

---

# CROSS BORDER SECURITIES UPDATE

November 2003

---

## Inside This Issue:

- Sarbanes-Oxley: Section 906 Certifications Not Required for Forms 6-K, 8-K and 11-K and Section 404 Not Applicable to Form 11-K
- Why List on the CNQ
- NEX Board: Widows and Orphans of the TSX Venture Exchange

## Sarbanes-Oxley: Section 906 Certifications Not Required for Forms 6-K, 8-K and 11-K and Section 404 Not Applicable to Form 11-K

In case there was any doubt, in a telephone conference in early October 2003, Allan Beller of the Securities and Exchange Commission and Mark Corallo of the Department of Justice clarified that neither current reports on Forms 6-K and 8-K nor employee benefit plan reports on Form 11-K are required to include the certifications mandated by Section 906 of the *Sarbanes-Oxley Act of 2002*.

In a second teleconference in October 2003, David Lynn, Chief Counsel of Corporate Finance at the SEC, further clarified that Section 404 of *Sarbanes-Oxley* is not applicable to annual reports for employee benefit plans on Form 11-K. Section 404 of *Sarbanes-Oxley* requires that annual reports filed under Section 13(a) or 15(d) of the *Exchange Act of 1934* contain a report on internal controls in accordance with rules prescribed by the SEC.

---



## Why list on the CNQ?

The following is the text of the speech given by Alixe Cormick on October 9, 2003 at the CNQ Information Session held at the Hyatt Hotel in Vancouver.

The CNQ offers an alternative to the traditional trading forums available in Canada.

From what I can see, the CNQ has stepped away from the “big brother” approach to regulating its listed companies, which is followed by the TSX and TSX Venture Exchange and, instead, has adopted a stream-lined regulatory model based on regular and continuous disclosure. This model allows the Board of Directors of CNQ listed companies to make quick decisions and to focus on building their businesses versus seeking regulatory approval and paying fees every time they enter into a transaction or wish to raise money.

Although the NEX Board offers some reprieve from the full brunt of the rules and cost of being listed on the TSX Venture Exchange to companies who no longer meet its listing requirements, it is a temporary solution. Once these companies have been reactivated, the rules, regulations and filing fees of the TSX Venture Exchange will apply, and - for some companies - continue to hinder their corporate growth.

The OTCBB has been successful in attracting Canadian-based companies to the U.S. marketplace. This success has been built on the desire of companies to move away from over-regulation as well as into the US trading market.

Currently, there are over 500 OTCBB companies based in the lower mainland. Some of these are considered poor quality companies but quite a few are legitimate good revenue building companies that did not see a place for themselves on the traditional exchanges here in Canada. The CNQ may provide these companies with a more attractive Canadian alternative - a reason to come home.

This is not to say that the CNQ is the Canadian version of the wild-west of the U.S. Pink Sheets or the OTC Bulletin Board; one needs to meet certain conditions to be listed on the CNQ. The listing application of the CNQ is equivalent in form to the listing applications of the TSX and TSX Venture Exchange. There is also regulatory oversight of CNQ companies. For instance, CNQ companies are required to provide monthly progress reports, an updated quotation statement each quarter, advance notice of certain transactions, and to obtain CNQ approval before completing any transaction considered a fundamental change. A fundamental change is a reverse-merger or major reorganization.

The key is that CNQ listed company regulations have been stream-lined and are disclosure based. In most cases you provide the information and 24 hours

## CROSS BORDER SECURITIES UPDATE: NOVEMBER 2003

Page 2

### Why the list on the CNQ? (continued)

later you can close your transaction, assuming you have also met any corporate or Securities Act requirements that may apply.

As for fees, \$300 per month covers everything on the CNQ. No annual renewal fees and no additional fees for issuing stock options, completing a private placement or entering into a major or minor transaction, or anything else. The only exception is fundamental change transactions. These are treated by the CNQ like a new listing application and an equivalent fee applies.

#### The CNQ Listing Process

I wanted to talk a bit about the CNQ listing process from the perspective of the listed company and its counsel.

First, let me say that it is not necessary for you to use legal counsel. You could go through the process one on one with the CNQ staff. At some point, however, you will need to engage a lawyer to write the legal opinion letter that is required as part of the listing package. There are also advantages to using a lawyer to help with at least part of the process. I know both of my clients benefited from my review and assistance with the documents and the process because of my experience with the listing process in general.

