CSE Creates a Senior Tier

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The Canadian Securities Exchange's (CSE) new senior tier (Senior Tier) will include larger and later stage CSE-listed issuers subject to enhanced disclosure and governance requirements similar to those imposed upon issuers on other senior exchanges globally.

Takeaways

- In May 2023, the CSE will begin to review listed issuers' audited financial statements to determine whether they meet the standards for inclusion in the Senior Tier. New issuers that list on the CSE can join the Senior Tier upon listed, provided they meet the applicable standards.
- CSE-listed issuers that are designated "NV Issuers" will be subject to heightened governance and disclosure standards including the requirement to file an Annual Information Form within 90 days of the issuer's year end, a disclosure obligation not required of venture issuers under Canadian securities laws.
- New securityholder approval requirements are now included in the CSE policies with respect to certain offerings and transactions.

CSE policy amendments

As announced by the CSE in late March 2023, the Ontario Securities Commission (the OSC) and the British Columbia Securities Commission (the BCSC) have approved significant changes to the CSE's policies that introduce standards for CSE-listed issuers that are more substantively in line with the rules and policies applicable to issuers listed on other Canadian exchanges, including the Toronto Stock Exchange (the TSX), the TSX Venture Exchange (the TSXV) and the NEO Exchange Inc. (the NEO).

While the addition of a Senior Tier represents the most significant change to CSE policies, the amendments will impact all issuers listed on (or considering listing on) the CSE and not just those designated as "NV Issuers" and subject to Senior Tier requirements. These include new requirements with respect to securityholder approval, pricing, and issuer bids. A summary of certain of the changes to CSE policy are set out below.

Qualification for the Senior Tier

As noted above, the CSE has created a Senior Tier for larger and more seasoned issuers. To be designated as an “NV Issuer”, an issuer must meet one of the following standards, in addition to meeting the CSE’s basic listing requirements:

Standard	Minimum Shareholders’ Equity	Minimum Public Float Market Value	Other
Equity	$5 million	$10 million	N/A
Net Income	$2.5 million	$5 million	**Net income** of at least $400,000 in the most recent fiscal year, or in two of the three most recent fiscal years
Market Value	$2.5 million	$10 million	**Market value of all securities** of at least $50 million
Assets and Revenue	N/A	$5 million	**Total assets and total revenues** of at least $50 million each in the most recent fiscal year or in two of the three most recent fiscal years

In addition, NV Issuers must have a public float of at least 1,000,000 freely tradeable securities and at least 300 public holders each holding at least one board lot. The CSE retains the ability to designate an issuer as an NV Issuer if the issuer is sufficiently advanced in capitalization or operations and it is close to achieving two of the four standards or the CSE considers it to be in the public interest.

Amendments to ongoing requirements

Listing requirements

Issuers that are designated NV Issuers may not sell securities in an IPO for less than $2.00 per share or unit. Once listed, an NV Issuer with equity securities listed on the CSE must continue to meet the following requirements on an annual basis:

- **Public Distribution**. 500,000 shares in the public float and a public float value of $2,000,000.
- **Standards**. Net income from continuing operations of $100,000 OR market value of listed securities of at least $3,000,000. The CSE may exercise discretion in determining whether these standards are met taking into consideration the general economic conditions and those specifically impacting the issuer’s industry.

NV Issuers that cease to meet the continued listing requirements, will be given nine months to meet the requirement and failure to do so on such timeline will result is the removal of the NV designation.

Majority voting requirement for NV Issuers

The CSE has imposed a majority voting requirement, similar to that of the TSX, on NV Issuers. Namely, directors of NV Issuers must be elected by a majority (50% +1 vote) of the votes cast with respect to their election, other than at contested meetings. NV Issuers may satisfy this requirement either by law (for example, issuers incorporated under the *Canada Business Corporations Act*) or by implementation of a majority voting policy that provides:

- Directors must tender their resignation immediately if they are not elected by a majority of votes cast;
- Board must accept the director's resignation within 90 days of the relevant meeting, absent exceptional circumstances;
- Resignation will be effective upon the Board's acceptance;
- Directors who tender a resignation cannot participate in Board meetings where the resignation is being considered; and
- A news release must be promptly issued announcing the Board's decision.
- A NV Issuer's majority voting policy must be described in the circular sent to shareholders in connection with a meeting at which directors are being elected. The policy must also be posted to the issuer's website. An exemption from the majority voting requirement is available for NV Issuers that are majority controlled.

Securityholder Approval

The CSE policy amendments include new securityholder approval requirements for both NV Issuers and other CSE-listed issuers:

- **NV Issuers - Offerings:** Securityholder approval will be required where the number of securities issuable in an offering (prospectus or private placement) where the number of securities issuable in the offering (on a fully diluted basis) is more than 25% of the total number of securities or votes outstanding (on a non-diluted basis). Securityholder approval will also be required if the number of securities issuable in the offering (prospectus or private placement) to Related Persons of the NV Issuer if, when added to the number of securities issued to the Related Person in private placements or acquisitions in the last 12 months is more than 10% of the total number of securities or votes outstanding.
- **Non-NV Issuers – Offerings:** Securityholder approval will be required where the number of securities issuable in an offering (prospectus or private placement) where the number of securities issuable in the offering (on a fully diluted basis) is more than (i) 50% of the total number of securities or votes outstanding (on a non-diluted basis) if a new control person is created, or (ii) 100% of the total number of securities or votes outstanding.
- **All Issuers – Offerings:** Securityholder approval will be required if the offering price is lower than the market price less the "Maximum Permitted Discount", regardless of the number of securities to be issued.

