropriate in this case as shareholder interests should be paramount and there is no other way to ensure shareholder interests are considered above all other interests. As well, such approval requirements would ensure that entrenched board members cannot take action contrary to the will of the shareholders in order to protect their positions.

Consolidation

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.

This requirement should not be included as it is sufficiently covered through legislation in each applicable jurisdiction.

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

Please see 11 above.

Emerging Market Issuer Requirements

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.

77 King Street West, Suite 2905, Toronto, ON M5K 1H1
T: 416.777.7300 F: 416.777.6199 info@foundationmarkets.com www.foundationmarkets.com

Existing requirements are sufficient, and we see no need for enhanced requirements. We are unaware of any systemic issues relating to EMIR concerns which would require additional requirements, especially given current requirements already require significant additional disclosure as compared to non-emerging market issuers.

****

We thank you for the opportunity to provide feedback on the foregoing proposed amendments. Should you have any questions regarding any of the foregoing, please do not hesitate to contact me.

Yours Truly,

Alex Storcheus
Managing Director & Chief Compliance Officer

cc: Peter Bilodeau, Ultimate Designated Persona and Chief Executive Officer
Adam K. Szweras, Chairman
Ignazio Gulizia, Vice President, Compliance and Legal Affairs

77 King Street West, Suite 2905, Toronto, ON M5K 1H1
T: 416.777.7300 F: 416.777.6199 info@foundationmarkets.com www.foundationmarkets.com