

## 13.2.2 Neo Exchange – Listing Manual & Forms Amendments – Request for Comments

### NEO EXCHANGE

### REQUEST FOR COMMENTS

### LISTING MANUAL & FORMS AMENDMENTS

December 12, 2019

#### Introduction

Neo Exchange Inc. (“**NEO Exchange**” or “**Exchange**”) is publishing proposed amendments to the NEO Exchange Listing Manual and Listing Forms (“**Public Interest Rule Amendments**”) in accordance with Schedule 5 to its recognition order, as amended (the “**Protocol**”). As required under the Protocol, the Public Interest Rule Amendments were filed with the Ontario Securities Commission (“**OSC**”) and are being published for comment. A description of the Public Interest Rule Amendments is set out below and the text of the Public Interest Rule Amendments is attached hereto as Appendix A. Subject to any changes resulting from comments received, the Public Interest Rule Amendments will be effective upon publication of the notice of approval on the OSC’s website.

#### Description of the Public Interest Rule Amendments

##### 1. Amendments to the Listing Manual

The following are proposed:

- Revision to the definition of “Approved Bank” to include financial institutions, other than Schedule I and III banks, which are acceptable to the Exchange, and a related change to subsection 10.16(10) requiring a SPAC to disclose in its prospectus details regarding the financial institution where Escrowed Funds will be held.
- Removal of subsection 2.06(4) relating to minimum listing standards for Debt-Based Structured Products.
- Revision of subsection 7.08(3) to change the criteria applicable to the exercise price of Security-Based Compensation Arrangements and Awards.
- Addition of wording to subsection 10.16(22) to permit a SPAC to adopt a Security Based Compensation Arrangement prior to completing a Qualifying Transaction, provided that no Awards may be granted prior to the completion of the Qualifying Transaction.

##### 2. Revised Forms

Proposed changes to the Exchange’s Forms are as follows:

- In the combined Listing Application (see the description below of the consolidation of Forms 1, 1A and 1B), addition of a requirement to advise the Exchange of other listing applications and clarification relating to the payment of listing fees.
- Elimination of Form 4–Issuer Performance Program (IPP), which will be reformatted as a stand-alone agreement to be filed at a later date.
- Changes to Form 14C–Notice of Exercise of Over-Allotment Option to remove an unnecessary requirement and to elicit more accurate information relating to the number of listed securities prior to the exercise of an over-allotment option.

#### Expected Date of Implementation of the Public Interest Rule Amendments

NEO Exchange seeks to implement the Public Interest Rule in early January 2020.

## **Rationale for the Public Interest Rule Amendments and Supporting Analysis**

### 1. Revisions Proposed to Clarify Provisions

The following proposed revisions are intended to clarify concepts, eliminate superfluous requirements and simplify the manner in which requirements are conveyed in the Exchange's rules or Commentaries:

- The revised definition of "Approved Bank" is expanded to institutions beyond banks listed in Schedule I or III of the *Bank Act* (Canada) to provide SPAC issuers raising capital in the United States with more flexibility for required escrow arrangements, provided the financial institution where Escrowed Funds are to be held is acceptable to the Exchange and details sufficient for the Exchange to make this determination are disclosed in the IPO prospectus.
- Subsection 2.06(4) relating to minimum listing standards for Debt-Based Structured Products has been deleted as the listing of convertible debt is covered in section 2.02(6) of the Listing Manual, and the clarification is no longer required under 2.06(4).
- The changes to subsection 7.08(3) are intended to provide added flexibility for the calculation of the exercise price of Awards, and to harmonize our rules with the equivalent provisions of other exchanges.

### 2. Revision Stemming from a Waiver Codification

Revised subsection 10.16(22) is intended to reflect that since SPACs are no longer required to hold a shareholder meeting to carry out a Qualifying Transaction, it is not practical to require the adoption of a proposed Security Based Compensation Arrangement to take place at the time of the Qualifying Transaction. Permitting SPACs to adopt such an arrangement prior to the Qualifying Transaction does not result in a meaningful change to Exchange rules as no Awards can be granted prior to the completion of the Qualifying Transaction.

### 3. Revisions to Forms

Proposed changes to the Exchange's forms are as follows:

- The additional changes to consolidated Listing Agreement (Form 1, 1A and 1B) were included to clarify our expectations relating to the payment of listing fees to the Exchange where an issuer has filed multiple listing applications. This change is based on the fact that with more competition among exchanges, issuers may file multiple applications to gain leverage.
- Form 4—Issuer Performance Program (IPP) is being eliminated from the Listing Forms as we feel the specifics of this incentive program are more appropriately covered under a stand-alone agreement.
- The changes to Form 14C—Notice of Exercise of Over-Allotment Option are intended to both eliminate the submission of superfluous information (the "reference number") and ensure that the number of listed securities outstanding disclosed on the form is as accurate as possible by requiring this number to be as of a date that is closer to the date of the exercise of the over-allotment option than previously required.

