

# Securities Law Bulletin

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## TSXV Amends Policy for Changes of Business and Reverse Takeovers

By Daniel Overall, Liam Tracey-Raymont and Andreea Andrei<sup>1</sup>

The TSX Venture Exchange (the “TSXV”) published its amendments to Policy 5.2 – *Changes of Business and Reverse Takeovers* (“Policy 5.2”) of the TSXV Corporate Finance Policy Manual (the “Policy 5.2 Amendments”) on December 15, 2016. Policy 5.2 outlines procedures and filings for TSXV or NEX-listed issuers entering into transactions resulting in a Change of Business (“COB”) or Reverse Takeover (“RTO”). Pursuant to the Policy 5.2 Amendments, the express purpose of Policy 5.2 is to enable issuers to efficiently complete a COB or RTO while protecting the interests of affected shareholders and preserving the integrity of the capital market.

A summary of the notable substantive amendments, such as changes to shareholder approval requirements, is provided below.

### Formalization of the Initial Trade Halt

Previously, the TSXV imposed a trading halt on securities of the issuer following notification of the proposed COB or RTO transaction. The Policy 5.2 Amendments modified the rules to impose a trading halt after the parties reach an agreement in connection with the COB or RTO transaction. Furthermore, the securities of the issuer are now subjected to a trading halt until the disclosure and suitability conditions required by Policy 5.2 are satisfied.

### Exceptions to Shareholder Approval

Prior to the Policy 5.2 Amendments, shareholder approval was required whenever an issuer entered into a COB or RTO agreement. They have introduced an exemption to this requirement if issuers meet all of the following criteria:

- a. the COB or RTO is not a Related Party Transaction (as defined in the TSXV policies) and no circumstances exist that may compromise the independence of the issuer or other interested parties;
- b. the TSXV has confirmed that the issuer has ceased to have active operations;
- c. the issuer is not subject to a cease trade order and its listed securities will not otherwise be suspended from trading on completion of the COB or RTO;
- d. shareholders’ approval of the COB or RTO is not required under corporate law or securities law; and
- e. the issuer has disseminated a comprehensive news release disclosing that it will not obtain shareholder approval and providing the reasons why such approval will not be obtained, including the reasons as set out in the exemption.

### Bridge Financing to the Issuer

The Policy 5.2 Amendments introduce rules formalizing the TSXV’s practices related to issuers intending to enter into a COB or RTO agreement, but which first require additional financing to complete the contemplated transaction (“Bridge Financing”). Additionally, the Policy 5.2 Amendments also formalize policies related to financings that an issuer may complete, after it has entered into a COB or RTO agreement, in order to raise funds to satisfy applicable listing requirements (such as working capital and financial resources) where such financing takes place concurrently with the closing of the COB or RTO transaction

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(“**Concurrent Financing**”). The requirements of Concurrent Financings are set out in Policy 4.1 – Private Placements.

Bridge Financing is permitted upon the issuer satisfying certain requirements, including that:

- a. the issuer lacks sufficient resources to complete the COB or RTO transaction;
- b. the financing is completed independently of the completion of the COB or RTO;
- c. except as otherwise permitted by the TSXV, the proceeds obtained from the Bridge Financing must be used for specific purposes associated with the completion of the COB or RTO (e.g., audit fees, legal fees and due diligence costs);
- d. subject to (f) below, the Bridge Financing is on essentially the same terms as a contemplated Concurrent Financing;
- e. subject to (f) below, the Bridge Financing may be offered at a discount to a Concurrent Financing if the discount is no greater than what is permitted under Discounted Market Price (as defined in the TSXV Policy 1.1 – Interpretation);
- f. where the terms of a contemplated Concurrent Financing have not been set at the time of the Bridge Financing, the terms of the Bridge Financing can be independent of those of the Concurrent Financing;
- g. at least 75% of the Bridge Financing offering is subscribed by parties who are arm’s-length persons to the COB or RTO transaction, if
  - i. the Bridge Financing is done on better terms to the investors than a contemplated Concurrent Financing, or
  - ii. the terms of a contemplated Concurrent Financing have not been set at the time of the Bridge Financing; and
- h. the applicable TSXV fee in respect of the Bridge Financing must be calculated and paid separately from the COB or RTO and a contemplated Concurrent Financing.

#### **Deposits and Loans to Target Companies**

To alleviate any financial pressures caused by the amount of time required to complete a COB or RTO, the Policy 5.2 Amendments permit advances from the issuer to the target in the form of non-refundable deposits and unsecured loans without approval from the TSXV, up to an aggregate maximum amount of \$25,000. Advances greater than \$25,000, including any Bridge Financing, may be made with prior approval from the TSXV provided that such advances are secured and meet certain criteria set out in Policy 5.2.

#### **Sponsorship**

The TSXV has also expressed an intention to eliminate the general requirement for sponsorship. Until this initiative is implemented, the TSXV has indicated that it will be amenable to applications seeking waivers of the sponsorship requirement in appropriate circumstances.

The [amended version of Policy 5.2](#) can be found on the TSXV’s website, along with a [blackline to the previous version](#).

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