

B.2.4 CNSX Markets Inc. – ss. 21, 144

Headnote

Subsection 144(1) of the *Securities Act* (Ontario) – application for order varying the Commission’s order recognizing CNSX Markets Inc. as an exchange – variation required to replace references to IIROC – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144(1).

May 12, 2023

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(Act)**

AND

**IN THE MATTER OF
CNSX MARKETS INC.**

**ORDER
(Sections 21 and 144 of the Act)**

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated May 7, 2004, and varied on September 9, 2005, June 13, 2006, May 16, 2008, varied and restated on July 6, 2010, varied on June 22, 2012, varied and restated on November 5, 2013, varied on October 1, 2015, and varied and restated on February 12, 2016, February 8, 2019, and August 31, 2020, recognizing the Canadian Trading and Quotation System Inc. (**CNQ**), which later changed its name to CNSX Markets Inc. (**CNSX**), as an exchange pursuant to section 21 of the Act (**Recognition Order**);

AND WHEREAS the Commission considers the proper operation of an exchange as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of an exchange be dealt with appropriately and risks to the integrity of the market associated with the listing and continued listing of issuers are monitored and controlled;

AND WHEREAS CNSX has agreed to the terms and conditions set out in the Schedules to the Recognition Order;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the Recognition Order to reflect the legal name change of Investment Industry Regulatory Organization of Canada to Canadian Investment Regulatory Organization (**CIRO**) (**Application**);

AND WHEREAS, based on the Application, the Commission has determined that:

- (a) CNSX continues to satisfy the recognition criteria set out in Schedule 1 of the Recognition Order,
- (b) it is in the public interest to continue to recognize CNSX as an exchange pursuant to section 21 of the Act, and
- (c) it is not prejudicial to the public interest to vary and restate the Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Recognition Order is granted.

IT IS ORDERED, pursuant to section 21 of the Act, that CNSX continues to be recognized as an exchange, provided that CNSX complies with the terms and conditions set out in the Schedules to the Recognition Order, as applicable.

DATED this 12th day of May 2023, to take effect June 1, 2023.

“Susan Greenglass”
Director, Market Regulation

**SCHEDULE 1
CRITERIA FOR RECOGNITION**

PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

- (a) access;
- (b) marketplace operations;
- (c) exchange rules, policies and other similar instruments;
- (d) order and trade transparency;
- (e) transparency of marketplace operations;
- (f) record keeping;
- (g) marketplace systems and business continuity planning;
- (h) confidentiality of information;
- (i) outsourcing;
- (j) clearing and settlement;
- (k) fair and orderly markets;
- (l) the management of conflicts of interest; and
- (m) filing of financial statements.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange;
- (b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
 - (i) appropriate representation of independent directors, and
 - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 ACCESS

3.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

4.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

- (a) The exchange has rules, policies, and other similar instruments (Rules) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.
- (b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to
 - (i) ensure a fair and orderly market; and
 - (ii) provide a framework for disciplinary and enforcement actions.

PART 6 DUE PROCESS

6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 FEES

10.1 Fees

- (a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

11.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE 2
TERMS AND CONDITIONS APPLICABLE TO CNSX

1. DEFINITIONS AND INTERPRETATION

(a) For the purposes of this Schedule:

“accounting principles” means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“affiliated entity” has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

“associate” has the meaning ascribed to it in subsection 1(1) of the Act;

“Board” means the board of directors of CNSX;

“Competitor” means a person whose consolidated business, operations or disclosed business plans are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material lines of business of CNSX or its affiliated entities;

“CNSX Issuer” means a person or company whose securities are listed on CNSX;

“CNSX marketplace participant” means a marketplace participant of CNSX;

“criteria for recognition” means all the criteria for recognition set out in Schedule 1 to the Order;

“dealer” means “investment dealer”, as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements*;

“CIRO” means the Canadian Investment Regulatory Organization;

“marketplace” has the meaning ascribed to it in subsection 1(1) of the Act;

“marketplace participant” has the meaning ascribed to it in section 1.1 of NI 21-101;