My experience with the CNQ relates to having listed the first company on the CNQ which is International Thunderbird Gaming Corporation, and a second company which was approved this week for listing. This second company expects to commence trading on the CNQ on

October 15, 2003. The CNQ green-lighted it for trading on the 10<sup>th</sup>, but the 15<sup>th</sup> worked better for the company timing wise.

In both instances my clients and I found the CNQ very receptive to the client companies and genuinely helpful in working out any problems that emerged along the way.

The process takes 15 to 20 days from when the PIFS (the personal information statements) have been submitted to the CNQ. The CNQ does a background check on all principals identified and it takes two to three weeks for these checks to come back. CNQ turn around time on its review of the listing application is much quicker.

Once you have made the decision to list on the CNQ, it is important that you understand which documents you are required to produce and what information and documents you need from third parties. I set out a document checklist at the front and hopefully most of you have a copy. If not, you can download a copy from my web site at [www.venturelawcorp.com](http://www.venturelawcorp.com). I believe you will find the list quite helpful.

You will need to obtain a Word version of the required CNQ forms from Radihika Joseph at the CNQ. The forms on the CNQ web site are in a protected PDF format which won't allow you to change or use the forms properly.

The next thing you need to do is to update your business plan to be submitted to the CNQ and obtain a current report on your property if you are a mining or oil and gas company.

You will also want to obtain a current stockholder and participants list from your transfer agent and DTC right away. Your transfer agent can provide you with the Canadian participant list. However, in most cases, you must request a U.S. participants list directly from DTC. Once you have the list, start sending out letters to the participants to get a list of the number of stockholders holding shares in your company and how many shares each of these stockholders hold. This information is required in the stockholder table of CNQ Form 2A.

Once that has been completed, start working on answering the questions in the Forms. Get your directors, senior officers, and any stockholders holding 20% or more of your stock to complete a Personal Information Form. Draft CNQ Forms 1A, 1B, 2A and 2B. Leave the text of the questions in the form and place your answer underneath each question. Use tables whenever possible.

Arrange for the following required documents from third parties:

- Certificate of Good Standing from Registrar of Companies;
- Certified copy of the Memorandum, Articles, Bylaws and all amendments to these documents;
- Certificate of Compliance from Securities Commission;
- Letter from the Transfer Agent;

Letter from Canadian Depository Trust confirming CUSIP number; and

# CROSS BORDER SECURITIES UPDATE: NOVEMBER 2003

Page 3

## Why the list on the CNQ? (continued)

- Opinion letter from legal counsel.

Have an employee gather any additional documents which must be submitted.

Submit the draft forms and send the initial \$2,000 fee to the CNQ;

Wait for the CNQ to provide feed-back, and respond to any questions, making any amendments required.

Assuming all goes well, you will then file the final version of these documents and the Form 4 - Quotation Agreement and Form 6 - Certificate of Compliance along with your payment of the remaining \$8,000 due. This portion of the fee I understand has now been waived for six months by the CNQ.

Post-approval you need to get your company ready to go live on the CNQ:

- you will need to submit a de-listing letter to any exchange or board your stock is currently trading;
- you will also need to put together the documents which are required to be posted as PDF files on the CNQ web site. This includes all Forms 1B, 2A, 2B; the legal opinion letter; Certificate of Good Standing; Reporting Issuer Certificate; Certificate of Compliance; all of documents filed by the Company on SEDAR for the last two years and an index to those documents.

It is also advisable to familiarize yourself with the CNQ ongoing reporting requirements. Appoint someone in the office to read through the policies, download

the monthly and quarterly reporting forms and add them to you list of things to do when you file documents with SEDAR or issue a press release.

## The Future of the CNQ

I believe the CNQ is a very attractive model for companies who have found the rules and regulations of the more traditional exchanges unnecessarily restrictive. Non-mining companies in particular should find the CNQ a better fit to their business model.

At this stage, the CNQ is relatively young and unproven. I believe it will take about two years for the CNQ to truly establish itself. In the US people thought NASDAQ and the OTCBB were trading models which wouldn't find acceptance but they were wrong. You had the early adopters (the stage at which the CNQ is at now) which really led the way for both NASDAQ and the OTCBB to establish themselves. In the case of NASDAQ, it took ten to fifteen years before it achieved mainstream acceptance, the OTCBB achieved it in five years. I believe it will take less time for the CNQ to reach the same broad recognition and acceptance. The CNQ is a trading model that is new to Canada but one which I believe companies and stockholders will embrace as being more efficient for small cap companies in particular. I am also very excited about the CNQ working towards obtaining recognition as an exchange. I believe it will offer the CNQ greater opportunities in the future to expand its client base beyond what would have been possible as a board.

