

THE NEW CSE SENIOR TIER

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On April 3, 2023, the Canadian Securities Exchange (the "CSE") implemented amendments (the "Amendments") that included the addition of a new senior tier (the "Senior Tier") for its larger and later stage issuers or "non-venture" issuers (the "NV Issuers").

The Senior Tier related amendments include enhanced disclosure and governance requirements for NV Issuers that are consistent with the policies governing comparable senior tier issuers. The Senior Tier is expected to provide more accessibility to a broader range of institutional investors and may meet the criteria for certain stock indices from which venture securities are currently excluded.

Under Canadian securities regulations, a "venture issuer" continues to mean a reporting issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, the NEO Exchange (now known as Cboe Canada), a US marketplace (such as the New York Stock Exchange or NASDAQ), or a marketplace outside of Canada and the United States other than the AIM of the London Stock Exchange or the PLUS markets. Therefore, although NV Issuers will be subject to enhanced disclosure and governance requirements that are generally consistent with senior exchanges, NV issuers will continue to be "venture issuers" under Canadian securities regulations and be subject to its "venture issuer" requirements.

It is expected that, starting in May 2023, the CSE will begin reviewing the audited financial statements of its listed issuers that are currently not NV Issuers ("**Non-NV Issuers**") to determine whether they meet the criteria for being included in the Senior Tier.

The NV Issuer-specific policies set out in the Amendments are summarized below. For a summary of the Amendments not relating to NV Issuers, please see our bulletin: <u>Significant Amendments to CSE Policies come into force April 3, 2023</u>.

Senior Tier Listing Requirements

In addition to meeting the basic listing qualifications of a CSE listed issuer (an "**Issuer**"), to join the Senior Tier, an Issuer needs to meet at least one of the following four standards:

1. the equity standard, which requires (a) shareholders' equity of at least \$5,000,000, and (b) expected



market value of the public float of at least \$10,000,000;

- 2. the net income standard, which requires (a) net income of at least \$400,000 from continuing operations in the most recent fiscal year or in two of the three most recent fiscal years, (b) shareholders' equity of at least \$2,500,000, and (c) expected market value of the public float of at least \$5,000,000;
- 3. the market value standard, which requires (a) a market value of all securities of at least \$50,000,000, (b) shareholders' equity of at least \$2,500,000, and (c) expected market value of the public float of at least \$10,000,000; or
- 4. the assets and revenue standard, which requires (a) total assets and total revenues of at least \$50,000,000 each in the most recent fiscal year or in two of the three most recent fiscal years, and (b) expected market value of the public float of at least \$5,000,000.

The CSE may, in its sole discretion, designate an Issuer as an NV Issuer if it is sufficiently advanced in capitalization or operation that it is near the thresholds of at least two of the four standards or alternatively, the CSE determines that it would be in the public interest to designate the Issuer as an NV Issuer.

In addition, an NV Issuer must also have (a) a public float of at least 1,000,000 freely tradeable securities and (b) at least 300 public holders each holding at least a board lot. In comparison, a Non-NV Issuer must have a public float of at least 1,000,000 freely tradeable shares and at least 150 public holders holding at least a board lot.

In terms of continued listing requirements, NV Issuers must meet certain criteria on an annual basis including having (a) a public distribution of 500,000 shares with a public float value of \$2,000,000 and (b) net income from continuing operations of \$100,000 or market value of listed securities of at least \$3,000,000. In determining whether these standards have been met, the CSE may exercise discretion in considering economic conditions, generally and those affecting the industry of the NV Issuer.

NV Issuer Related Policies

The Amendments introduce certain requirements that will apply to NV Issuers that are generally stricter than the requirements for Non-NV Issuers or better suited for later stage companies, including among others the following:

• Documents Required to be Posted – An NV Issuer must post a quarterly listing statement no later than 45 days from the last day of the relevant quarter. In comparison, a Non-NV Issuer must post a quarterly listing statement concurrently with an unaudited interim financial statement required under applicable securities laws (no later than 60 days from the last day of the relevant quarter). Also, an NV Issuer is not required to post a monthly progress report before the opening of trading on the fifth trading day of the following month as required for Non-NV Issuers. In addition, an NV Issuer must post an Annual



Information Form no later than 90 days from the NV Issuer's financial year-end.