“Nominating Committee” means the committee established by CNSX pursuant to section 7 of this Schedule;

“officer” has the meaning ascribed to it in subsection 1(1) of the Act;

“Regulatory Oversight Committee” means the committee established by CNSX pursuant to section 8 of this Schedule;

“Rule” means a rule, policy, or other similar instrument of CNSX;

“shareholder” means a person or company that holds any class or series of voting shares of CNSX;

“significant shareholder” means:

- (i) a person or company that beneficially owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of CNSX; or
- (ii) a shareholder whose nominee is on the Board, for as long as the nominee of that shareholder remains on the Board; and

“unaudited non-consolidated financial statements” means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

- (i) they are not audited; and
- (ii) investments in subsidiary entities, jointly controlled entities and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 *Separate Financial Statements*.

- (b) For the purposes of this Schedule, an individual is independent if the individual is “independent” within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:
- (i) is a partner, director, officer or employee of a CNSX marketplace participant or an associate of that partner, officer or employee;
 - (ii) is a partner, officer, director or employee of an affiliated entity of a CNSX marketplace participant who is responsible for or is actively engaged in the day-to-day operations or activities of that CNSX marketplace participant;
 - (iii) is an officer or an employee of CNSX or any of its affiliates;
 - (iv) is a partner, officer or employee of a significant shareholder or any of its affiliated entities or an associate of that partner, officer or employee;
 - (v) is a director of a significant shareholder or any of its affiliated entities or an associate of that director;
 - (vi) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of CNSX;
 - (vii) is the director of a person or company that beneficially owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of CNSX;
 - (viii) is a director that was nominated, and as a result appointed or elected, by a significant shareholder; or
 - (ix) has, or has had, any relationship with a significant shareholder that could, in the view of the Nomination Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of CNSX.
- (c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(v), b(vii) and b(viii) provided that:
- (i) the individual being considered does not have, and has not had, any relationship with a shareholder that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of CNSX;
 - (ii) CNSX publicly discloses the use of the waiver with reasons why the particular candidate was selected;
 - (iii) CNSX provides advance notice to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and
 - (iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

2. PUBLIC INTEREST RESPONSIBILITIES

- (a) CNSX must conduct its business and operations in a manner that is consistent with the public interest.
- (b) The mandate of the Board of CNSX must expressly include the regulatory and public interest responsibilities of CNSX.

3. SHARE OWNERSHIP RESTRICTIONS

- (a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over:
 - (i) more than 10% of any class or series of voting shares of CNSX and, thereafter,
 - (ii) more than 50% of any class or series of voting shares of CNSX.
- (b) The articles of CNSX must contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares

and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

4. RECOGNITION CRITERIA

CNSX must continue to meet the criteria for recognition set out in Schedule 1 to the Recognition Order.

5. FITNESS

To ensure that CNSX operates with integrity and in the public interest, CNSX will take reasonable steps to ensure that each director or officer of CNSX is a fit and proper person. As part of those steps, CNSX will consider whether the past conduct of each director or officer of CNSX affords reasonable grounds for the belief that the director or officer will perform their duties with integrity and in a manner that is consistent with CNSX's public interest responsibilities.

6. BOARD OF DIRECTORS

- (a) CNSX will ensure that at least 50% of its directors are independent.
- (b) The Chair of the Board must be independent.
- (c) In the event that CNSX fails to meet the requirement in paragraph (a) or (b), it will immediately advise the Commission and take appropriate measures to promptly remedy such failure.
- (d) CNSX must ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, at least 50% of whom must be independent directors.

7. NOMINATING COMMITTEE

CNSX must maintain a Nominating Committee of the Board that, at a minimum:

- (a) is made up of at least three directors, at least 50% of which must be independent;
- (b) confirms the status of a nominee to the Board as independent before the individual is appointed to the Board or the name of the individual is submitted to the shareholder(s) of CNSX as a nominee for election to the Board, whichever comes first;
- (c) confirms, on an annual basis, that the status of the directors that are independent has not changed;
- (d) assesses and approves all nominees of management to the Board; and
- (e) has a requirement that the quorum consist of at least 50% of independent directors.