In closing, it should be noted that listing on the CNQ will not preclude companies from moving onto more

senior boards if they choose to do so at a later date. The TSX, AMEX and NASD Small Cap all look at how a company has historically conducted itself and whether it meets their listing criteria. If a company has grown its business and avoided corporate and trading abuses, there is no reason it cannot and will not move onto one of these more senior exchanges when it makes sense to make that move.

If you are interested in finding out more about the CNQ, please do not hesitate to call our office or visit the CNQ web.



## NEX Board: Widows and Orphans of the TSX Venture Exchange

On August 18, 2003 the TSX Group launched the NEX Board by transferring 197 companies from the TSX Venture Exchange to this new board.

The only way a company can be listed on the NEX Board is by having been demoted to this board by the TSX or TSX Venture Exchange.

Prior to creating the NEX Board, companies which failed to meet the maintenance requirements of the TSX or TSX Venture Exchange were declared inactive and de-listed if they were not reactivated within 18 months. The TSX and TSX Venture

Exchange will now give companies 90 days to reactivate. Companies which fail to reactivate in this period will be moved to the NEX Board instead of being de-listed.

## CROSS BORDER SECURITIES UPDATE: NOVEMBER 2003

Page 4

---

### NEX Board: Widows and Orphans of the TSX Venture Exchange (continued)

CPC companies that have not completed a Qualifying Transactions within the prescribed time period may also be moved to the NEX Board subject to stockholder approval. Under the new rules, CPC stockholders may choose to delist the CPC, cancel the principals' shares and redistribute the remaining cash to stockholders, or cancel the principals' shares and transfer the CPC to the NEX Board.

Companies which have been previously de-listed by the TSX or TSX Venture Exchange are not eligible to trade on the NEX Board.

Staff of the TSX Venture Exchange have referred to the NEX Board as the repair shop. A place where former TSX and TSX Venture companies can rebuild their businesses or re-invent themselves.

NEX Board companies benefit from simplified and minimal compliance policies and a reduced fee structure of \$1,250 per quarter.

NEX Board companies are expected to comply with a total of nine pages of listing policies, excluding corresponding forms. Under these policies, NEX Board companies are given a lot of leeway in order to raise money (up to \$350,000 every 12 months), enter into contracts (filing but no approval necessary unless a major transaction), and to issue stock options (not allowed by inactive companies on the TSX Venture Exchange).

NEX Board companies can stay on the NEX Board indefinitely. Staff at the TSX Venture Exchange hope, however,

that these companies will develop their businesses to meet applicable TSX Venture standards and then apply to re-list on the TSX Venture Exchange.

A company may re-graduate to the TSX Venture Exchange in a number of different ways. Companies which reactivate in the same business with the same principals will be able to re-list based on ongoing Tier 2 maintenance requirements rather than minimum listing requirements. Companies who reactivate in a different business and or principals will have to meet the minimum listing requirements of the TSX Venture Exchange before being allowed to re-list.

A NEX Board company that undertakes a reverse takeover must comply with the TSX Venture Exchange policies governing these transactions. On completion of the transaction, the company will be required to graduate to the TSX Venture Exchange or de-list off the NEX Exchange if the transaction was not in compliance with TSX Venture Exchange policies.

It will be interesting to watch how the NEX Board evolves. Junior mining companies in particular could function quite well under the NEX Board listing policies. For CPC and non-mining companies the NEX Board may not be such a great deal. One non-mining company has already voted with its feet and moved to the new CNQ. Yet again, another has graduated back up to the TSX Venture Exchange.

---

*The information in this newsletter is of a general nature only about recent developments of interest to our clients. You are encouraged to contact legal counsel before acting on any information provided.*



Author Alixe Cormick has assisted small and micro cap companies through each stage of their growth from inception to graduation to junior and more senior trading forums.

### VENTURE LAW CORPORATION

618 - 688 West Hastings Street  
Vancouver, British Columbia, V6B 1P1  
Phone: 604-659-9188  
Fax: 604-659-9178  
Web: [www.venturelawcorp.com](http://www.venturelawcorp.com)

---

## VENTURE LAW CORPORATION