

CSA Notice and Request for Comment
*Proposed Amendments and Changes to Certain National Instruments
and Policies related to the Senior Tier of the Canadian Securities
Exchange, the Cboe Canada Inc. and AQSE Growth Market name
changes, and Majority Voting Form of Proxy Requirements*

August 1, 2024

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments to:

- National Instrument 41-101 *General Prospectus Requirements*
- National Instrument 44-101 *Short Form Prospectus Distributions (NI 44-101)*
- National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*
- National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*
- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- National Instrument 52-110 *Audit Committees*
- National Instrument 58-101 *Disclosure of Corporate Governance Practices*
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions (MI 61-101)*
- National Instrument 62-104 *Take-Over Bids and Issuer Bids (NI 62-104)*
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

(collectively, the **Proposed Amendments**).

We are also proposing changes (the **Proposed Changes**) to the following:

- Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions*
- National Policy 46-201 *Escrow for Initial Public Offerings (NP 46-201)*

(collectively, the **Proposed Changes**).

The public comment period will end on October 30, 2024.

The text of the Proposed Amendments and Proposed Changes is contained in Annexes A through N of this notice and will also be available on websites of CSA jurisdictions, including:

- www.lautorite.qc.ca
- www.asc.ca
- www.besc.bc.ca
- nssc.novascotia.ca
- www.fcnb.ca
- www.osc.ca
- www.fcaa.gov.sk.ca
- mbsecurities.ca

Substance and Purpose

The Proposed Amendments and Proposed Changes are intended to address the following:

- the Canadian Securities Exchange (the **CSE**) creating, by amendments to its listing policies, a senior tier (the **CSE Senior Tier**), which is intended to be a non-venture tier but is currently categorized as a venture marketplace in securities legislation
- the name change of the PLUS markets to AQSE Growth Market as a result of PLUS Markets Group plc selling those markets
- the name change of Aequitas Neo Exchange Inc. (**NEO**) to Cboe Canada Inc. as a result of Cboe Global's acquisition of NEO
- amendments to the *Canada Business Corporations Act (CBCA)* dealing with "majority voting", which amendments may have created uncertainty about the voting options required to be provided to securityholders in uncontested director elections of CBCA-incorporated reporting issuers and those required under securities legislation

The Proposed Amendments and Proposed Changes are also intended to ensure that CSE Senior Tier issuers are treated the same way under securities legislation as issuers listed on other non-venture exchanges.

Background

On April 3, 2023, amendments to the CSE's listing policies came into effect, creating the CSE Senior Tier. The CSE Senior Tier is intended to be a non-venture tier with initial and continued listing requirements in line with a non-venture exchange. However, under the current definition of "venture issuer" in securities legislation, the CSE is a venture exchange.

On January 15, 2019, the legal name of Aequitas NEO Exchange Inc. was changed to NEO Exchange Inc. On June 1, 2022, Cboe Canada Holdings, ULC purchased the direct shareholder of NEO Exchange Inc. Effective January 1, 2024, NEO Exchange Inc. was amalgamated with other related entities into a single legal entity named Cboe Canada Inc.

The PLUS markets no longer exist under that name and have had a name change to AQSE Growth Market operated by Aquis Stock Exchange Limited.

On August 31, 2022, amendments to the CBCA and the *Canada Business Corporations Regulations, 2001* (the **Majority Voting Amendments**) came into effect that generally require

“majority voting” for each candidate nominated for director in uncontested director elections of CBCA-incorporated reporting issuers. Where the Majority Voting Amendments apply, the form of proxy must provide securityholders with the option to specify whether their vote is to be cast “for” or “against” each candidate nominated for director, rather than “voted” or “withheld” from voting as is required by subsection 9.4(6) of NI 51-102.

To address any uncertainty about the voting options required to be provided to securityholders of CBCA-incorporated reporting issuers by the Majority Voting Amendments and those required by subsection 9.4(6) of NI 51-102, on January 31, 2023, the CSA jurisdictions issued substantively harmonized local blanket orders that exempt CBCA-incorporated reporting issuers from the director election form of proxy requirement in subsection 9.4(6) of NI 51-102 in respect of the uncontested election of directors (**Blanket Orders**).¹

In certain CSA jurisdictions, the local blanket order will expire only when related amendments to NI 51-102 come into force. However, the Ontario local blanket order will expire on January 31, 2026. Once the Ontario blanket order expires, if related amendments to NI 51-102 are not in effect, there will again be uncertainty about the voting options required to be provided to securityholders of CBCA-incorporated reporting issuers by the Majority Voting Amendments and those required by Ontario securities law. The Proposed Amendments would address this uncertainty.

Summary of the Proposed Amendments and Proposed Changes

The Proposed Amendments and Proposed Changes are primarily housekeeping amendments and changes to reflect the name change of NEO and PLUS markets and to add Cboe Canada Inc. to the definition of “designated exchange” in NI 62-104 to codify the designation of NEO which is currently evidenced through local designation orders.

The Proposed Amendments and Proposed Changes also include the following non-housekeeping amendments and changes:

Venture Issuer Definition

The CSE Senior Tier is intended to be a non-venture tier with initial and continued listing requirements in line with a non-venture exchange. However, CSE Senior Tier issuers are “venture issuers”, as is currently defined under securities legislation, and are required under securities legislation to comply only with the requirements applicable to venture issuers. The Proposed Amendments and Proposed Changes will revise the definition of “venture issuer” and “IPO venture issuer” in various national instruments to exclude CSE Senior Tier issuers. As a result of the Proposed Amendments and Proposed Changes, such issuers will have to comply with securities law requirements applicable to non-venture issuers.