## **Expected Impact on Market Structure, Members, Investors, Issuers and Capital Markets**

There is no anticipated impact on the market structure and a positive one on issuers and the capital markets generally, due to the positive impact on issuers' ability to raise capital and meet exchange requirements and a reduction of administrative burden on issuers by continuing to make streamlining changes and mirroring TSX PIF requirements.

## **Impact on Exchange's Compliance with Ontario Securities Law and on Requirements for Fair Access and Maintenance of Fair and Orderly Markets**

The proposed amendments will not adversely impact the Exchange's compliance with Ontario securities laws, including requirements for fair access and maintenance of fair and orderly markets. The bulk of the amendments seeks to provide additional clarity to our existing rules, streamline the listing process for new issuers (and harmonize with other requirements where applicable) and simplify the reporting requirements for Listed Issuers.

## **Impact on the Systems of Members or Service Vendors**

None of the Public Interest Rule Amendments require members or service vendors to modify their systems.

**New Rule**

None of the Public Interest Rule Amendments introduce any material new feature.

**Comments**

Comments should be provided, in writing, no later than January 13, 2020 to:

Cindy Petlock  
Chief Legal Officer  
Neo Exchange Inc.  
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legal@neostockexchange.com

with a copy to:

Market Regulation Branch  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, ON M5H 3S8  
marketregulation@osc.gov.on.ca

Please note that, unless confidentiality is requested, all comments will be publicly available.

**Appendix A  
Text of the Public Interest Rule Amendments**

**NEO EXCHANGE LISTING MANUAL**

**PART I. DEFINITIONS, INTERPRETATION AND GENERAL DISCRETION**

**1.01 Definitions**

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“**Approved Bank**” means a bank listed in Schedule I or III of the *Bank Act* (Canada), or another financial institution acceptable to the Exchange.

**PART II. INITIAL LISTING REQUIREMENTS**

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**2.06 Minimum Listing Standards – Debt-Based Structured Products**

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~~(4) Not Convertible Debt—The issue must not be convertible debt of the Structured Product Issuer of a type contemplated in paragraph 2.02(6)(c).~~

**PART VII. CORPORATE FINANCE AND CAPITAL STRUCTURE CHANGES**

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**7.08 Security Based Compensation Arrangements and Awards**

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- (3) Awards ~~may not~~must have an exercise price or issue price, as applicable, ~~lower than~~based on one of the following:
- (a) the five-day volume weighted average trading price, calculated by dividing the total value by the total volume of securities traded for the relevant period;
  - (b) the closing price of the underlying securities on the previous trading day prior to the date of grant of the Award; or
  - (c) a reasonable pre-determined formula, based on a weighted average trading price or average daily high and low board lot trading prices for a short period of time prior to the date of grant of the Award.
  - ~~(b) the closing market prices of the underlying securities on the trading day prior to the date of grant of the Award.~~

**PART X. CORPORATE GOVERNANCE AND SECURITY HOLDER APPROVAL**

...

**10.16 SPACs**

...

- (10) The escrow agent must invest the Escrowed Funds in Permitted Investments. The SPAC must disclose in its IPO prospectus the proposed nature of the Permitted Investments as well as any intended use of the interest or other proceeds earned on the Escrowed Funds from these investments. If the Escrowed Funds are to be held at an Approved Bank that is not a Schedule 1 or III bank, the SPAC IPO prospectus must disclose details regarding the financial institution where the Escrowed Funds will be held.

...

- (22) ~~Notwithstanding section 7.08, a~~ SPAC ~~may seeking a listing on the Exchange is not permitted to~~ adopt a Security Based Compensation Arrangement prior to completing a Qualifying Transaction; ~~however, it may not grant any type of awards under a Security Based Compensation Arrangement prior to the completion of a Qualifying Transaction. All Security Based Compensation Arrangements must meet the applicable requirements in sections 7.08 and 10.12 of the Listing Manual.~~

**LISTING FORMS**

**FORM 1  
LISTING AGREEMENT FOR ALL LISTED ISSUERS**

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2. Without limiting the generality of the preceding section, the Listed Issuer will at the time of application and once listed:

...

b. ~~identify, during the application process, if it has applied to any other exchange(s) to list the same securities;~~

...

~~g-h.~~ pay when due, all applicable fees or charges, established by the Exchange, acknowledging that the current fees and charges are set out in the Fee Schedule and may be amended from time to time and that such fees are due upon receipt of an invoice, regardless of whether the application is terminated.

**FORM 14C  
NOTICE OF EXERCISE OF OVER-ALLOTMENT OPTION**

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Number of Listed Securities outstanding ~~on the day immediately~~ preceding the public announcement exercise of the over- allotment option:

~~Submission reference number for the transaction approving the over-allotment option:~~

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