

CHANGES TO TSX-V POLICY 5.2 TO IMPACT ISSUERS - UNDERTAKING A CHANGE OF BUSINESS OR REVERSE TAKEOVER

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The TSX Venture Exchange (TSX-V) recently published amended [Policy 5.2 – Changes of Business and Reverse Takeovers of the TSX-V's Corporate Finance Manual](#) (the Amended Policy). The Amended Policy, which formalizes guidance provided by the TSX-V in March 2015, includes specific guidance on circumstances where the TSX-V may waive the requirement for shareholder approval of a change of business (COB) or reverse takeover (RTO). The Amended Policy also formalizes, among other things, certain restrictions relating to financings undertaken concurrently with a COB or RTO, as well as requirements relating to loans made by the issuer to a target in connection with a COB or RTO.

The stated purpose of the Amended Policy is to enable issuers listed on the TSX-V or the NEX Board of the TSX-V (NEX) to efficiently complete a COB or RTO, while protecting the interests of the affected shareholders and preserving the integrity of the market.

Changes to Shareholder Approval Requirement

Under the prior version of the Amended Policy, shareholder approval of a COB or RTO was a condition to obtaining TSX-V approval for the transaction. Amendments incorporated into the Amended Policy have formalized exceptions to the requirement that prior shareholder approval of a COB or RTO be obtained in cases where the following conditions are met:

- The transaction is not a related party transaction (and no other circumstances exist which may compromise the independence of the issuer or other interested parties);
- The TSX-V has confirmed that the issuer does not have active operations (this will generally include issuers listed on NEX, Tier 1 and Tier 2 issuers that do not meet activity requirements but have yet to be transferred to NEX and issuers that have otherwise satisfied the TSX-V that they have no active operations);
- The issuer is not subject to a cease trade order and will not be suspended from trading on completion of the transaction;

- There is no requirement to obtain shareholder approval of the transaction (or any element thereof) under any applicable corporate or securities laws; and
- The issuer has disclosed in the press release announcing the transaction that it will not obtain, and the reasons for not obtaining, shareholder approval.

Where shareholder approval is not required, the issuer will be expected to file all requisite disclosure documents on SEDAR at least seven business days prior to: (i) the date on which trading in the securities of the issuer resumes following the closing of the COB or RTO, if such securities are halted from trading; or (ii) the closing date of the COB or RTO, if the securities of the issuer are not subject to any trading halt.

Restrictions on Financings

The Amended Policy also imposes certain restrictions on financings completed in connection with a COB or RTO. The Amended Policy differentiates between a "bridge financing", defined as a financing completed by the issuer during the period between the execution of a COB or RTO agreement and the closing of such transaction to cover interim transaction costs (such as audit fees and legal expenses), and a "concurrent financing", defined as a financing completed by the issuer concurrently with the closing of a COB or RTO in order to cover closing costs and satisfy initial listing requirements.

Under the Amended Policy, a bridge financing in connection with a COB or RTO is only permitted if the following conditions are satisfied.

- the issuer lacks the funds necessary to cover the costs associated with completing the COB or RTO; the financing is completed independently of the completion of the transaction, such that the proceeds of
- the financing must be immediately available to the issuer upon the closing of the financing ;
- the money raised under the financing must be used for specific purposes related to the completion of the COB or RTO; and
- the terms of the financing must be consistent with the terms of any concurrent financing (in terms of offering price and type of security offered) if the terms of such concurrent financing are known at the time, subject to the exception that a bridge financing may (i) be priced at a discount to a concurrent financing (no greater than what is permitted under the definition of Discounted Market Price) or (ii) involve the issuance of warrants (even when the concurrent financing does not) to account for actual risk being assumed by investors.

The Amended Policy also requires that at least 75 percent of a bridge financing be subscribed for by arm's length parties in instances where: (i) the bridge financing is carried out on terms preferable to those used in the concurrent financing; or (ii) the terms of the concurrent financing have not been settled at the time of the

bridge financing.

Loans to Target Companies

The Amended Policy also formalizes the criteria that must be met in order for an issuer to be permitted to advance funds to a vendor or target company in connection with a COB or RTO. Advances in the form of non-refundable deposits and unsecured loans in an aggregate maximum amount of \$25,000 are now permitted without approval from the TSX-V. Advances in excess of an aggregate amount of \$25,000 are subject to TSX-V acceptance and will only be permitted if the advance is structured as a secured loan and if:

- The advance is announced in a press release disseminated at least 15 days prior to the advance being made;
- The COB or RTO is an arm's length transaction and has been announced in a press release;
- The due diligence with respect to the COB or RTO is well underway;
- A sponsor has been engaged or sponsorship^[1] has been waived in relation to the COB or RTO, if applicable; and
- The funds being advanced do not exceed \$250,000 in the aggregate (although advances in excess of this amount may be permitted where the funds advanced represent less than 20 percent of the working capital of the issuer).

Other Notable Amendments

Immediate Trading Halt Requirement

The amendments incorporated into the Amended Policy formalize the practice whereby the issuer must notify the TSX-V as soon as a COB or RTO agreement has been reached, and the securities of the issuer are immediately subject to a trading halt until certain disclosure and suitability conditions, as set out by the TSX-V, are met.

Document Filings

The Amended Policy also introduces certain changes to the document filing requirements for a COB and RTO. The stated purpose of such changes is to minimize inconsistencies in relation to document filing requirements with respect to initial listings and capital pool companies.

by Arman G. Farahani and Andjela Vukobrat

[1] The TSX-V is expected to abolish the requirement for sponsorship of COB and RTO transactions but that policy has not yet been implemented. Recent guidance states that it will be receptive to applications to waive the requirement in situations where it is appropriate to do so.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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