GOING PUBLIC IN CANADA AND THE UNITED STATES

DAVIES WARD PHILLIPS & VINEBERG LLP

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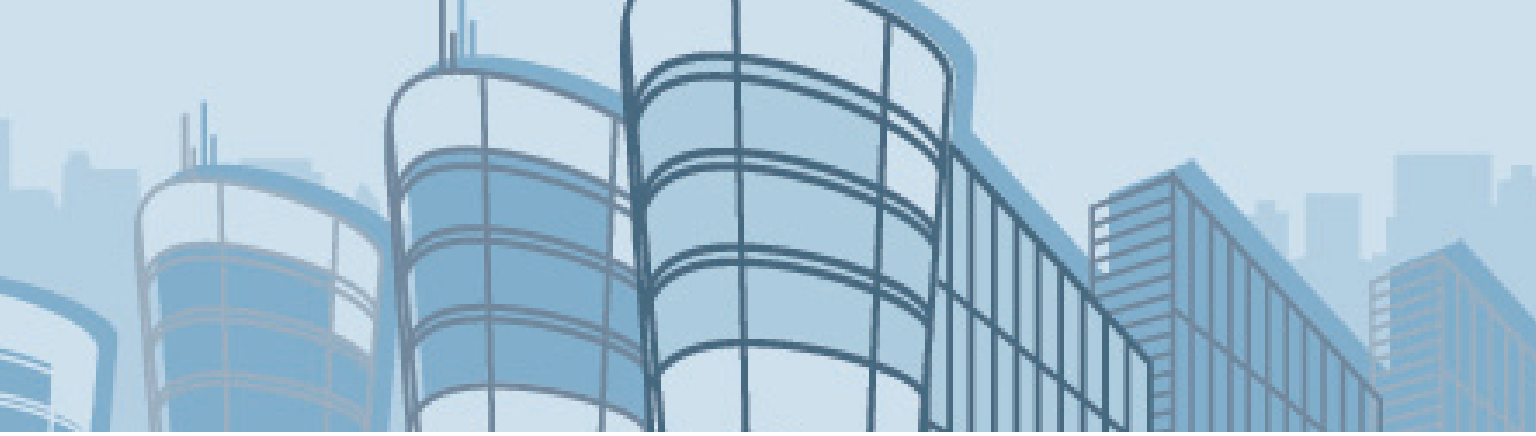

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Introduction

We have prepared this guide to summarize the principal legal processes and consequences of going public in Canada or the United States. "Going public" refers to the process of a privately held company becoming a public company. The most common method of going public is an initial public offering (or "IPO"), which involves, among other things, filing a prospectus meeting the requirements of applicable securities laws and using that prospectus to offer shares to the public. Typically, a company will simultaneously list its shares on a stock exchange in order to create an active secondary marketplace for its shares. Companies often decide to go public in Canada, the United States or elsewhere when additional capital needed for growth is no longer available from the principals, business associates, angel investors, lenders, or venture capitalists, or when existing securityholders are looking for an exit strategy. Going public has significant consequences for a company and its principals. Before beginning the process, a company will need to ask itself why it wishes to go public; what it wishes to achieve; whether the benefits of doing so outweigh the burdens associated with being a public company; whether Canada, the United States or another jurisdiction is the optimal place to make this investment of time, energy and financial resources; and whether the timing is optimal.

BENEFITS OF GOING PUBLIC IN CANADA AND THE UNITED STATES

There are a number of benefits to a private company to going public and listing in Canada and the United States. Generally speaking these benefits include:

- Greater liquidity for investors in the company as a result of an efficient and regulated market on which the company's shares may be traded.
- Access to the public equity and debt markets, reducing the company's cost of financing.
- Increased credibility with the public from public company disclosure and regulation, which may provide other business advantages over privately held companies, including, in obtaining bank financing.
- Stock that is more attractive as a currency to acquire other companies and assets and as equity-based compensation for executives and employees.