- **NV Issuers – Acquisitions and Dispositions:** Securityholder approval will be required for certain acquisitions if a Related Person (or 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 (on a fully diluted basis) are more than 5% of the total number of securities or votes of the NV Issuer outstanding (on a non-diluted basis). If an NV Issuer will be issuing more than 25% of the total number of securities or votes of the issuer (on a non-diluted basis) in connection with an acquisition, the CSE will also require securityholder approval.
- **Non-NV Issuers – Acquisitions and Dispositions:** Securityholder approval will be required for acquisitions if the total number of securities to be issued in the transaction will be more than (i) 50% of the total number of securities or votes of the issuer (on a non-diluted basis) and a new control person is created, or (ii) 100% of the total number of securities or votes outstanding.
- **All Issuers – Acquisitions and Dispositions:** Transactions that are seen to "materially affect control" of the listed issuer will require securityholder approval.
- **All Issuers – Rights Offerings:** Securityholder approval will be required for rights offerings where securities are offered at a price greater than the "Maximum Permitted Discount", subject to independent directors determining that the rights offering and pricing is in the best interest of the issuer and reasonable in the circumstances.
- **All Issuers – Other:** In addition to the specific requirements set out above, securityholder approval will generally be required for:
    - Security based compensation arrangements;
    - Adoption or amendment to shareholder rights plans (poison pills);
    - Related party transactions if required by Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*; and
    - Share consolidations where the consolidation ratio is greater than 10 to 1 (on an individual basis or combined with any other consolidation in the previous 24 months that was not approved by shareholders).

Exemptions from the securityholder approval requirements for offerings are generally available for issuers who are in serious financial difficulty provided that certain conditions are satisfied.

Private Placement Pricing

While the CSE policies provide that securities issued in a private placement cannot be priced for less than $0.05 per security, the amendments to the policies provide a limited exemption. CSE-listed issuers can now complete a private placement at a price lower than $0.05 provided that the price is not lower than the 20-day VWAP, the proceeds of the offering are used for working capital or bona fide debt settlement (other than accrued salaries to officers, directors and investor relations activities) and the CSE approves the price in advance of closing. Additional requirements with respect to obtaining price protection are now included in the CSE policy as well.

Other CSE amendments

Takeover bids and issuer bids

Among the changes to the CSE policies are new requirements with respect to takeover bids and issuer bids. If a CSE-listed issuer undertakes a take-over bid, it will now be required to provide the CSE with certain documentation including an opinion of counsel that any securities to be issued in connection with the take-over bid will be duly issued and are fully paid and non-assessable. A take-over bid may require securityholder approval as an acquisition. New normal course issuer bid (NCIB) rules now impose filing requirements, along with restrictions on certain purchases and limits on price and volume. Allowances for block purchases have been included for NV Issuers only.

Control block distributions

A more formalized process for control block distributions is now set out in the CSE policies that includes a new reporting obligation for both the control person seller and the dealer acting on their behalf. New limits imposed on control block sales are substantively the same as those set out in the TSX Company Manual.

Shareholder rights plans (Poison Pills)

CSE-listed issuers looking to adopt a new shareholder rights plan will have to comply with new CSE policies, including new requirements with respect to specific features of the plan and securityholder approval within 6 months of adoption of the plan.

SPACs on the CSE

The amendments to the CSE Policies also allow for special purpose acquisition companies (SPACs) to be listed on the CSE. Notably, a listed issuer resulting form the completion of a qualifying acquisition by a SPAC must meet the CSE's original listing requirements for an NV Issuer, as set out above.

Mineral issuers and escrow provisions

The CSE Policies have historically included industry-specific listing requirements for natural resource companies, including mineral exploration companies. The amendments to the CSE Policies have revised these requirements by increasing the minimum threshold of qualifying expenditures on the issuer's property from $75,000 to $150,000 in the most recent 36 months and the minimum budget for first phase exploration from $100,000 to $250,000. Notwithstanding these changes, a mineral exploration company may be approved for listing based on the old thresholds provided that the issuer has entered into an escrow agreement with certain heightened requirements.

In addition to any other escrow requirements imposed upon listing on the CSE, mineral issuers approved for listing under the lower thresholds will be subject to additional escrow requirements as a result of the amendments to the CSE Policies. All Builder Shares (as defined in the CSE Policies) will be subject to escrow, regardless of the holder of such shares. The initial release from escrow will be subject to CSE approval and cannot be earlier than 10 days following public announcement of the results of the first phase program described in the issuer's listing statement. The CSE will be required to approve transfer of shares within escrow, even if permitted under securities laws. The terms of the escrow agreement must irrevocably authorize and direct the escrow agent

to immediately cancel all remaining escrowed securities upon delisting from the CSE or the announcement of a “Fundamental Change”.

Next steps

For additional information about the amendment to the CSE policies, please see the CSE’s March 30, 2023 news release. If you have any questions about how the CSE’s new policies will impact your organization or if you are interested in obtaining a CSE listing, please reach out to any of the authors or key contacts listed below.

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