



The CSE introduces important amendments to its listing regime (part II)

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Broad-reaching and significant amendments to the Canadian Securities Exchange (CSE) policies took effect April 3, 2023 (the Amendments). In part 1 of this [update](#) we discussed the creation of a two-tier CSE by the introduction of a new class of senior issuers known as non-venture issuers (NV Issuers), which will be subject to more stringent continuous disclosure and governance requirements. The Amendments also introduce the following key changes to the CSE's policies:

- modifying the listing process and ongoing requirements;
- formalizing shareholder approval requirements for a broad range of transactions;
- amending the CSE distribution policy;
- replacing the CSE incentive option policy with a comprehensive policy for all security-based compensation arrangements; and
- introducing written requirements for special purpose acquisition corporations (SPACs).

In this update we discuss highlights of these key changes.

Listing process and ongoing listing requirements

The process for listing on the CSE has been amended by introducing an eligibility review. Issuers intending to list must provide the CSE with a document that allows the CSE to determine whether the issuer is eligible for listing prior to the actual listing. A draft prospectus that includes all necessary information will satisfy this requirement. Natural resource issuers will need to file the necessary accompanying technical reports. The CSE will review and confirm eligibility or will identify those issues that must be met prior to listing.

An ongoing public float requirements for a listing of equity securities of an NV Issuer has been introduced. Such issuers must have a public float of at least 1 million freely tradeable securities and at least 300 public holders each holding a board lot.

Security Holder Approvals

A number of new security holder approval requirements have been added to the CSE corporate governance policy for private placement and public offerings, acquisitions and dispositions, rights offerings, share consolidations and other transactions. In several instances, the requirements are triggered on different thresholds for NV Issuers than for issuers that are not NV Issuers (Non-NV Issuer(s)). The following are the approvals required for certain transactions:

Private Placements and Prospectus Offerings:

Where securities are proposed to be privately placed or sold by way of prospectus, security holders must approve the transaction if:

- the securities to be issued in the offering exceed:
 - for a Non-NV Issuer, 50% of the securities or votes outstanding and there is a new control person of a Non-NV Issuer;
 - for a Non-NV Issuer, 100% of the securities or votes outstanding where there is no new control person; and
 - for an NV Issuer, 25% of the securities or votes outstanding;
- for any listed issuer:
 - the price of the offered securities is lower than the market price less the permitted discount; or
 - the transaction will materially affect control of the issuer.

NV Issuers must also seek security holder approval if the securities issuable under the transaction or that have been issued to related parties in the last 12 months exceed 10% of the securities or votes outstanding. The Amendments provide an exemption from the approval requirements where an issuer is in financial difficulty.

Acquisitions and Dispositions

Shareholder approval is required for an acquisition where:

- the total number of securities issuable in the acquisition exceeds:
 - for a Non-NV Issuer, 50% of the outstanding securities of the issuer and there is a new control person; or
 - for a Non-NV Issuer, 100% of the outstanding securities of the issuer where there is no new control person; or
 - for an NV Issuer, 25% of the outstanding securities of the issuer.
- in the case of an NV Issuer also where:
 - a related party has a 10% or greater interest in the target assets; or
 - the number of securities issuable for the assets exceeds 5% of the outstanding securities of the issuer.

Acquisitions that materially affect control of any listed issuer will require shareholder approval. Dispositions of assets that are more than 50% of any listed issuer's assets will also require shareholder approval.

Other Transactions

Other transactions that may require shareholder approval include rights offerings, shareholder rights plans, the establishment and amendment of any security-based compensation arrangements or shareholder rights plans, rights offerings, related-party transactions and certain share consolidations.

Amendments to distribution policy

The Amendments to the CSE policy on distributions that are applicable to all listed issuers:

- remove the minimum offering price per security of \$0.05;
- provide for a five-day public notice for price protection of securities issued by private placements or upon acquisitions; and
- provide filing and/or disclosure requirements for take-over and issuer bids and control block distributions.

Security-based compensation arrangements

The CSE has expanded its incentive stock option policy to cover all security-based compensation arrangements (SBCA), not just stock options. The pre-approval of the CSE is required to establish all SBCAs. The Amendments require three-year shareholder approval for "rolling" or "evergreen" plans (i.e. self-replenishment plans) for such plans to continue. The CSE has also formalized rules relating to the exercise price of options. These changes bring the CSE in line with other Canadian exchanges.

SPACS

The Amendments introduce comprehensive requirements for listing SPACs and related qualifying transactions similar to those of other exchanges. A SPAC seeking to list on the CSE must:

- complete an IPO of shares or units that raises a minimum of \$30 million with a minimum price of \$2 per share or unit;
- have at least 1 million freely tradeable publicly held securities; and
- have an aggregate market value of publicly held securities of \$30 million and at least 150 public holders each holding a board lot.

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