

SIGNIFICANT AMENDMENTS TO CSE POLICIES COME INTO FORCE APRIL 3, 2023

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On March 30, 2023, the Canadian Securities Exchange (the “**CSE**”) announced that significant amendments (the “**Amendments**”) to its policies (the “**Policies**”), previously published in draft form in December 2021, will come into force on April 3, 2023. The Amendments are comprehensive and, according to the CSE, include “*extensive housekeeping and consequential revisions.*”^[1] Though the Amendments lead to revisions in each of the CSE’s 10 Policies, this bulletin will focus on amendments to CSE Policy 2 – *Qualification for Listing*, Policy 4 – *Corporate Governance and Miscellaneous Provisions*, and Policy 6 – *Distributions*, which will be of particular interest to CSE listed issuers and companies considering applying for listing.

Policy 2 – Qualification for Listing

CSE Policy 2 – *Qualifications for Listing* (“**CSE Policy 2**”) outlines requirements that issuers must meet in order to list on the CSE. The Amendments expand the scope of CSE Policy 2 and introduce several new listing requirements.

Eligibility Review

Following the Amendments, the CSE has introduced an “eligibility review” for all applicants applying to list on the CSE immediately before or concurrently with filing a prospectus.^[2] The eligibility review process starts with the applicant submitting a “*document with sufficient detail to determine that the eligibility requirements have been met*”.^[3] With respect to the documents that must be filed with the application, the CSE notes that a draft prospectus will be sufficient as long as it provides all required information and that natural resource issuers must provide the relevant technical report.^[4] The CSE will then conduct a review and will provide confirmation of eligibility or conditions the applicant must meet before listing. The eligibility review carries a fee, which the CSE will apply to the non-refundable portion of the listing fee.^[5]

“NV Issuers”

The amended CSE Policy 2 also introduces a new category of listing for senior issuers, which the CSE designates as “NV Issuers” (Non-Venture Issuers), and provides specific listing criteria which NV Issuers must

meet. In addition to meeting the CSE basic listing qualifications, NV Issuers must meet one of four elevated listing standards. Each of the four standards sets minimum thresholds with respect to Equity^[6], Net Income^[7], Market Value^[8], or Assets and Revenue.^[9]

CSE Policy 2 now also includes minimum float requirements for NV Issuers listing on the CSE. Pursuant to the Amendments, NV Issuers are required to have a public float of at least 1,000,000 freely tradable shares and at least 300 public holders^[10], each holding at least a board lot.^[11] The new NV Issuer public float requirements also apply to closed end funds, ETFs, and structured products.

Of note is that the definition of “venture issuer” under applicable securities laws^[12] means any reporting issuer not listed on the Toronto Stock Exchange, NEO, or a U.S. marketplace such as NASDAQ or NYSE, among other certain categories. NV Issuers listing on the CSE would continue to be considered “venture issuers” under securities laws; however, pursuant to CSE policies they will be subject to certain additional requirements which mirror some of the statutory requirements for non-venture issuers. This includes the obligation to post an Annual Information Form pursuant to the requirements of Form 51-102F2 and shorter filing deadlines for annual and interim financial statements, for example.^[13]

Special Purpose Acquisition Corporations (“SPAC”)^[14]

CSE Policy 2 has now also introduced SPAC listing requirements, which are similar to the requirements of other Canadian stock exchanges. SPACs may submit a listing application (the “**SPAC Listing Application**”) to demonstrate that they meet the CSE’s SPAC listing requirements.^[15] The CSE SPAC listing requirements include, but are not limited to:

- a minimum IPO raise of \$30,000,000 through the sale of shares or units;
- at least 1,000,000 freely tradable securities are held by public holders;
- the aggregate market value of the securities held by public holders is \$30,000,000; and
- a minimum IPO price of \$2 per share.^[16]

However, the CSE retains discretion to grant or deny SPAC Listing Applications when it deems it is in the public interest to do so.^[17] In exercising its discretion, the CSE will also consider management’s experience, compensation, and founding shareholder’s equity interest in the SPAC.^[18]

Policy 4 – Corporate Governance and Miscellaneous Provisions

Pursuant to the Amendments, CSE Policy 4 – *Corporate Governance and Miscellaneous Provisions* has been renamed “*Corporate Governance, Securityholder Approvals and Miscellaneous Provisions*” (“**CSE Policy 4**”). Unsurprisingly, following the Amendments, the scope of CSE Policy 4 has been expanded to require that a CSE-listed issuer (a “**Listed Issuer**”) obtain securityholder approval for certain transactions.^[19]

Sale of Securities

For Listed Issuers, securityholder approval is required if the issuance of securities in an offering (i) is greater than 50% of the outstanding securities, and a new control person is created, or (ii) if the issuance is greater than 100% of the securities outstanding.^[20] Securityholders must also approve security issuances where the issuance price is lower than the current market price, less the Maximum Permitted Discount.^[21] Additionally, if the Listed Issuer or the CSE determines that the issuance will materially affect the control of the Listed Issuer, securityholder approval for the issuance will be required.^[22]