BURDENS OF GOING PUBLIC IN CANADA AND THE UNITED STATES

The cost of an IPO can be significant. Underwriters' or agents' discounts, commissions and expenses can range from 3 to 7% or more of the total proceeds of the IPO, and the issuer will incur other significant fees, including legal, accounting, printing and filing fees and, in some cases, experts' fees (such as those charged by geologists, engineers and appraisers). In addition to these costs, preparing for and conducting an IPO will involve a significant commitment of the issuer's internal resources.

In addition to these up-front costs, there are more significant ongoing burdens associated with being a public company. These include:

- Ongoing disclosure, governance and other obligations of a public company as a reporting issuer under applicable securities laws and stock exchange rules, including the requirement to establish, maintain and certify its internal controls over financial reporting and disclosure controls and procedures.

- Increased exposure to lawsuits for, among other things, alleged misrepresentations in the issuer's disclosure or selective or untimely disclosure.
- Increased vulnerability to hostile takeovers where the initial owners have incurred a substantial dilution of their voting power.
- New and additional demands on management due to, among other things:
    - pressure to increase stock prices in both the near or long term;
    - timely and continuous public reporting requirements;
    - expanded corporate governance requirements; and
    - responsibility to a broader constituency of stakeholders.
- Constraints on management's flexibility to freely operate the company as a result of additional regulatory requirements and pressures from institutional and other large shareholders.

Companies need also be mindful that, once they have gone public, it may be difficult to transition back to a private company as there are significant costs, time and other requirements associated with "going private" transactions.

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Going Public in Canada

METHODS OF GOING PUBLIC IN CANADA

- Most issuers that become public companies in Canada will list their securities on one of the two principal stock exchanges in Canada: the Toronto Stock Exchange, also known as the "TSX", or the TSX Venture Exchange, also known as the "TSX-V".

- A company can obtain a listing on the TSX or the TSX-V via an IPO, a direct listing or a reverse take-over. A company can also obtain a listing through the TSX-V's capital pool company program or the TSX's special purpose acquisition corporation program.

INITIAL PUBLIC OFFERING

- An IPO is the traditional method for going public. It is often done together with listing an issuer on a stock exchange, which involves the issuance or distribution of securities in a public offering that are qualified by a prospectus filed publicly with the relevant securities commissions together with an application for a public listing on an exchange. The prospectus provides potential investors with all material information related to the issuer and the securities being distributed.

DIRECT LISTING

- An issuer already listed on another stock exchange may list directly on the TSX or TSX-V if it is able to meet the applicable listing standards. As well, an issuer may be eligible for certain exemptions from the regulatory and reporting requirements under applicable securities laws if it is a reporting issuer in certain foreign jurisdictions.

REVERSE TAKE-OVER

- A reverse take-over (or "RTO"), also known as a back door listing or reverse merger, can be done in a number of ways, including through an amalgamation or issuance of shares in exchange for other shares or assets of the issuer. Such a transaction often involves an already listed "shell" company that does not have an operating business but continues to have public shareholders. The RTO is subject to TSX or TSX-V approval, and the company resulting from the RTO must meet the original listing requirements of the TSX or TSX-V.

TSX-V CAPITAL POOL COMPANY PROGRAM

- The TSX-V allows an issuer to list as a capital pool company (or "CPC"). The CPC program was designed to provide businesses with the opportunity to obtain financing earlier in their development than might be possible with an IPO. The CPC program permits a TSX-V listing to be obtained by a newly created company that has no assets, other than cash, and has not commenced commercial operations. The CPC is then expected to use this "pool" of funds to identify and evaluate potential assets or businesses which, when acquired, would qualify the CPC for listing on the TSX-V.

