

Corporate Securities Law

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Toronto Stock Exchange and TSX Venture Exchange Seek Public Comment in Ongoing Review of Emerging Market Issuers

On December 17, 2012, the Toronto Stock Exchange (the “**TSX**”) and TSX Venture Exchange (“**TSXV**” and together with the TSX, the “**Exchanges**”) published a joint Consultation Paper on companies with a significant connection to an emerging market jurisdiction (“**Emerging Market Issuers**”). The Consultation Paper summarizes the findings of a broad review of the issues and considerations applicable to listing Emerging Market Issuers and solicits feedback on possible requirements and procedures for Emerging Market Issuers to be adopted by the Exchanges.

Areas of Risk Identified by the Exchanges

In the course of its review, the Exchanges identified four areas relevant to the listing of securities with greater risk potential for Emerging Market Issuers as compared to other reporting issuers. These areas are: (i) management and corporate governance; (ii) financial reporting; (iii) non-traditional corporate/capital structures; and (iv) legal matters relating to title and ability to conduct operations.

The Exchanges are seeking feedback on a broad range of issues concerning listings by Emerging Market Issuers. Examples of the specific questions on which the Exchanges are currently seeking feedback include:

- whether independent directors of Emerging Market Issuers should be required to have certain specific attributes and experience;
- whether the Exchanges should require an independent chair for all Emerging Market Issuers;
- whether there are additional factors that are relevant to an individual’s suitability as CFO, an audit committee member, or auditor for an Emerging Market Issuer other than those factors currently employed by the Exchanges;
- whether an expanded view of “related party transactions” should be adopted to capture transactions where an Emerging Market Issuer appears to be engaging in non-arm’s length transactions that do not meet the general definition for related party transactions; and
- whether the Exchanges should refuse to list Emerging Market Issuers that have adopted non-conventional corporate structures; and
- whether the Exchanges should require sponsorship for all Emerging Market Issuers.

Proposed TSXV Requirements and Procedures

The TSXV has also requested comments on proposed specific requirements and procedures applicable to Emerging Market Issuers seeking to list on the TSXV. These proposed requirements and procedures are intended to supplement the TSXV’s existing policy requirements, including those governing initial listing requirements and processes, sponsorship requirements and matters relating to corporate governance.

While the proposed requirements and procedures are intended to apply principally in respect of new listings, the TSXV will require compliance on an ongoing basis.

The proposed requirements and procedures will apply, generally, to issuers whose principal business operations or operating assets are located in an Emerging Market Jurisdiction, which is defined as any jurisdiction outside of Canada, the United States, Western Europe, Australia and New Zealand. The proposed requirements and procedures will not apply to certain mining and energy issuers if the majority of such Issuer’s directors and senior officers have not been residents in an Emerging Market Jurisdiction for the majority of the past ten years. Highlights of proposed requirements include the following:

- Qualifications of Management and Corporate Governance.** The CEO, CFO, and the board of directors of an Emerging Market Issuer must have adequate knowledge and experience with Canadian public company requirements, including Canadian securities laws and policies of the TSXV. To meet this requirement, the TSXV will look for recent experience as a director or officer of a TSXV or TSX- listed Issuer with a positive track record of compliance. In addition, senior officers and the board of directors must demonstrate that they have adequate industry and technical experience in the Emerging Market Jurisdiction in which the Issuer operates.

2. **Communication.** The Issuer must have senior officers and directors who are bilingual in either French and English and the primary language in the Emerging Market Jurisdiction in which the Issuer operates. The Issuer must also demonstrate how any language barriers within the Issuer's management team and between the Issuer's management team and its advisors will be overcome. If any document or agreement that is required to be filed with the TSXV is prepared in a language other than English or French, the Issuer must file a translation that has been prepared by a duly certified translator.
3. **Requirements of the CFO.** Emerging Market Issuers must demonstrate that the CFO has the capability to design and apply effective internal controls over financial reporting. At the time of listing, the Issuer must confirm with the TSXV the frequency with which it will be necessary for the CFO to travel to the Issuer's operation sites in order to fully exercise his or her mandate.
4. **Requirements of the Audit Committee.** Emerging Market Issuers must demonstrate that every member of the audit committee is financially literate and independent, and that at least one member of the committee has Canadian financial reporting skills and experience with audit engagements for public companies.
5. **Independent Oversight of Related Party Transactions.** In addition to fulfilling existing requirements, Emerging Market Issuers must adopt internal written policies regarding Related Party Transactions and transactions with Non-Arm's Length Parties that address matters such as independent director oversight and approval, adequate and timely disclosure, financial statement disclosure and compliance with applicable regulatory requirements.
6. **Background and Corporate Searches.** The TSXV may, at the expense of the Emerging Market Issuer, conduct corporate due diligence searches in any jurisdiction relevant to an Emerging Market Issuer.
7. **Qualifications of Auditors.** In general, auditors for an Emerging Market Issuer must be pre-cleared by the TSXV. The TSXV must be satisfied that the auditor has sufficient experience and expertise in the relevant jurisdiction.
8. **Financial Reporting and Adequacy of Internal Controls.** Auditors must review the interim period financial statements of all Emerging Market Issuers for the first two years after the listing. Auditors will also be required to review and evaluate the Issuer's internal controls over financial reporting prior to the listing. The Issuer's CEO and CFO must confirm to the TSXV in writing that the internal controls in place provide reasonable assurance regarding reliability of financial reporting. This confirmation must include a description of any material weakness identified in the internal controls, and any plans of the Issuer to remediate such material weaknesses.
9. **Non-Traditional Corporate/Capital Structure.** Where an Emerging Market Issuer intends to employ a non-traditional corporate structure or share capital structure, the Issuer must provide an explanation of why such structure is necessary. In the absence of a satisfactory explanation the TSXV may refuse the listing. Full, true and plain disclosure of the nature, material characteristics and associated risks of the corporate/capital structure must be disclosed in the Issuer's principal document at the time of listing, and in its subsequent annual filings.
10. **Legal Matters Relating to Title and Ability to Conduct Operations.** An Emerging Market Issuer must provide a satisfactory title opinion for principal properties or assets located outside of Canada or the United States. The Issuer must also provide a legal opinion confirming that the Issuer has all required permits, licenses and approvals to conduct business in the relevant jurisdiction.
12. **Sponsorship Requirements.** The proposed requirements and procedures restrict the availability of existing sponsorship exemptions for new listings from Emerging Market Issuers. The Exchange will continue, at its discretion, to request additional information about the Issuer from the Sponsor in the form of a Sponsorship Report.

Next Steps

Once comments are received on these matters, each of the TSX and the TSXV will assess whether to implement additional guidance or requirements for listing Emerging Market Issuers. If amendments are proposed to the TSX Company Manual, they will be subject to public comment and regulatory approval.

For more information on the Consultation Paper and proposed Appendix 2B, or for additional information on the regulation of Emerging Market Issuers, please contact any member of our Corporate Securities Group.