

Securities Law Bulletin

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TSXV Amends Policy 5.1 - Loans, Loan Bonuses, Finder's Fees and Commissions

By: **Melanie Cole and Daniel Everall***

Amendments to Policy 5.1 – *Loans, Bonuses, Finder's Fees and Commissions* (“**Policy 5.1**”) of the TSX Venture Exchange (“**TSXV**”) came into force on January 26, 2015. Large portions of the amendments are housekeeping in nature. The substantive amendments involve formalizing into written policy new or existing working practices and the creation of new requirements and limitations to address certain circumstances involving loan bonuses, finder's fees and commissions that were not previously addressed in Policy 5.1. Notable substantive changes to Policy 5.1 include the following revisions:

1. Loan Bonus Requirements and Limitations:

- a. Loan bonuses may not be granted to a lender or guarantor in relation to a loan or debt instrument that is convertible into shares listed on the TSXV.
- b. The limits for both bonus shares and bonus warrants are now calculated using the applicable market price, not the discounted market price.
- c. The limit on bonus warrants increased from 40% to 100% of the value of the loan (i.e. 100% warrant coverage). This, combined with the change in (a) above, addressed a discrepancy between the TSXV's limit on detachable warrants issued in connection with a convertible debenture (as set forth in Policy 4.1 – *Private Placements*) and the current limit on bonus warrants issued in connection with a non-convertible loan.
- d. For loans with a term of less than one year, bonus warrants are permitted, but bonus shares are generally no longer permitted.
- e. Provisions related to the acceptability of a loan bonus for loan renewals or extensions are formalized.

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2. Restrictions on “Finding Oneself”:

The TSXV formalized restrictions on the ability of an issuer to pay either: (i) a commission to an investor in respect of such person's own investment in the issuer; or (ii) a finder's fee to a vendor or purchaser in respect of such person's sale or purchase of assets or services to or from the issuer. Certain limited exceptions to these general rules are laid out in the amendments.

3. Commission Limitations:

The amendments also clarify that if compensation payable by an issuer in respect of a financing transaction includes shares or warrants, the aggregate value of the shares and warrants cannot exceed 12.5% of the gross proceeds of the financing. For these purposes, one warrant will be valued as one-half of a share (i.e. the existing 25% limit on warrants under section 3.4 of Policy 5.1 was unchanged).

The amended version of Policy 5.1 can be found on the TSXV's website ([here](#)) along with a blackline to the previous version ([here](#)).

* Daniel Everall is an articling student at Aird & Berlis LLP.

TSXV Amends Policy 4.1 - *Private Placements*

By: Melanie Cole and Daniel Everall*

The TSXV's amendments to Policy 4.1 – *Private Placements* (“**Policy 4.1**”) came into force on January 26, 2015, many of which are non-substantive in nature despite the policy undergoing a substantial redraft. Some of the more substantive amendments include the following:

1. Expanded Guidance on Notice and Acceptance Procedures:

The amendments include further guidance from the TSXV on the steps involved in the notice and acceptance process for a private placement, from price reservation to the publication of the TSXV's bulletin. This new guidance in Policy 4.1 outlines the steps to be taken by an issuer when it intends to close a private placement upon receipt of conditional acceptance of the TSXV as opposed to final acceptance.

2. Part and Parcel Pricing Exception:

It was clarified that the warrant exercise price premium component of the part and parcel pricing rules does not apply if the private placement is the concurrent financing in connection with a qualifying transaction, reverse takeover or change of business such that the exercise price of warrants issued as part of a concurrent financing to a qualifying transaction, reverse takeover or change of business need not be set at a premium to the applicable market price.

3. News Releases:

Policy 4.1 now includes additional guidance with respect to initial, closing and other news releases relating to private placements. Notably, the following disclosure requirements generally apply for private placements: the initial public disclosure of the private placement must be made at the time the proposed offering price is reserved; there must be no undisclosed material changes at the time the issuer reserves the proposed offering price; all material changes which occur during the private placement process must be disclosed; and the issuer must announce the closing of the private placement immediately following the close.

4. Filing Requirements:

The amendments include details on the specific filing requirements to be met by issuers applying for conditional and final acceptance from the TSXV. In particular, issuers should be cognisant of the requirement to apply to the TSXV for acceptance of the proposed terms of the private placement within 30 calendar days after the price reservation date.

5. Closing of the Private Placement:

The amendments include expanded guidance in respect of the TSXV's conditions to closing, timeframes for closing and final filing requirements. Of particular note is the clarification that if a private placement involves the creation of a new insider or a new control person, the issuer may not close on subscriptions from those persons until the TSXV has provided its final acceptance to the private placement.