TSX SPECIAL PURPOSE ACQUISITION COMPANY

- In 2008, the TSX introduced a program for special purpose acquisition corporations (or "SPAC") as a result of growing market acceptance of SPACs in the United States. A SPAC is similar to a CPC in that both involve the creation of publicly-traded shell companies that later acquire an operating business using the initial proceeds raised. However, SPACs are much larger than CPCs and therefore involve more stringent investor protections.

OVERVIEW OF CANADIAN STOCK EXCHANGE LISTING REQUIREMENTS

- There are minimum financial, distribution and other standards that must be met by a company seeking a listing on the TSX or TSX-V, which are outlined below. Detailed summaries of the listing requirements for the TSX and the TSX-V are attached as Appendix "A" and "B", respectively.

- A company seeking to list on either exchange must file with the relevant exchange a listing application together with supporting data demonstrating that the company is able to meet the minimum listing requirements of the exchange. The company must also sign a listing agreement with the exchange which establishes the company's obligation to comply with the exchange's ongoing requirements for maintaining a listing.

- Generally, the exchanges require that securities issued to principals, directors and senior officers of the issuer be escrowed or held subject to restrictions on resale.

LISTING REQUIREMENTS ON THE TORONTO STOCK EXCHANGE

- The TSX classifies applicant issuers into one of three listing categories: (i) industrial (general), (ii) mining, and (iii) oil & gas.

    - The industrial (general) category is further separated into profitable companies, companies forecasting profitability, technology companies, and research & development companies.

    - The mining category is further separated into producing mining companies and mineral exploration and development-stage companies.

- Minimum financial requirements vary between these sub-categories of issuers. In addition, an issuer must meet the applicable public distribution requirement. Generally, this requires an issuer to have at least 1,000,000 freely tradeable shares with an aggregate market value of at least Cdn.$4,000,000 (Cdn.$10,000,000 for industrial companies classified as "technology" companies engaged in business such as hardware, software, telecommunications and information technology) held by at least 300 public shareholders, each holding at least one board lot (100 securities each of $1.00 or more; 500 securities between $1.00 and 10¢; or 1,000 securities under 10¢). In this context, "freely tradeable" means all of the issued and outstanding securities less securities owned by directors, officers and significant securityholders and any securities subject to resale restrictions such as those resulting from an escrow arrangement, a pooling agreement or a private placement.

- An issuer must also demonstrate evidence of management experience and expertise. Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors, a chief executive officer ("CEO"), a chief financial officer ("CFO") and a corporate secretary.

- Sponsorship by a participating organization of the TSX and the corresponding written sponsor's report is mandatory for all applicants other than those classified as "TSX exempt". An issuer may be classified as TSX exempt when the applicant issuer is experienced, has net tangible assets (or proved developed oil and gas reserves, as applicable) of Cdn.$7,500,000 or more, meets certain cash flow requirements, has adequate working capital and, in the case of a mining issuer, has proven and probable reserves to provide a mine life of at least three years.

- There are no unique requirements for the management or financial requirements for an international issuer already listed on another recognized exchange that is acceptable to the TSX (such as the Nasdaq Stock Market, the New York Stock Exchange, the London Stock Exchange, the Tokyo Stock

Exchange or the Hong Kong Stock Exchange) and incorporated outside Canada. However, as with all applicant issuers, an international issuer must be able to demonstrate that it is able to satisfy all of its reporting and public company obligations in Canada. In addition, an international issuer is generally required to have some presence in Canada. This requirement of a Canadian presence may be satisfied by having a member of the board of directors or management, an employee or a consultant of the issuer situated in Canada.

LISTING REQUIREMENTS ON THE TSX VENTURE EXCHANGE

- The TSX-V's listing requirements are specifically designed for emerging companies, and therefore the listing requirements focus more on the experience of the management team rather than the company's products and services.

- The TSX-V classifies applicant issuers into two tiers based on historical financial performance, stage of business development and financial resources:

    - Tier 1 is for issuers with greater financial resources and has more onerous minimum listing requirements, and ongoing tier maintenance requirements than for Tier 2 issuers.

