

## Corporate Securities Law

July 15, 2015

### Toronto Stock Exchange Issues Guidance for Emerging Market Issuers

The Toronto Stock Exchange (TSX) has published a staff notice (the “**Staff Notice**”) to provide guidance to applicants and issuers with a significant connection to emerging market jurisdictions (“**Emerging Market Issuers**”). The Staff Notice is further to a joint Consultation Paper on Emerging Market Issuers published by the TSX and TSX Venture Exchange on December 17, 2012 (see our December 20, 2012 Update, *Toronto Stock Exchange and TSX Venture Exchange Seek Public Comment in Ongoing Review of Emerging Market Issuers*). The purpose of the Staff Notice is to improve transparency in respect of TSX practices and procedures, and provide a better understanding of the TSX listing requirements, relating to Emerging Market Issuers.

#### Identifying Emerging Market Issuers

To determine whether an applicant or an issuer may be an Emerging Market Issuer, the TSX will generally consider, in respect of each applicant or issuer: (i) the residency of “mind and management”; (ii) the jurisdiction of the principal business operations and assets, (iii) the jurisdiction of incorporation; (iv) the nature of the business, and (v) the corporate structure. Such considerations will be focused on applicants or issuers with significant connections to jurisdictions outside of Canada, the United States, the United Kingdom, Western Europe, Australia and New Zealand and will take into account, among other things, the prevalence of the rule of law, the rating in corruption perception and transparency indices, the similarities to Canada’s legal system, and membership in key international organizations.

#### Guidance for Listing of Emerging Market Issuers

In the Staff Notice, the TSX identified the following areas of greater risk potential for Emerging Market Issuers: (i) management and corporate governance; (ii) financial reporting; (iii) adequacy of internal controls; (iv) non-traditional corporate/capital structures; and (v) legal matters relating to title and ability to conduct operations. The Staff Notice provides non-exhaustive guidance for Emerging Market Issuers submitting an original listing application to the TSX to explain how certain potential risks associated with such applicants might be mitigated. Highlights of the guidance include the following:

##### (i) *Management and Corporate Governance*

An Emerging Market Issuer must demonstrate to the TSX that its board and management have adequate knowledge and expertise relevant to the applicant’s business and industry as well as adequate public company experience. The TSX’s consideration would include, among other things, whether: (a) a significant proportion of management and the board has North American public company experience; (b) there is independent oversight of management by the board; (c) at least one director has significant local business knowledge and experience in the jurisdiction of the applicant’s principal business operations; (d) at least one member of senior management is fluent in English or French to effectively communicate with stakeholders and applicable regulatory authorities; and (e) each of the CFO and members of the audit committee has suitable knowledge of, and experience with, applicable Canadian securities laws and financial reporting matters.

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## (ii) *Auditors*

The TSX must be satisfied that the applicant's auditor will be able to adequately discharge its responsibilities. The TSX will consider, among other things, the auditor's expertise in the jurisdiction where the applicant principally operates, the size and resources of the audit firm, and the auditor's experience in auditing other Canadian reporting issuers. In certain cases, the TSX may require an Emerging Market Issuer's auditor to review interim financial statements on an ongoing basis.

## (iii) *Internal Controls*

The TSX requires applicants to have a comprehensive internal control system in place and may request that the CEO and CFO confirm in writing that the internal controls provide a reasonable assurance of financial reporting reliability. The TSX may also request, among other things, that the applicant produce an annual report commenting on the adequacy of internal controls.

## (iv) *Sponsorship*

Generally, an Emerging Market Issuer should be prepared to provide sponsorship in connection with its listing application. Before engaging a sponsor, the TSX encourages applicants to first confirm that the TSX does not object to such sponsor. On August 1, 2015, the TSX will begin publishing the names of sponsors in its original listings bulletins and will also indicate, where applicable, if an applicant is exempt from sponsorship requirements or if such requirements are waived.

## (v) *Related Party Transactions*

The TSX may require Emerging Market Issuers to adopt a policy regarding related party transactions, particularly if the applicant has a controlling security holder. The policy should address matters such as independent director oversight and approval, public disclosure and other reporting and filing requirements.

## (vi) *Non-traditional Capital or Corporate Structure*

The TSX expects comprehensive disclosure regarding any non-traditional corporate structure that explains why the structure is necessary and the risks associated with using that structure. A legal opinion may be required that addresses any noted concerns of the TSX.

## (vii) *Other Guidance*

In addition, the TSX:

- recommends that Emerging Market Issuers arrange a pre-filing meeting with the TSX to discuss appropriate application procedures and highlight any potential issues,
- may, at the expense of the Emerging Market Issuer, conduct corporate due diligence searches in any jurisdiction relevant to an Emerging Market Issuer, and
- may require the applicant to adopt certain policies, such as governance, disclosure, and whistle-blowing policies, which must be pre-cleared by the TSX.

## **Impact of TSX Guidance**

The guidance set out in the Staff Notice provides greater clarity on the TSX's consideration of Emerging Market Issuers. Accordingly, Emerging Market Issuers that are either in the process of listing on the TSX, or are currently listed on the TSX, should be familiar with the Staff Notice and, to the extent applicable, work to address any deficiencies in current practices.

For more information on the Staff Notice, or for additional information on the regulation of Emerging Market Issuers, please contact any member of our Corporate Securities Group.