8. REGULATORY OVERSIGHT COMMITTEE

- (a) CNSX will establish and maintain a Regulatory Oversight Committee that, at a minimum:
 - (i) is made up of at least three directors, a majority of which must be independent;
 - (ii) reviews and decides, or makes recommendations to the Board, on proposed regulation and rules that must be submitted to the Commission for review and approval under Schedule 3 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of this Order;
 - (iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:
 - (A) ownership interests in CNSX by any CNSX marketplace participant with representation on the Board of CNSX,
 - (B) significant changes to the ownership of CNSX, and
 - (C) the profit-making objective and the public interest responsibilities of CNSX, including general oversight of the management of the regulatory and public interest responsibilities of CNSX;
 - (iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are

developed by CNSX, including those that are required to be established pursuant to the Schedules of the Recognition Order;

- (v) reviews the effectiveness of the policies and procedures regarding conflicts of interest on a regular, and at least annual, basis;
 - (vi) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting.
- (b) The Regulatory Oversight Committee must provide such information as may be required by the Commission from time to time.

9. GOVERNANCE REVIEW

- (a) At the request of the Commission, CNSX must engage an independent consultant, or independent consultants acceptable to the Commission to prepare a written report assessing the governance structure of CNSX (Governance Review).
- (b) The written report must be provided to the Board of CNSX promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.
- (c) The scope of the Governance Review must be approved by the Commission.

10. CONFLICTS OF INTEREST AND CONFIDENTIALITY

- (a) CNSX must establish, maintain and require compliance with policies and procedures that:
 - (i) require that confidential information regarding exchange operations, regulation functions, a CNSX marketplace participant or CNSX Issuer that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of exchange operations or regulation functions:
 - (A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding exchange operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and
 - (B) not be used to provide an advantage to the significant shareholder or its affiliated entities.
- (b) CNSX must establish, maintain and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or affiliated entity on CNSX.
- (c) CNSX must regularly review compliance with the policies and procedures established under (a) and (b) and will document each review, and any deficiencies, and how those deficiencies were remedied.

11. ACCESS

CNSX's requirements must provide access to the facilities of CNSX only to properly registered investment dealers that are members of CIRO and satisfy the access requirements reasonably established by CNSX.

12. REGULATION OF CNSX MARKETPLACE PARTICIPANTS AND CNSX ISSUERS

- (a) CNSX must establish, maintain and require compliance with policies and procedures that effectively monitor and enforce Rules against CNSX marketplace participants and CNSX Issuers, either directly or indirectly through a regulation services provider.
- (b) CNSX has retained and will continue to retain CIRO as a regulation services provider to provide certain regulation services that have been approved by the Commission.
- (c) CNSX must perform all other regulation functions not performed by CIRO, and must maintain adequate staffing, systems and other resources in support of those functions. CNSX must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of CNSX.

- (d) CNSX must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

13. ISSUER REGULATION

- (a) CNSX must ensure that only the issuers set out in Appendix B to this Schedule, as amended from time to time, are eligible for listing on CNSX.
- (b) CNSX must ensure that, in exercising its discretion in carrying out its listing function, it takes into consideration the public interest, the risks associated with the listing and continued listing of issuers, and the integrity of the market.
- (c) CNSX may, in accordance with the requirements for qualification for trading set out in its Rules, designate certain listed securities as Other Listed securities without approving such securities for an additional listing.
- (d) CNSX has and will continue to ensure that it has sufficient authority over CNSX Issuers.
- (e) CNSX must carry out appropriate review procedures to monitor and enforce listed issuer compliance with the Rules and provide a report to the Commission annually, or as required by the Commission, describing the procedures carried out, and the types of deficiencies found and how they were remedied.
- (f) CNSX will amend its Policies and Forms, from time to time, at the request of the Director, Corporate Finance, to reflect changes to the disclosure requirements of Ontario securities law.