CSE Policy 4 requires securityholders of NV Issuers to approve proposed security offerings if the number of securities issuable in the offering is more than 25% of its currently outstanding securities.^[23] NV Issuers must also obtain securityholder approval if the securities issuable to a related person, combined with those issued to the related person in the last 12 months in private placements or acquisitions, is more than 10% of the issuer's outstanding securities.^[24]

Notwithstanding the foregoing, securityholder approval may not be required if a Listed Issuer is in serious financial difficulty, has reached an agreement to complete the offering, and there is no related person participating in the offering.^[25] In addition, to rely on the exemption from the securityholder approval requirement, the Listed Issuer's independently comprised audit committee or the majority of its independent directors must determine that the offering is in the Listed Issuer's best interests, is reasonable, and it is not feasible to obtain securityholder approval or complete a rights offering to existing securityholders on the same terms.^[26] Listed Issuers relying on this exemption must issue a news release stating that it will not hold a securityholder vote and must explain its qualification for the exemption five (5) days in advance of the offering.^[27]

Acquisitions and Dispositions

Similar to the requirements for financings, securityholders of Listed Issuers must approve acquisitions if (i) the number of securities to be issued is greater than 50% of outstanding securities, and a new control person is created, (ii) if the total number of securities to be issued is more than 100% of the Listed Issuer's outstanding securities, or (iii) it would, as determined by the Listed Issuer or the CSE, materially affect control of the Listed Issuer.^[28] Pursuant to the Amendments, securityholders must also approve of a disposition of all or substantially all of the assets, business, or undertaking of a Listed Issuer.^[29]

Further, securityholders of NV Issuers must approve acquisitions if related persons hold an interest of 10% or greater in the target assets and the total number of issuable securities is more than 5% of the NV Issuer's outstanding securities.^[30] Securityholders of NV Issuers, other than investment funds, must also approve acquisitions if the total number of securities to be issued is greater than 25% of the NV Issuer's outstanding

securities.[\[31\]](#)

Rights Offerings

Securityholder approval is now also required if securities offered through a rights offering are offered at a price greater than the Maximum Permitted Discount.[\[32\]](#) However, a Listed Issuer may not require securityholder approval if its independently comprised audit committee or the majority of its independent directors have determined that the rights offering is in the Listed Issuer's best interest and is reasonable in the circumstances.[\[33\]](#) Listed Issuer's relying in this exemption must file a news release explaining how it qualifies for the exemption.[\[34\]](#)

Other Transactions Requiring Securityholder Approval

The Amendments to CSE Policy 4 also now require that both NV Issuers and Listed Issuers obtain securityholder approval for certain other items including:

- the adoption or amendments to any shareholder rights plans[\[35\]](#);
- the adoption or amendments to security based compensation plans[\[36\]](#); and
- consolidations if: (a) the consolidation ratio is greater than ten (10) to one (1); or (b) when combined with any other consolidation in the previous 24 months that was not approved by shareholders, the consolidation ratio is greater than ten (10) to one (1)[\[37\]](#).

Policy 6 – Distributions

CSE Policy 6 – *Distributions* has been renamed "*Distributions and Corporate Finance*" ("**CSE Policy 6**"). The scope of CSE Policy 6 has been expanded to require advance public notice for acquisitions and private placements, as well as requiring prescribed details for price reservation submissions.

Private Placements

The Amendments now delimitate limited exceptions to the \$0.05 minimum private placement security price requirement. A Listed Issuer may now complete a private placement at a price less than \$0.05 if the proposed price is not less than the twenty (20) day volume weighted average price less the Maximum Permitted Discount, the proceeds will be used for working capital and/or *bona fide* debt settlement, and the following information is provided when the price reservation request is submitted:

- name and trading symbol;
- anticipated insider participation;
- confirmation that there is no undisclosed material information;
- intended use of proceeds;

- structure of the financing; and
- any other information that may be relevant.^[38]

Listed Issuers are also required to give advance five (5) day public notice of an intention to complete a private placement.^[39] The Amendments also clarify that the price protection will expire if the financing is not closed within forty-five (45) days unless securityholder or CSE approval is required or the CSE has consented to an extension.^[40]

Acquisitions

Under the Amendments, if a Listed Issuer is requesting confidential price protection with respect to an acquisition, they must provide the same information as required when submitting a price reservation request in connection with a private placement, as listed above.^[41] As with private placements, Listed Issuers are also now required to give advance five (5) day public notice of an intention to complete an acquisition.^[42] If the CSE does not object within the five (5) day window, the Listed Issuer may close the acquisition.^[43]

Security Based Compensation Arrangements

The Amendments renamed Section 5 of CSE Policy 6 from “*Incentive Stock Options*” to “*Security Based Compensation Arrangements*” and introduced securityholder approval requirements, additional filings, posting and reporting requirements to bring security based compensation arrangement requirements more in line with other Canadian stock exchanges. More specifically, the Amendments to CSE Policy 6 now require that Listed Issuers obtain approval every three (3) years for “evergreen” or “rolling” plans.^[44]

Conclusion

The Amendments have made sweeping changes to the Policies. Further, the Amendments significantly clarify each of the CSE Policies and provide useful guidance to both Listed and NV Issuers, while simultaneously making the Policies more consistent with other Canadian stock exchanges. All issuers listed on the CSE must be compliant with the amended policies as of April 3, 2023. The authors and any member of McMillan’s Capital Markets & Securities Group are able to provide advice with respect to any questions that may arise as issuers seek to comply.

