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CHANGES TO TSXV LISTING REQUIREMENTS

BY GUY PAUL ALLARD AND TARAN AUJLA

The TSX Venture Exchange (the “Exchange”), a public venture capital marketplace for emerging companies, recently announced major changes which will come into force on June 14, 2010, aimed at simplifying the listing requirements for both issuers seeking a listing on the Exchange and for listed issuers wishing to maintain their listing.

Changes include the new Initial Listing Requirements (formerly known as Minimum Listing Requirements), the new Continued Listing Requirements (formerly known as Maintenance Listing Requirements), as well as various other minor policy amendments.

The following bulletin will provide an overview of the main amendments made to the minimum and maintenance listing requirements. Issuers filing applications prior to June 14, 2010, will be subject to the requirements of the Exchange currently in force (Minimum Listing Requirements and Maintenance Listing Requirements). Issuers submitting an application on or after June 14, 2010, will be subject to the amended requirements (Initial Listing Requirements and Continued Listing Requirements).

1. Initial Listing Requirements (“ILR”)

1.1 Tier 2 Issuers

Tier 2 issuers will require: (i) adequate working capital or financial resources to carry out a work program or execute their business plan for the 12-month period following listing; and (ii) \$100,000 in unallocated funds.

Furthermore, Tier 2 issuers will require: (i) public float of 500,000 shares; (ii) 200 public shareholders each holding a board lot and having no resale restrictions on their shares; and (iii) 20% of all issued and outstanding shares in the hands of public shareholders.

1.1.1 Non-Resource Issuers

Tier 2 non-resource issuers will also need to satisfy either: (i) the net tangible asset test (\$750,000); (ii) the revenue test (\$500,000); or (iii) the arm’s length financial test (\$2 million). This new requirement replaces the net tangible asset tests and revenue tests from the previous requirements. Notwithstanding these new requirements, real estate and investment industry Tier 2 issuers will be required to satisfy either: (i) the net tangible asset test (\$2 million); or (ii) the arm’s length financial test (\$3 million).

In addition, Tier 2 non-resource issuers will be required to have a significant interest in the business, property, real property or asset depending on the industry.

Non-resource Tier 2 issuers will be required either to demonstrate a history of operations or provide evidence of business validity. Furthermore, investment issuers will need to have an investment policy disclosed to their investors and at least 50% of their available funds allocated to at least two specific investments.

1.1.2 Resource Issuers

The ILR for Tier 2 resource issuers will remain largely unchanged.

1.2 Tier 1 Issuers

Tier 1 issuers will require: (i) adequate working capital, or financial resources to carry out a work program or execute their business plan for the 18-month period (versus the 12-month period for Tier 2 issuers) following listing; and (ii) \$200,000 in unallocated funds.

Furthermore, Tier 1 issuers will require: (i) public float of one million shares; (ii) 250 public shareholders (versus 200 for Tier 2 issuers) each holding a board lot and having no resale restrictions on their shares; and (iii) 20% of all issued and outstanding shares in the hands of public shareholders.

1.2.1 Non-Resource Issuers

Tier 1 non-resource issuers will need to satisfy either: (i) the net tangible asset test (\$5 million); or (ii) the revenue test (\$5 million). Notwithstanding these new requirements, real estate and investment industry Tier 1 issuers will be required to meet net tangible asset metrics of \$5 million and \$10 million, respectively.

As with Tier 2, Tier 1 non-resource issuers will be required to have a significant interest in the business, property, real property or asset depending on the industry.

Non-resource Tier 1 issuers will be required either to demonstrate a history of operations or provide evidence of business validity. Furthermore, a Tier 1 investment issuer will be required to disclose an investment policy to its investors.

1.2.2 Resource Issuers

Oil and gas issuers in the exploration sub-segment will need to demonstrate \$3 million in reserves (of which \$1 million must be in proved developed reserves), whereas oil and gas issuers in the producing sub-segment will need to demonstrate \$2 million in proved developed reserves. The property requirements for mining issuers remain substantially unchanged.

2. Continued Listing Requirements (“CLR”)

2.1 Tier 2 Issuers

Tier 2 CLR have been simplified and are consistent for all industry segments.

Public distribution and market capitalization tests will be satisfied by Tier 2 issuers; if: (i) no less than 500,000 listed shares are in the public float; (ii) 10 % of listed

shares are in the public float; (iii) the listed shares within the public float have a minimum market capitalization of \$100,000; and (iv) at least 150 public shareholders hold at least one board lot each, free of any resale restrictions.

As for the working capital, Tier 2 issuers will satisfy the metric with the greater of: (i) \$50,000; and (ii) the amount required to maintain operations and cover general and administrative expenses for a period of six months.

The assets and operations metric for Tier 2 issuers will generally be more flexible. However, the Exchange will ultimately have the discretion to determine eligibility in situations where the Tier 2 issuer reduces or impairs its principal operating asset, ceases or discontinues a substantial portion of its operations or business for any reason.

Tier 2 issuers will be able to satisfy their activity test based on either: (i) their most recently completed financial year; or (ii) their two most recently completed financial years. The amount of operating revenue and expenditures for the financial year(s) will depend on the industry segment of the Tier 2 issuer.

2.2 Tier 1 Issuers

The CLR for Tier 1 issuers has been dramatically simplified. A Tier 1 issuer from any industry segment will be able to meet CLR if it continues to meet the Tier 1 ILR applicable to its industry segment.

3. Policy 2.4 – Capital Pool Companies (“CPC”)

3.1 Maximum investment

The maximum aggregate gross proceeds in a CPC from the issuance of IPO shares and all seed shares issued pursuant to a private placement is increased from \$2 million to \$5 million.