14. FEES, FEE MODELS AND INCENTIVES

- (a) CNSX must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:
 - (i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or
 - (ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by CNSX that is conditional upon:
 - (A) the requirement to have CNSX be set as the default or first marketplace a marketplace participant routes to, or
 - (B) the router of CNSX being used as the marketplace participant's primary router.
- (b) Except with the prior approval of the Commission, CNSX must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:
 - (i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by CNSX that is conditional upon the purchase of any other service or product provided by CNSX or any affiliated entity, or
 - (ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.
- (c) CNSX must obtain prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements that provide for equity ownership in CNSX for marketplace participants or their affiliated entities based on trading volumes of values on CNSX.
- (d) Except with the prior approval of the Commission, CNSX must not require another person or company to purchase or otherwise obtain products or services from CNSX or a significant shareholder as a condition of CNSX supplying or continuing to supply a product or service.
- (e) If the Commission considers that it would be in the public interest, the Commission may require CNSX to submit for approval by the Commission a fee, fee model or incentive that has previously been submitted to and/or approved by the Commission.

- (f) Where the Commission decides not to approve the fee, fee model or incentive submitted under paragraph (e), any previous approval for the fee, fee model or incentive must be revoked, if applicable, and CNSX will no longer be permitted to offer the fee, fee model or incentive.

15. ORDER ROUTING

CNSX must not support, encourage or incent, either through fee incentives or otherwise, CNSX marketplace participants, CNSX affiliated entities or significant shareholders to coordinate the routing of their orders to CNSX.

16. FINANCIAL REPORTING

CNSX must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

17. FINANCIAL VIABILITY MONITORING

- (a) CNSX must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.
- (b) CNSX must calculate monthly the following financial ratios:
 - (i) a current ratio, being the ratio of current assets to current liabilities;
 - (ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to adjusted EBITDA (i.e., earnings before interest, taxes, stock-based compensation, depreciation and amortization) for the most recent 12 months; and
 - (iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of CNSX.
- (c) CNSX must report quarterly in writing to the Commission the results of the calculations referred to in (b).
- (d) If CNSX determines that it does not have, or anticipates that, in the next twelve months, it will not have sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons and any impact on the financial viability of CNSX.
- (e) Upon receipt of a notification made by CNSX under (d), the Commission may, as determined appropriate, impose additional terms on CNSX.

18. ADDITIONAL INFORMATION

- (a) CNSX must provide the Commission with:
 - (i) the information set out in Appendix A to this Schedule, as amended from time to time; and
 - (ii) any information required to be provided by CNSX to CIRO, including all order and trade information, as required by the Commission.

19. PROVISION OF INFORMATION

- (a) CNSX must, and must cause its affiliated entities to, promptly provide the Commission, on request, any and all data, information and analyses in the custody or control of CNSX or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:
 - (i) data, information and analyses relating to all of its or their businesses; and
 - (ii) data, information and analyses of third parties in its or their custody or control.
- (b) CNSX must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, other recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

20. COMPLIANCE WITH TERMS AND CONDITIONS

- (a) CNSX must certify in writing to the Commission, in a certificate signed by its CEO and general counsel, within one year of the effective date of its recognition as an exchange pursuant to this Recognition Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:
 - (i) the steps taken to require compliance;
 - (ii) the controls in place to verify compliance;
 - (iii) the names and titles of employees who have oversight of compliance.
- (b) If CNSX or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to the CNSX under the Schedules to the Recognition Order, such person must, within two business days after becoming aware of the breach or possible breach, notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer or employee of the recognized exchange must provide to the Regulatory Oversight Committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.
- (c) The Regulatory Oversight Committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by (d).
- (d) The Regulatory Oversight Committee must promptly cause to be conducted an investigation of the breach or possible breach reported under (b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to CNSX under the Schedules to the Order, the Regulatory Oversight Committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

Additional Reporting Obligations

1. Ad Hoc

- (a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory obligation, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).
- (b) Immediate notification if CNSX:
 - (i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;
 - (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or
 - (iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.
- (c) Any strategic plan for CNSX, within 30 days of approval by the Board.
- (d) Any information submitted by CNSX to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order or NI 21-101, provided concurrently.
- (e) Copies of all notices, bulletins and similar forms of communication that CNSX sends to the CNSX marketplace participants or CNSX issuers.