Majority Voting Amendments

The Proposed Amendments are intended to codify the Blanket Orders. The Proposed Amendments introduce a provision to NI 51-102 that would specify that subsection 9.4(6) of NI 51-102 does not apply to a form of proxy sent to securityholders of a reporting issuer in respect of the election of directors if the issuer is incorporated, organized or continued under the CBCA and complies with

¹ CSA Coordinated Blanket Order 51-930 Exemption From the Director Election Form of Proxy Requirement

subsection 54.1(2) of the *Canada Business Corporations Regulations, 2001* or if the issuer is incorporated, organized or continued under the laws of another jurisdiction that contain a requirement substantially similar to that subsection and it complies with that requirement.

Modernization of Escrow Agreement

NP 46-201 and the policies of certain exchanges require a Form 46-201F1 to be entered into by an issuer and its principals in connection with most initial public offerings. The Proposed Changes modernize the Form 46-201F1 by removing the requirement for the agreement to be signed, sealed and delivered by securityholders in the presence of a witness. This is a requirement that is outdated, not compatible with electronic signing, and can be overly burdensome when there are numerous principals required to sign the escrow agreement.

Other CSE Related Changes

The Proposed Amendments and Proposed Changes also include the following amendments and changes, which will allow CSE Senior Tier issuers to be treated the same way under securities legislation as issuers listed on other non-venture exchanges and reflect recent amendments to CSE listing policies applicable to all CSE-listed issuers:

- *Employee, Executive Officer, Director or Consultant Exemption*

A proposed amendment to section 2.22 of NI 45-106 to add CSE to the definition of “listed issuer”. Section 2.24 provides an exemption from the prospectus requirements for distribution of securities to employees, executive officers, directors or consultants. However, in the case of issuers that do not meet the definition of “listed issuer”, section 2.25 removes the availability of the exemption in section 2.24 for distributions of securities in certain circumstances, unless the issuer has provided certain required disclosure and obtained security holder approval. The current definition of “listed issuer” includes issuers with securities listed on the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSXV) and NEO, but does not include issuers with securities listed on the CSE.

- *Short Form Prospectus Eligibility Requirement*

A proposed amendment to section 2.7 of NI 44-101 to include a provision that would allow issuers listed on the CSE to qualify to file a short form prospectus by relying on a CSE Listing Statement filed in connection with a fundamental change, instead of an Annual Information Form (AIF). Unlike non-venture issuers, venture issuers are not required under securities legislation to file an AIF. However, a venture issuer may voluntarily file an AIF to meet the short form prospectus qualification requirements. This proposed amendment will align the qualification requirements for venture issuers on the CSE with those of venture issuers on the TSXV. Section 2.7 has a provision that allows issuers listed on the TSXV to rely on a filing statement in certain circumstances, rather than an AIF.

- *Exemption from Escrow Requirements*

A proposed change to NP 46-201 to revise the meaning of “exempt issuer” to include certain CSE Senior Tier issuers, and to revise the meaning of “established issuer” to include CSE Senior Tier issuers that are not “exempt issuers”. These proposed changes will align

the escrow requirements and escrow release schedule for CSE Senior Tier issuers to those of issuers listed on the TSX and NEO.

- *Inclusion of CSE Senior Tier issuers as a category of issuers for which certain exemptions in MI 61-101 are not available*

A proposed amendment to MI 61-101 such that CSE Senior Tier issuers, as non-venture issuers, will not be able to rely on certain exemptions from the formal valuation and minority approval requirements available to issuers not listed on certain specified non-venture exchanges. This would be achieved by adding CSE Senior Tier issuers to the list of categories of issuers for which the exemptions in paragraphs 4.4(1)(a) and 5.5(b), and subparagraph 5.7(1)(b)(i) of MI 61-101 are not available.

Local Matters

Annex O is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments and Proposed Changes.

Please submit your comments in writing on or before October 30, 2024.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Fax : 514-864-8381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.asc.ca, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

Annex A:	Proposed amendments to National Instrument 41-101 <i>General Prospectus Requirements</i>
Annex B:	Proposed amendments to National Instrument 44-101 <i>Short Form Prospectus Distributions</i>
Annex C:	Proposed amendments to National Instrument 45-106 <i>Prospectus Exemptions</i>
Annex D:	Proposed amendments to National Instrument 51-102 <i>Continuous Disclosure Obligations</i>
Annex E:	Proposed amendments to Multilateral Instrument 51-105 <i>Issuers Quoted in the U.S. Over-The-Counter Markets</i>
Annex F:	Proposed amendments to National Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i>
Annex G:	Proposed amendments to National Instrument 52-110 <i>Audit Committees</i>

Annex H:	Proposed amendments to National Instrument 58-101 <i>Disclosure of Corporate Governance Practices</i>
Annex I:	Proposed amendments to Multilateral Instrument 61-101 <i>Protection of Minority Security Holders in Special Transactions</i>
Annex J:	Proposed amendments to National Instrument 62-104 <i>Take-Over Bids and Issuer Bids</i>
Annex K:	Proposed amendments to National Instrument 71-102 <i>Continuous Disclosure and Other Exemptions Relating to Foreign Issuers</i>
Annex L:	Proposed amendments to National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i>
Annex M:	Proposed changes to Companion Policy 44-101CP to National Instrument 44-101 <i>Short Form Prospectus Distributions</i>
Annex N:	Proposed changes to National Policy 46-201 <i>Escrow for Initial Public Offerings</i>
Annex O:	Local Matters

Questions

Please refer your questions to any of the following:

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