3.2 Minimum investment

The minimum aggregate investment by directors and officers of a CPC is the greater of: (i) \$100,000; and (ii) 5% of the aggregate of all proceeds received by the CPC on the date of its final prospectus resulting from the issuance of treasury securities, including proceeds from the issuance of seed shares, proceeds from any private placement and proceeds from IPO shares.

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 54-101 – COMMUNICATION WITH BENEFICIAL SHAREHOLDERS, RELATED FORMS AND COMPANION POLICY 54-101CP

BY DEVIN KANHAI AND KIM M. WILLEY

The CSA has published a Notice and Request for Comments relating to, among others, proposed amendments to National Instrument 54-101 - *Communication with Beneficial Owners of Securities of a Reporting Issuer* and the related forms, and Companion Policy 54-101CP (the “CSA Proposal”), and is soliciting comments on the CSA Proposal by August 31, 2010. Key changes in the CSA Proposal include:

- **Notice-and-Access:** Reporting issuers would now have the option of sending proxy-related materials for meetings that are not “special meetings” by: (i) posting the information circulars on a website other than SEDAR; and (ii) sending a notice informing beneficial owners that the proxy-related materials have been posted online, along with a voting instruction form. Beneficial owners would retain the right to request that the reporting issuer send a paper copy of the information circular at the reporting issuer’s expense. The CSA Proposal also includes a substantially similar process for registered holders of reporting issuer securities.
- **Simplification of Beneficial Owner Proxy Appointment Process:** Under the current rules, a beneficial owner who holds securities through an intermediary must utilize a time-consuming and confusing legal proxy process if he or she wishes to attend and vote on those securities at a meeting. The CSA Proposal aims at changing this process to require intermediaries and reporting issuers to arrange to appoint the beneficial owner as proxy holder if requested to do so.
- **Enhanced Disclosure Regarding the Beneficial Owner Voting Process:** The CSA Proposal requires reporting issuers to disclose, if they do not pay for intermediaries to send proxy-related materials to objecting beneficial owners, and to disclose in the management information circular if they are using notice-and-access in respect of some, but not all beneficial owners.
- **Stricter Rules On Use By Third-Parties of NOBO Information and the Indirect Sending Procedures:** The CSA Proposal imposes stricter

rules on the permitted use by third parties of non-objecting beneficial owner (“NOBO”) information and the indirect sending procedures.

- **Other Changes:** The CSA Proposal also makes changes to certain technical aspects of the beneficial owner communication procedures in addition to amendments to 54-101CP to provide guidance in several areas, including permitted delivery methods of proxy-related materials, and procedures reporting issuers should have in place if they choose to solicit voting instructions directly from NOBOs.

The full text of the CSA Proposal and background information on the proposed changes are available on the websites of each of the securities regulators in each of the provinces and territories across Canada, contact information for which is available on the website of the CSA (www.securities-administrators.ca).

PROPOSED REPEAL AND REPLACEMENT OF NATIONAL INSTRUMENT 43-101 - STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS, FORM 43-101F1 (TECHNICAL REPORT) AND THE COMPANION POLICY 43-101CP

BY KIM M. WILLEY

The Canadian Securities Administrators (the “CSA”) have published revised versions of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (“NI 43-101”), Form 43-101F1 (Technical Report) and the Companion Policy 43-101CP (the “Amended Instrument”) and are soliciting comments on these revised documents by July 23, 2010.

The proposed changes are the first major revision to NI 43-101 since its introduction in 2001 and are intended to provide cost savings and efficiencies to mining companies without compromising investor protection. The key proposed changes include, but are not limited to:

- **Technical Report Form:** The form has been substantially amended to make it less prescriptive and more adaptable for advanced stage and producing properties.
- **Updated Certificates and Consents:** The requirement for qualified persons to provide updated certificates and consents for certain filings (i.e. short form prospectuses, annual information forms, etc.) has been removed,

provided that the technical information is still current.

- **Comparable Foreign Standards:** The Amended Instrument recognizes foreign standards for qualified persons and mining disclosure that are more consistent and comparable to standards in Canada and other international mining jurisdictions.
- **Royalty Holders:** The Amended Instrument exempts royalty holders from the requirement to prepare a technical report if the information concerning the project is publically available and was prepared by an issuer subject to the Amended Instrument or a producing issuer on a specified exchange.
- **Property Acquisitions:** The current 45-day filing period for an issuer to file a new independent technical report upon acquisition of a material property is extended to six months, if another issuer previously filed a technical report on the acquired property and such report is still current.

In addition, the CSA is seeking comments on whether to keep, modify or eliminate the existing short form prospectus trigger for a technical report. Currently, issuers are required to file a technical report if a preliminary short form prospectus includes material scientific or technical information about a mineral project on a property material to the issuer, which is not contained in a previously filed technical report. The CSA acknowledges that this requirement may impose extra cost and limits on an issuer's ability to complete an offering on a timely basis. If the short form prospectus trigger is removed, issuers could go to the market to raise funds without having to concurrently file a technical report, and would only be required to file a technical report within the 45-day or 6-month time limits, as prescribed by the Amended Instrument.

The full text of the proposed amendments to NI 43-101 and background information on the proposed changes are available on the websites of the securities regulators in each of the provinces and territories across Canada, contact information for which is available on the website of the CSA (www.securities-administrators.ca).

CONTACT US

For further information, please contact a member of our [National Securities | Corporate Finance Group](#).



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