2. Quarterly Reporting on Exemptions or Waivers Granted

On a quarterly basis, CNSX must submit to the Commission a report summarizing all exemptions or waivers granted pursuant to the rules, policies or other similar instruments (Rules) to any CNSX marketplace participant or CNSX Issuer during the period. This summary should include the following information:

- (a) The name of the CNSX marketplace participant or CNSX Issuer;
- (b) The type of exemption or waiver granted during the period;
- (c) The date of the exemption or waiver; and
- (d) A description of CNSX staff's reason for the decision to grant the exemption or waiver.

3. Quarterly Reporting on Listing Applications

On a quarterly basis, CNSX must submit to the Commission a report containing the following information:

- (a) The number of listing applications filed;
- (b) The number of listing applications that were accepted;
- (c) The number of listing applications that were rejected and the reasons for rejection, by category;
- (d) The number of listing applications that were withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category;
- (e) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change;
- (f) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change that were accepted;
- (g) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change that were rejected and the reasons for rejection, by category;

- (h) The number of listing applications filed by CNSX Issuers as a result of a Fundamental Change that were withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category.

In each of the foregoing cases, the numbers must be broken down by industry category and in any other manner that a Director of the Commission requests.

3. Annual Reporting

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing CNSX and the plan for addressing such risks.

4. Notification of Suspensions and Disqualifications

If a CNSX Issuer has been suspended or disqualified from qualification for listing, CNSX will immediately issue a notice setting out the reasons for the suspension and submit this information to the Commission.

APPENDIX B

Eligible Issuers

1. Subject to section 2 below, only an issuer that:
 - (a) is a reporting issuer or the equivalent in a jurisdiction in Canada; or
 - (b) is proposing to list debt securities issued or guaranteed by a government in Canada that are exempt from the prospectus requirements under clause 73(1)(a) of the Act; or
 - (c) is proposing to list debt securities issued or guaranteed by a financial institution that are exempt from the prospectus requirements under clause 73(1)(b) of the Act; and
 - (d) is not in default of any requirements of securities legislation in any jurisdiction in Canada,is eligible for listing. However, if an issuer is eligible for listing under paragraph (b) or (c) above, CNSX may only list debt securities of the issuer that are contemplated by those paragraphs unless the issuer files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada.
2. An issuer that is a reporting issuer in a jurisdiction in Canada but is not considered eligible under the Rules due to the process by which it became a reporting issuer, is ineligible for listing unless it:
 - (a) files and obtains a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada; and
 - (b) is not in default of any requirements of securities legislation in any jurisdiction in Canada.

SCHEDULE 3
PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND
THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director. This Protocol also establishes requirements regarding the time at which an Exchange may begin operations following recognition by the Commission.

2. Definitions

For the purposes of this Protocol:

- (a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.
- (b) *Director* means "Director" as defined in subsection 1(1) of the Securities Act (Ontario).
- (c) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.
- (d) *Fee Change subject to Public Comment* means a Fee Change that, in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.
- (e) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that
 - (i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (f) *Housekeeping Rule* means a new Rule or an amendment to a Rule that
 - (i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (g) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.
- (h) *Rule* includes a rule, policy and other similar instrument of the Exchange.
- (i) *Significant Change* means an amendment to the information in Form 21-101F1 other than
 - (i) a Housekeeping Change,
 - (ii) a Fee Change, or
 - (iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

- (j) *Significant Change subject to Public Comment* means a Significant Change that
 - (i) is listed in paragraphs 6.1(4)(a) or (b) of Companion Policy 21-101 CP, or
 - (ii) in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

3. Scope

The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

4. Board Approval

The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

5. Waiving or Varying the Protocol

- (a) The Exchange may submit a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.
- (b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:
 - (i) written notice that Staff object to granting the waiver or variation; or
 - (ii) written notice that the waiver or variation has been granted by Staff.