    - Tier 2 is for early-stage companies in all industry sectors. The majority of the TSX-V's listed issuers trade in Tier 2. Tier 2 issuers may obtain Tier 1 status if the Tier 1 minimum listing requirements.

- Minimum public distribution requirements differ between the two tiers:

    - Tier 1: at least 1,000,000 freely tradeable shares with an aggregate market value of at least Cdn.$1,000,000, held by at least 200 public shareholders, each holding one board lot or more.

    - Tier 2: at least 500,000 freely tradeable shares with an aggregate market value of at least Cdn.$500,000, held by at least 200 public shareholders, each holding one board lot or more.

- Issuers are further classified within each of the two tiers into industry sectors as: (i) mining, (ii) oil & gas, (iii) technology or industrial, (iv) real estate or investment, and (v) research & development.

- Minimum quantitative requirements such as net tangible assets, working capital and financial resources are based on tier and industry sector and are broken down into further categories based on the issuer's business.

- Applicant issuers in certain tiers and industry sectors may be required to submit a management plan demonstrating reasonable likelihood of revenue, working prototypes, test results or geological reports demonstrating commercial viability.

- Sponsorship and a sponsor's report may be required in connection with each application for a new listing. In making a determination as to whether an applicant meets the listing requirements, the TSX-V will rely heavily on the fact that a sponsor has agreed to sponsor the applicant issuer and prepare and file the sponsor's report.

OVERVIEW OF PROSPECTUS AND OTHER DISCLOSURE REQUIREMENTS FOR GOING PUBLIC IN CANADA

PROSPECTUS REQUIREMENTS

- A prospective issuer must prepare and publicly file a preliminary prospectus and final prospectus with the relevant exchange and securities regulators for its shares to be listed on the TSX or TSX-V and to qualify a public offering of those shares.

- The primary purpose of the prospectus is to enable public investors to make an informed investment decision. The prospectus must provide full, true and plain disclosure of all material facts relating to the issuer and the securities to be distributed.

- The prospectus must contain extensive information about matters such as the issuer's business, capital structure, recent acquisitions, directors and officers, corporate governance, legal proceedings affecting its business, and any other material information as well as describe the risk factors relating to an investment in the securities.

- The prospectus must also contain extensive financial disclosure in respect of the issuer. Typically, the following financial statements of the issuer (accompanied by appropriate note disclosures) are required:

    - annual statements of income, retained earnings and cash flows for each of the three most recently completed financial years ended more than 90 days (120 days for a venture issuer) before the date of the prospectus;

    - a balance sheet as at the last day of the two most recently completed financial years;

    - interim statements of income, retained earnings and cash flows for the most recently completed interim period that ended more than 45 days (60 days for a venture issuer) before the date of the prospectus and for the comparable period in the immediately preceding financial year; and

    - a balance sheet as at the last day of the most recently completed interim period, and a balance sheet as at the end of the comparable period in the immediately preceding financial year.

- The annual financial statements included in a prospectus must be audited by an independent auditor and be accompanied by a report of that auditor with no reservation. Unaudited financials included in the prospectus must have been reviewed by an independent auditor.

- Generally speaking, where an issuer has completed a significant acquisition, or such an acquisition is probable, the prospectus must also include financial statements of the business acquired, together with *pro forma* financial statements of the issuer giving effect to the acquisition. There are three alternative tests for determining whether an acquisition is "significant" for these purposes.

- Generally, financial statements included in the prospectus must be prepared in accordance with Canadian generally accepted accounting principles (or "GAAP"). However, exceptions are available for certain foreign issuers that have filed financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") and for issuers that report in the U.S. and file financial statements prepared in accordance with U.S. GAAP. In addition, acquisition statements may be prepared in accordance with U.S. GAAP or IFRS provided that where the accounting principles used for the acquisition statements differ from those used for the issuer, they must be reconciled to the accounting principles used by the issuer.

