



Canadian Securities Exchange introduces important amendments to its listing regime (part I)

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Amendments to the Canadian Securities Exchange (CSE) policies took effect April 3, 2023 (the Amendments). The Amendments are broad and significant in that they create a two-tier exchange having two categories of listed issuers: non-venture issuers (NV Issuers) and all other listed issuers (collectively, Listed Issuers).

A NV Issuer is a Listed Issuer identified by the CSE as an NV Issuer based upon it meeting one of the four eligibility tests set out below. The identification of NV Issuers is at the CSE's discretion but issuers will be consulted. NV Issuers, as senior issuers, will be subject to more stringent continuous disclosure and governance requirements than other CSE-listed issuers. These include shorter deadlines for filing financial statements, required filing of an annual information form (an AIF), mandatory majority voting for the election of directors and a lower threshold for security holder approval of transactions.

In addition to creating the category of NV Issuer, the Amendments:

- modify the listing process and ongoing requirements;
- formalize shareholder approval requirements for a broad range of transactions;
- amend certain aspects of the CSE's distribution policy;
- replace the CSE's prior incentive option policy with a comprehensive policy for all security-based compensation arrangements; and
- formalize requirements for special purpose acquisition corporations (SPACs).

This update summarizes the key highlights of the new NV Issuer regime. In Part II of this update, we will review the substantive changes made to the CSE policies described above.

What is an NV Issuer?

An NV Issuer is a Listed Issuer that meets one of the following four criteria that has been identified by the CSE as such:

- shareholder's equity of at least \$5 million and a market value of the public float of at least \$10 million;
- net income of at least \$400,000 from continuing operations in its most recent fiscal year, or in two of its three most recent fiscal years, shareholders' equity of at least \$2.5 million and a market value of the public float of at least \$5 million;
- the market value of all securities, including those securities to be listed and any class convertible into those securities, but excluding warrants and options, is at least \$50 million; shareholders' equity of at least \$2.5 million including the value of any offering concurrent with listing; and a market value of the public float of at least \$10 million; or

- it has total assets and total revenues of at least \$50 million each in the most recent fiscal year or in two of three of the most recent fiscal years; and a market value of the public float of at least \$5 million.

The Amendments provide the CSE with discretion to identify a Listed Issuer as an NV Issuer if it is sufficiently advanced in capitalization or operations that it is near the thresholds of at least two of the four tests set out above or the CSE determines it would be in the public interest to do so.

An NV Issuer with listed equity securities must annually maintain:

- a public float of 500,000 shares with a value of \$2 million;
- net income from continuing operations of \$100,000; or
- a market value of listed securities of at least \$3 million.

Currently NV Issuers are considered venture issuers under Canadian Securities laws which define a venture issuer as an issuer whose securities are not listed on the TSX, NEO, a prescribed US exchange such as NASDAQ or NYSE or any marketplace outside the US or Canada other than AIM or markets operated by PLUS. It remains to be seen if the definition of venture issuer will be amended such that NV Issuers will no longer be considered venture issuers under securities legislation.

Implementation of NV Issuer regime

The CSE has outlined the implementation process for the NV Issuer regime as follows:

- Listed Issuers that were listed on the CSE prior to April 3, 2023, will not automatically be designated as NV Issuers prior to review and advance notification by the CSE. The CSE stated it will initiate reviews of Listed Issuers with a financial year end of December 31, 2022, on or about April 30, 2023.
- going forward all Listed Issuers will be reviewed on annually following the filing of audited annual financial statements and if identified as NV Issuer, must comply with the shortened deadlines in their second quarter interim filings; and
- an applicant listed on or after April 3, 2023, that the CSE identifies as an NV Issuer must comply with the Amendments upon listing.

New continuous disclosure requirements for NV Issuers

Annual Information Form

An NV Issuer will be required to prepare an AIF within 90 days of its year end. Venture issuers are not required to prepare an AIF unless they wish to raise funds in a Canadian jurisdiction by way of a short form prospectus, in which case they must file a current AIF prior to doing so. The effect of the Amendments is that while NV Issuers are currently venture issuers under Canadian securities laws, the AIF requirement will be increased for NV Issuers.

Shortened Financial Statement Filing Deadlines

The Amendments introduce earlier filing deadlines for both annual and interim financial statements for NV Issuers. Listed Issuers are currently required to file their financial statements within 120 days of the year end or 60 days of the end of each interim period. These Amendments reduce these periods to 90 and 45 days respectively. These tightened deadlines will bring NV Issuers in line with the deadlines required for non-venture issuers under securities legislation.

Majority Voting Policy

The Amendments will require majority voting for each director of an NV Issuer. An NV Issuer must also adopt a majority voting policy unless it otherwise satisfies the majority voting requirement. NV Issuers who are subject to the *Canada Business Corporations Act* (the CBCA) will satisfy this requirement by complying with the CBCA, which mandates majority voting for all distributing corporations.

The requirements for majority voting introduced by the Amendments require that:

- each director be elected annually and individually;
- a director must be elected by a majority of votes (50% plus one vote); and
- a majority voting policy be adopted that provides that:
 - directors not receiving a majority vote must tender their resignation immediately;
 - the board must decide whether to accept the resignation within 90 days and shall accept the resignation absent exceptional circumstances. Directors may not participate in any meeting where their resignation is being considered and the resignation will become effective when accepted by the board; and
 - a press release must be issued setting out the board's decision.

The above requirement does not apply to an issuer that is majority controlled (50% or more of votes held by a security holder). The majority voting policy must be fully described in an NV Issuer's management information circular and must be posted on its website.

Transaction Approvals

The Amendments introduce shareholder approvals for transactions undertaken by all Listed Issuers but provide lower thresholds for NV Issuers. Part II of this update will provide further details of these requirements.

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