6. Commencement of Exchange Operations

The Exchange must not begin operations until a reasonable period of time after the Exchange is notified that it has been recognized by the Commission.

7. Materials to be Submitted and Timelines

- (a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will provide Staff with the following materials:
 - (i) a cover letter that, together with the notice for publication submitted under paragraph (a)(ii), if applicable, fully describes:
 - (A) the proposed Fee Change, Public Interest Rule or Significant Change;
 - (B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;
 - (C) the rationale for the proposal and any relevant supporting analysis;
 - (D) the expected impact, including the quantitative impact, of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;
 - (E) the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets;
 - (F) a summary of any consultations, including consultations with external parties, undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, and the internal governance process followed to approve the Rule or Change;
 - (G) for a proposed Fee Change:
 - 1. the expected number of marketplace participants likely to be subject to the new fee, along with a description of the costs they will incur; and
 - 2. if the proposed Fee Change applies differently across types of marketplace participants, a description of this difference, how it impacts each class of affected marketplace participant, including, where applicable, numerical examples, and any justification for the difference in treatment.
 - (H) if the Public Interest Rule or Significant Change will require members or service vendors to modify their systems after implementation of the Rule or Change, the expected impact of the Rule or Change on the systems of members and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the Public Interest Rule or Significant Change on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets;

- (I) where the proposed Significant Change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment;
 - (J) a discussion of any alternatives considered; and
 - (K) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;
- (ii) for a proposed Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, a notice for publication that generally includes the information required under paragraph (a)(i), except information that, if included in the notice, would result in the public disclosure of sensitive information or confidential or proprietary financial, commercial or technical information;
 - (iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
 - (iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.
- (b) The Exchange will submit the materials set out in subsection (a)
 - (i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and
 - (ii) at least fifteen business days prior to the expected implementation date of a proposed Fee Change.
 - (c) For a Housekeeping Rule, the Exchange will provide Staff with the following materials:
 - (i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;
 - (ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;
 - (iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
 - (iv) a notice for publication on the OSC website or in the OSC Bulletin that contains the information in paragraph (ii) as well as the implementation date for the Rule and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.
 - (d) For a Housekeeping Change, the Exchange will provide Staff with the following materials:
 - (i) a cover letter that indicates that the change was classified as a Housekeeping Change and, for each Housekeeping Change, provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and
 - (ii) blacklined and clean copies of Form 21-101F1 showing the Change.
 - (e) The Exchange will submit the materials set out in subsection (d) by the earlier of
 - (i) the Exchange's close of business on the 10th calendar day after the end of the calendar quarter in which the Housekeeping Change was implemented; and
 - (ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

8. Review by Staff of notice and materials to be published for comment

- (a) Within 5 business days of the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will review the notice and materials to ensure that they contain an

adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a resubmission of the notice and/or materials.

- (b) Where the notice and/or materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and/or materials accordingly, and the date of resubmission will serve as the submission date for the purposes of this Protocol.
- (c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 9.

9. Publication of a Public Interest Rule, Significant Change Subject to Public Comment or Fee Change Subject to Public Comment

- (a) As soon as practicable after the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will publish in the OSC Bulletin and/or on the OSC website, the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.
- (b) If public comments are received
 - (i) the Exchange will forward copies of the comments promptly to Staff; and
 - (ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

10. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes

- (a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within
 - (i) 45 days from the date of submission of a proposed Public Interest Rule, , Significant Change; or Fee Change subject to Public Comment; and
 - (ii) fifteen business days from the date of submission of a proposed Fee Change.
- (b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection (a).
- (c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, and promptly after the receipt of the materials submitted under section 7 for all other Changes.
- (d) The Exchange will respond to any comments received from Staff in writing.
- (e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.
- (f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection (g), to the Commission, for a decision within the following timelines:
 - (i) for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;
 - (ii) for any other Significant Change, the later of 45 days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