- Further financial information that must be contained in the prospectus includes Management's Discussion and Analysis ("MD&A") discussing the business by reference to the financial statements in the prospectus and an outline of the liquidity and capital resources of the issuer. The MD&A is designed to give prospective investors the opportunity to analyze and evaluate the past performance and future prospects of the business from management's perspective.

- The CEO, CFO and any two additional members of the issuer's board of directors must certify that the prospectus contains full, true and plain disclosure of all material facts relating to the securities being offered.

ADDITIONAL DISCLOSURE FOR MINERAL PROJECTS: NI 43-101

- For certain companies carrying on business in the mining sector, National Instrument 43-101 requires additional disclosure, including a technical report (which must be filed with the preliminary prospectus), in respect of each mineral project on a property material to the issuer.

- A "mineral project" means any exploration, development or production activities, including a royalty or similar interest in these activities, in respect of diamonds, natural solid inorganic material, or natural solid fossilized organic material including base and precious metals, coal and industrial minerals.

- Disclosure of scientific or technical information must be based on the technical report, or other information, prepared by or under the supervision of a "qualified person", such as an engineer or geoscientist who meets the qualifications set out in the National Instrument. In certain circumstances, a qualified person must be independent of the issuer.

- An issuer must also file certificates and consents of the qualified persons responsible for each technical report at the time of filing the report.

ADDITIONAL DISCLOSURE FOR OIL AND GAS ACTIVITIES: NI 51-101

- For certain companies undertaking oil and gas activities, National Instrument 51-101 requires additional disclosure to be included in the prospectus in respect of their oil and gas reserves. The National Instrument also requires this same disclosure to be filed annually by an issuer once it has become a "reporting issuer".

- An "oil and gas activity" includes construction, drilling and production activities necessary to retrieve oil and gas from their natural reservoir; the extraction of hydrocarbons from oil sands; the search for crude oil or natural gas in their natural states and original locations; and the acquisition of properties or property rights in order to facilitate the removal of oil or gas from these properties.

- Among other things, the National Instrument requires a statement of reserves data together with a report executed by an independent qualified reserves evaluator or auditor, and a report of the issuer's management and directors confirming their respective responsibilities and roles in connection with that statement and report.

- When the disclosure concerns anticipated results from resources not currently classified as resources, the disclosure must be prepared by a professional valuator and, in certain cases, must include the significant positive and negative factors relevant to the estimate or expectation.

PROSPECTUS REQUIREMENTS: NON-CANADIAN ISSUERS

- The Canadian Securities Administrators (the "CSA") acknowledge that it is often difficult for non-Canadian issuers to comply simultaneously with the Canadian prospectus requirements and the corresponding requirements of their home jurisdictions, and, therefore, there are several exemptions from these requirements available to foreign issuers.

- A "foreign issuer" is an issuer, other than an investment fund, that is incorporated outside of Canada, unless more than 50% of its voting shares are owned by residents of Canada and one or more of the following is also true: the majority of its directors and executive officers are Canadian residents, more than 50% of its assets are in Canada, or the business is principally administered in Canada.

- Foreign issuers have various options relating to accounting principles and auditing standards used in preparing their financial statements and, for example, may be able to use financial statements prepared in accordance with U.S. GAAP or International Financial Reporting Standards instead of Canadian GAAP.

- Eligible issuers incorporated in the United States can also use the "Northbound MJDS" rules when offering securities in Canada. These rules are discussed in greater detail below.

PREPARING, FILING AND QUALIFYING A CANADIAN PROSPECTUS

- Although the information contained in every prospectus must comply with requirements prescribed by provincial securities legislation, the amount and type of information disclosed and the length of time required to complete the drafting of the prospectus will vary depending on, among other things, the nature and complexity of the issuer's business. The contents of (and time to complete) the preliminary prospectus will also be dependent on the "due diligence" review conducted by the issuer and the underwriters for the offering and their respective counsel.

