

13.2.2 CNSX Notice 2010-01 – Notice and Request for Comments of Proposed Rule Change – Rule 1-101 Definitions and Rule 11-102 Qualifications for Alternative Market

NOTICE 2010-01

**PROPOSED RULE CHANGE – RULE 1-101 DEFINITIONS AND
RULE 11-102 QUALIFICATION FOR ALTERNATIVE MARKET**

NOTICE AND REQUEST FOR COMMENTS

May 14, 2010

The Board of Directors of CNSX Markets Inc. (the “Board”) has passed a resolution to amend Rule 1-101 – Definitions and Rule 11-102 – Qualification for Alternative Market subject to Ontario Securities Commission approval, following public notice and comment.

The proposed amendments to the definition of “Alternative Market Security” in Rule 1-101 – Definitions remove specifics relating to qualification and instead refer to Rule 11-102. They also provide consistency among the definition, the qualification requirements in the Rules and the related provisions in CNSX Markets Inc.’s recognition order. The related proposed changes to Rule 11-102 – Qualification for Alternative Market, which sets out the securities that qualify for trading in the Alternative Market (Pure Trading), are to broaden the qualification to any stock exchange recognized in a jurisdiction in Canada and thereby include a CNSX-listed security, and to clarify the circumstances for disqualification.

Black-lined and clean versions of the text of the proposed amendments are included at the end of this notice.

Alternative Market rule amendments were previously published for comment in CNSX Notice 2009-001 dated October 23, 2009, and the changes proposed in those amendments have been incorporated here.

The Board has determined that the proposed amendments are in the public interest and have authorized that they be published for public notice and comment. Comments should be made no later than 30 days from the date of publication of this notice and should be addressed to:

CNSX Markets Inc.
220 Bay Street, 9th Floor
Toronto, ON
M5J 2W4
Attention: Mark Faulkner, Director, Listings and Regulation
Fax: 416.572.4160
Email: Mark.Faulkner@cnsx.ca

A copy should be provided to the Ontario Securities Commission (OSC) at the following address:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON
M5H 3S8
Attention: Manager, Market Regulation
Fax: 416.595.8940

Impact of the Proposed Changes

The proposed changes will not require any technological changes or development by CNSX Dealers or issuers currently listed on CNSX. There will be no direct costs associated with compliance.

The substantive changes to the rules relating to Alternative Market securities expand the range of securities that may be traded in the Alternative Market by adding those of another recognized exchange – CNSX. There are no additional obligations or costs imposed on CNSX Dealers or Issuers, but the change could provide additional competition in the listings area, which could provide benefits to both groups. There will be minor costs to service providers in adding new securities to those eligible for trading on the Alternative Market, but these are the same as for any new securities added at present.

The rest of the changes were for clarification purposes, and should ensure that the qualification criteria for Pure Trading are easily understood.

Consultation

Some consultation was carried out with a small group of specialty issuers (on a confidential basis) to understand their needs in the current environment. Flexibility was a key factor, and this led, in part to the proposed changes to the definition of "Alternative Market Security".

Alternatives

The proposed changes to the Rules are minor, technical changes necessary to broaden the provisions to accommodate future business strategies, clarify qualification and disqualification provisions and ensure consistency in drafting among the rules and the recognition order. No alternatives were considered.

Comparable Rules

The proposed changes to Alternative Market Security do not have comparable provisions in the rules of other stock exchanges because of the unique structure of CNSX Markets' facilities – i.e., that the Alternative Market is a facility of the exchange. Unlisted trading privileges are allowed in US markets pursuant to the Securities Exchange Act of 1934, subparagraph 12f-1(A), which states generally that: "... any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to (i) any security that is listed and registered on a national securities exchange ..."

Proposed Amendments

Proposed changes to the definition of "Alternative Market security" were first published with proposed amendments to Policy 2 and related changes in CNSX Notice 2009-001. As the Rules changes are related to changes to the Alternative Market qualification provisions in the recognition order, the amendments are now being re-published contemporaneously with a varied and restated recognition order. Black-lined and clean versions of the Rule 1 definition and the text of Rule 11-102 are provided below.

Black-lined proposed changes to "Alternative Market security" definition in Rule 1 and proposed changes to Rule 11-102:

1. Rule 1 Definitions

...

~~"Alternative Market security" means a security other than a CNSX listed security that is listed on another Canadian stock exchange and approved designated for trading on CNSX the Alternative Market in accordance with Rule 11-102 Qualification for Alternative Market.~~

...

2. Rule 11-102 Qualification for Alternative Market

- (1) CNSX Markets may designate securities listed on another stock exchange recognized in a jurisdiction in Canada as eligible for trading in the Alternative Market provided such securities are not suspended or subject to a regulatory halt.
- (2) CNSX Markets may disqualify an Alternative Market security from trading at any time without prior notice.
- (3) Notwithstanding the foregoing, an Alternative Market security shall immediately be disqualified from trading if
 - (a) the security is suspension or delisted by another stock exchange if such suspension or delisting would result in CNSX being the only stock exchange on which the security would trade in Canada and is not listed on any stock exchange recognized in a jurisdiction in Canada;
 - (b) the security is suspended by a stock exchange and the Alternative Market is the only venue on which the security would trade in Canada;
 - (cb) if the security is subject to a regulatory halt; or

- (de) if CNSX Markets, acting reasonably, determines that disqualification is necessary to protect the public interest or the maintenance of a fair and orderly market.

Clean versions proposed “Alternative Market security” definition in Rule 1 and proposed Rule 11-102:

1. Rule 1 Definitions

“**Alternative Market security**” means a security that is designated for trading on the Alternative Market in accordance with Rule 11-102 *Qualification for Alternative Market*;

2. Rule 11-102 Qualification for Alternative Market

- (1) CNSX Markets may designate securities listed on a stock exchange recognized in a jurisdiction in Canada as eligible for trading in the Alternative Market provided such securities are not suspended or subject to a regulatory halt.
- (2) CNSX Markets may disqualify an Alternative Market security from trading at any time without prior notice.
- (3) Notwithstanding the foregoing, an Alternative Market security shall immediately be disqualified from trading if
 - (a) the security is delisted by a stock exchange and is not listed on any stock exchange recognized in a jurisdiction in Canada;
 - (b) the security is suspended by a stock exchange and the Alternative Market is the only venue on which the security would trade in Canada;
 - (c) the security is subject to a regulatory halt; or
 - (d) CNSX Markets, acting reasonably, determines that disqualification is necessary to protect the public interest or the maintenance of a fair and orderly market.