- **IPO Pricing** An NV Issuer may not sell securities pursuant to an IPO for less than \$2 per share or unit. This is in comparison to a Non-NV Issuer, which may not sell securities pursuant to an IPO for less than \$0.10 per share or unit.
- Sale of Securities Security holders must approve a securities offering by an NV Issuer by way of prospectus or by private placement if: (a) the number of securities issuable in the offering (calculated on a fully diluted basis) is more than 25% of the total number of securities or votes outstanding (calculated on a non-diluted basis) for an NV Issuer (compared to 50% of the total number of securities or votes outstanding (calculated on a non-diluted basis) accompanied by a new control person of a Non-NV Issuer or 100% of the total number of securities or votes of a Non-NV Issuer); or (b) the number of securities issuable to related persons of an NV Issuer in the offering, when added to the number of securities issued to such related persons of the NV Issuer in private placements or acquisitions in the preceding twelve months (in each case, calculated on a fully diluted basis), is more than 10% of the total number of securities or votes outstanding (calculated on a non-diluted basis), regardless of the price of the offering. These are in addition to the requirement for security holder approval that apply to all Issuers if (a) the price is lower than the market price less the maximum permitted discount, regardless of the number of shares to be issued or (b) the Issuer or the CSE otherwise determines that the transaction will materially affect control of the Issuer.
- **Restricted Securities** Issuers with outstanding listed restricted securities or Issuers intending to list restricted securities should provide details of a proposed issuance of superior voting securities to the CSE in advance of seeking security holder approval. Notwithstanding the security holder approval requirement, the CSE will generally object to the distribution of superior voting securities of an Issuer that is not an NV Issuer.
- Acquisitions and Dispositions Security holders must approve an acquisition if: (a) a related person of an NV Issuer or a group of related persons of an NV Issuer has a 10% or greater interest in the assets to be acquired and the total number of securities issuable (calculated on a fully diluted basis) are more than 5% of the total number of securities or votes of the NV Issuer outstanding (calculated on a non-diluted basis); or (b) for Issuers that are not investment funds, the total number of securities issuable, calculated on a fully diluted basis: (i) for an NV Issuer, is more than 25% of the total number of securities or votes outstanding (calculated on a non-diluted basis); or (ii) for a Non-NV Issuer, is more than 50% of the total number of securities or votes outstanding (calculated on a non-diluted basis) accompanied by a new control person or 100% of the total number of securities or votes outstanding; or (iii) would, as determined by the Issuer or the CSE, materially affect control of the Issuer. Security holders must approve a disposition of all or substantially all of the assets, business or undertaking of an Issuer.



- **Significant Transaction** For policies relating to significant transactions, a "significant transaction" means any corporate transaction not involving equity securities that constitutes material information concerning the Issuer, including, among other things, transactions or a series of transactions with a related person with an aggregate value greater than (a) \$100,000, (b) 10% of the Non-NV Issuer's market capitalization, or (c) 25% of an NV Issuer's market capitalization.
- Majority Voting Policy Each director of an NV Issuer must be individually elected by a majority (at least 50%+1 vote) of the votes cast with respect to their election other than at contested meetings. An NV Issuer must adopt a majority voting policy (an "MV Policy"), unless it otherwise satisfies the majority voting requirement in a manner acceptable to the CSE. An MV Policy must include certain provisions relating to the resignation of a director not elected by at least a majority of the votes cast in an uncontested election and disclosure requirements. Subject to certain exceptions and requirements, NV Issuers that are majority controlled are exempted from the majority voting requirement.

For More Information

The Senior Tier is an exciting development that has been introduced by the CSE and we will be closely following its implementation. If you have questions regarding the Senior Tier or any of the Amendments, please contact a member of our Capital Markets & Securities group at McMillan LLP.

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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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