- (iii) for any other Fee Change, the later of fifteen business days from the date of submission of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.
- (g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection (f),
 - (i) if the proposed Fee Change, Public Interest Rule or Significant Change introduces a novel feature to the Exchange or the capital markets;
 - (ii) if the proposed Fee Change, Public Interest Rule or Significant Change raises significant regulatory or public interest concerns; or
 - (iii) in any other situation where, in Staff's view, Commission approval is appropriate.
- (h) Staff will promptly notify the Exchange of the decision.
- (i) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and/or on the OSC website promptly after the approval:
 - (i) a notice indicating that the proposed Rule or Change is approved;
 - (ii) the summary of public comments and responses prepared by the Exchange, if applicable; and
 - (iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

11. Review Criteria for a Fee Change, Public Interest Rule and Significant Change

- (a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard for the purposes of the *Securities Act* (Ontario) (Act) as set out in section 1.1 of the Act. The factors that Staff will consider in making their determination also include whether:
 - (i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;
 - (ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;
 - (iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and
 - (iv) the Exchange adequately addressed any comments received.

12. Effective Date of a Fee Change, Public Interest Rule or Significant Change

- (a) A Public Interest Rule or Significant Change will be effective on the later of:
 - (i) the date that the Exchange is notified that the Change or Rule is approved;
 - (ii) if applicable, the date of publication of the notice of approval on the OSC website;
 - (iii) if applicable, the implementation date established by the Exchange's Rules, agreements, practices, policies or procedures; and
 - (iv) the date designated by the Exchange.
- (b) The Exchange must not implement a Fee Change unless the Exchange has provided stakeholders, including marketplace participants, issuers and vendors, as applicable, with notice of the Fee Change at least five business days prior to implementation.
- (c) Where a Significant Change involves a material change to any of the systems, operated by or on behalf of the Exchange, described in section 12.1 of National Instrument 21-101, the Significant Change will not be effective until a reasonable period of time after the Exchange is notified that the Significant Change is approved.

- (d) In determining what constitutes a reasonable period of time for purposes of implementing a Significant Change under paragraph (c), Staff will consider how the Significant Change will impact the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns.
- (e) The Exchange must notify Staff promptly following the implementation of a Public Interest Rule, Significant Change or Fee Change that becomes effective under subsections (a) and (b).
- (f) Where the Exchange does not implement a Public Interest Rule, Significant Change or Fee Change within 180 days of the effective date of the Fee Change, Public Interest Rule or Significant Change, as provided for in subsections (a) and (b), the Public Interest Rule, Significant Change or Fee Change will be deemed to be withdrawn.

13. Significant Revisions and Republication

- (a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.
- (b) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is republished under subsection (a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

14. Withdrawal of a Fee Change, Public Interest Rule or Significant Change

- (a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.
- (b) If the notice of withdrawal relates to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and/or on the OSC website as soon as practicable.
- (c) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 10(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

15. Effective Date of a Housekeeping Rule or Housekeeping Change

- (a) Subject to subsections (c) and (d), a Housekeeping Rule will be effective on the later of
 - (i) the date of the publication of the notice to be published on the OSC website or in the OSC Bulletin, in accordance with subsection (e), and
 - (ii) the date designated by the Exchange.
- (b) Subject to subsections (c) and (d), a Housekeeping Change will be effective on the date designated by the Exchange.
- (c) Staff will review the materials submitted by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange submitted the documents in accordance with subsections 7(c) and 7(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.
- (d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, submit the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment, if applicable.
- (e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin or on the OSC website as soon as is practicable.

16. Immediate Implementation of a Public Interest Rule or Significant Change

- (a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.
- (b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible, but in any event, at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must follow within five business days following the Exchange receiving notice that Staff agree with immediate implementation of the Public Interest Rule or Significant Change.
- (c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following submission of the notice under subsection (b). If the disagreement is not resolved, the Exchange will submit the Public Interest Rule or Significant Change in accordance with the timelines in section 7.

17. Review of a Public Interest Rule or Significant Change Implemented Immediately

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 16 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 10, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

18. Application of Section 21 of the *Securities Act* (Ontario)

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.