[1] CSE Public Interest Rule Amendment [1], *CSE Policies*, Notice and Request for Comments (CSE Notice 2021-005) (December 9, 2021).

[2] CSE Policy 2, Section 2.2(3).

[3] CSE Policy 2, Section 2.3(1).

[4] *Ibid.*

[5] *Ibid.*

[6] The “Equity” standard requires shareholder’s equity of at least \$5,000,000 and an expected market value public float of at least \$10,000,000.

[7] The “Net Income” standard requires net income of at least \$400,000 in the last fiscal year or in the last two of the last three fiscal years. This standard also requires shareholder’s equity of at least \$2,500,000 and an expected market value of public float of at least \$5,000,000.

[8] The “Market Value” standard requires that the market value of all securities be at least \$50,000,000, shareholder’s equity of at least \$2,500,000 and expected market value of public float of at least \$10,000,000.

[9] The “Assets and Revenue” standard requires total assets and revenues of at least \$50,000,000 each in the last fiscal year or in two of the three last fiscal years. This standard also requires an expected market value of public float of at least \$5,000,000.

[10] CSE Policy 2, Appendix 2A, Section 2A.2(1)(b).

[11] The CSE defines a “Board Lot” as a standard trading unit. For securities priced \$1 or more per unit, a board lot is 100 unit. For securities priced between \$0.10 and \$1 a board lot is 500 units. Board lots for securities priced less than \$0.10 consist of 1,000 securities.

[12] National Instrument 51-102 *Continuous Disclosure Obligations* defines “venture issuer” as a reporting issuer that, as at the applicable time, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, Aequitas NEO Exchange Inc., a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

[13] CSE Policy 5, Section 5.13(f).

[14] A SPAC is a blind pool company that raises capital through an initial public offering and then has a defined period of time to complete the qualifying acquisition of a business. Following the acquisition, the resulting issuer will be listed on an exchange.

[15] CSE Policy 2, Appendix 2C, Section 2C.1(1).

[16] CSE Policy 2, Appendix 2C, Section 2C.1(1), Section 2C.1(13), and Section 2C.1(14).

[17] CSE Policy 2, Appendix 2C, Section 2C.1(2).

[18] CSE Policy 2, Appendix 2C.2.

[19] CSE Policy 4, Section 4.6.

[20] CSE Policy 4, Section 4.6(2)(a)(i)(2).

[21] CSE Policy 4, Section 4.6(2)(a)(ii). The Maximum Permitted refers to the allowable discount a Listed Issuer can issue their securities relative to the security’s market price. The Maximum Permitted Discount for securities with a market value up to \$0.50 is 25% (subject to a minimum price of \$0.05). For securities with a market value between \$0.51 and \$2, the Maximum Permitted Discount is 20%. For securities with a market value over \$2, the Maximum Permitted Discount is 15%.

- [22] CSE Policy 4, Section 4.6(2)(a)(v).
- [23] CSE Policy 4, Section 4.6(2)(a)(i)(1).
- [24] CSE Policy 4, Section 4.6(2)(a)(iii).
- [25] CSE Policy 4, Section 4.6(2)(b).
- [26] CSE Policy 4, Section 4.6(2)(b).
- [27] CSE Policy 4, Section 4.6(2)(c).
- [28] CSE Policy 4, Section 4.6(3)(a)(ii).
- [29] CSE Policy 4, Section 4.6(3)(b).
- [30] CSE Policy 4, Section 4.6(3)(a)(i).
- [31] CSE Policy 4, Section 4.6(3)(a)(ii)(1).
- [32] CSE Policy 4, Section 4.6(5)(a).
- [33] CSE Policy 4, Section 4.6(5)(b).
- [34] CSE Policy 4, Section 4.6(5)(c).
- [35] CSE Policy 4, Section 4.6(6).
- [36] CSE Policy 4, Section 4.6(4).
- [37] CSE Policy 4, Section 4.6(8).
- [38] CSE Policy 6, Section 6.2(4).
- [39] CSE Policy 6, Section 6.2(5)(a).
- [40] CSE Policy 6, Section 6.2(4).
- [41] CSE Policy 6, Section 6.3(1)(b).
- [42] CSE Policy 6, Section 6.3(1)(d).
- [43] CSE Policy 6, Section 6.3(1)(e).
- [44] CSE Policy 6, Section 6.5(4).

by [Sasa Jarvis](#), [Mark Neighbor](#), and [Jordan Ghag](#)

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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