6. Amending Convertible Securities:

A new section of Policy 4.1 sets out the requirements applicable to obtaining TSXV acceptance for an amendment to the terms of a previously-issued security which is convertible into a listed security. This new section is reflective of existing working practices and emphasizes that an amendment to the terms of convertible securities may constitute a distribution of a new security and thereby may require certain prospectus exemptions. Additionally, any amendments to the terms of a convertible security (including a change to the conversion price or an extension of the conversion period) will require TSXV acceptance.

7. Implementation of V-File and Discontinuation of Expedited Filing System:

The V-File System is now functional and available for use by issuers. This system allows for the electronic filing of the information that is currently included in a Form 4B (Notice of Private Placement) and automates certain components of the TSXV's review and acceptance process for private placements.

The amended version of Policy 4.1 can be found on the TSXV's website ([here](#)) along with a blackline to the previous version ([here](#)).

* Daniel Everall is an articling student at Aird & Berlis LLP.

National Instrument 58-101: New Disclosure Rules for Board Renewal and Diversity

By: Melanie Cole and Daniel Everall*

Securities regulators across Canada (non-participating jurisdictions include Alberta, Prince Edward Island and British Columbia) have adopted new disclosure requirements targeting board policies for renewal and gender diversity that will have implications for the upcoming proxy season. The new requirements, effective as of December 31, 2014, have the stated purpose of increasing transparency for investors and other stakeholders regarding the representation of women on boards and in senior management of non-venture issuers. This transparency is intended to assist investors when making investment and voting decisions.

Non-venture issuers in participating jurisdictions will now need to provide disclosure of the following annually in their management information circular and/or annual information form:

1. director term limits and other mechanisms of board renewal;
2. policies regarding the representation of women on the board;
3. the board's or nominating committee's consideration of the representation of women in the director identification and selection process;
4. the issuer's consideration of the representation of women in executive officer positions when making executive officer appointments;
5. targets regarding the representation of women on the board and in executive officer positions; and
6. the number of women on the board and in executive officer positions.

The amendments do not impose a requirement for issuers to have a specified quota of women in executive officer positions or on boards. Instead, the amendments follow a "comply or explain" approach whereby an issuer would need to confirm that it has a policy regarding the specific disclosure requirement (such as term limits for directors) and provide disclosure regarding the policy. If the issuer has no such policy in place, it must explain why it does not and disclose potential risks associated with not having such a policy in place. According to the Ontario Securities Commission, the "comply or explain" approach is consistent with existing corporate governance disclosure requirements and will allow issuers to determine how gender diversity and board renewal will be addressed in light of the issuer's unique circumstances. However, many commentators have questioned whether these disclosure requirements will bring about any meaningful change.

For the background of the consultation process undertaken in connection with the new board renewal and diversity requirements, please see Aird & Berlis LLP's [August 2013 Securities Law Bulletin](#).

The full CSA Notice of amendments to National Instrument 58-101 can be found [here](#).

** Daniel Everall is an articling student at Aird & Berlis LLP.*

If you have questions regarding these articles, please contact the authors or any member of the Aird & Berlis LLP Corporate Finance Group:

Lawyers:

Sherri Altshuler	416.865.3081	saltshuler@airdberlis.com
Christopher F. Berrigan	416.865.3065	cberrigan@airdberlis.com
Geoff Clarke	416.865.7711	gclarke@airdberlis.com
Melanie Cole	416.865.4638	mcole@airdberlis.com
Thomas A. Fenton	416.865.4631	tfenton@airdberlis.com
Tony Gioia	416.865.3403	tgioia@airdberlis.com
Mathew Goldstein	416.865.4637	mgoldstein@airdberlis.com
Rebecca Kacaba	416.865.7707	rkacaba@airdberlis.com
Steven Kelman	416.865.3446	skelman@airdberlis.com
Richard M. Kimel	416.865.3961	rkimel@airdberlis.com
Martin E. Kovnats	416.865.3419	mkovnats@airdberlis.com
Matthew V. Liberatore	416.865.4639	mliberatore@airdberlis.com
Andrew Magnus	416.865.4744	amagnus@airdberlis.com
Jeffrey K. Merk	416.865.7768	jmerk@airdberlis.com
Anne E. Miatello	416.865.7717	amiatello@airdberlis.com
Margaret T. Nelligan	416.865.7710	mnelligan@airdberlis.com
Jonathan Tong	416.865.3413	jtong@airdberlis.com
Graham Topa	416.865.4739	gtopa@airdberlis.com
Jennifer A. Wainwright	416.865.4632	jwainwright@airdberlis.com

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario, Canada
M5J 2T9
T 416.863.1500 F 416.863.1515
www.airdberlis.com

Any of the articles or papers written by our professionals can be viewed at:
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