- Once prepared, the preliminary prospectus is filed, together with prescribed supporting and other documentation, with the securities regulators in the provinces and territories where the issuer's shares will be offered. All Canadian provinces, other than Ontario, participate in a "passport system" whereby a company can apply to a single "principal regulator" for the filing and review of a prospectus. The principal regulator will be responsible for the review of the prospectus on behalf of all participating provincial regulators. Where Ontario is not the principal regulator, it will conduct a concurrent review of the prospectus.

- An issuer must file its material contracts with the prospectus. Provisions of these contracts may be omitted or redacted in the version that is filed where disclosure would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions.

- After the preliminary prospectus and certain other required documentation has been filed with the securities regulators, a receipt will be issued and a "waiting period" commences, which concludes upon the issuance of a receipt for the final prospectus. Typically, the issuer will file the listing application referred to above when the preliminary prospectus is filed.

- The final receipt is issued only after the securities regulators have reviewed the preliminary prospectus, the issuer has provided the regulators with any requested additional information, the issuer has corrected any deficiencies in a final, filed version of the prospectus, and discussions between the issuer and securities regulators have reached a satisfactory conclusion.

- During the waiting period, issuers may solicit interest from prospective investors provided each prospective investor receives a copy of the preliminary prospectus prior to the solicitation (or immediately after the investor indicates an interest in purchasing).

CIVIL LIABILITY FOR MISREPRESENTATIONS IN A PROSPECTUS

- Issuers, their directors, control persons, insiders and certain other persons may face civil liability under Canadian securities laws to purchasers of the issuer's securities if a prospectus contains a misrepresentation, which is defined as: (i) an untrue statement of material fact, or (ii) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. A material fact is a fact that would reasonably be expected to have a significant effect on the market price or value of securities.
- The parties against whom a statutory claim for misrepresentation may be made include:
    - the issuer;
    - each underwriter of the offering;
    - each director of the issuer;
    - every person or company whose consent to disclosure of information in the prospectus has been filed, but only with respect to reports, opinions or statements that have been made by them; and
    - every person or company that signed the prospectus.
- A plaintiff must prove that the securities were issued under the prospectus and that the plaintiff suffered damages (typically a loss due to a decline in the price of the security). The plaintiff is not required to prove reliance, as the right of action is available without regard to whether the plaintiff has actually relied on the misrepresentation, and furthermore, the plaintiff is also not required to prove knowledge, intent or recklessness on the part of the defendant.
- The issuer does not have a "due diligence" defence in respect of a misrepresentation contained in a prospectus. Defendants (other than the issuer) may assert a "due diligence" defence (that is, after reasonable investigation they had reasonable grounds to believe that there had been no misrepresentation), but the defence may be difficult to establish for directors and officers.
- There is no liability for misrepresentation if a defendant proves that the purchaser purchased the securities with knowledge of the misrepresentation.
- There are statutory safe harbour defences that may be relied upon for reasonable forward-looking information (other than those contained in a financial statement) accompanied by adequate cautionary language. However, the safe harbour defence does not apply in respect of forward-looking information contained in a document released in connection with an IPO.

SAMPLE TIMELINE FOR GOING PUBLIC IN CANADA

- A sample timeline for going public in Canada is attached as Appendix "C".

Overview of Obligations as a Reporting Issuer in Canada

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Overview of Obligations as a Reporting Issuer in Canada

PRINCIPAL CONTINUOUS DISCLOSURE OBLIGATIONS

GENERAL

- Once an issuer has received a receipt for a final prospectus, an issuer becomes a "reporting issuer" in each of the applicable provinces and territories. For as long as the issuer remains a "reporting issuer" (and a listed company, as applicable), it must comply with certain continuous disclosure obligations imposed by securities legislation applicable in those jurisdictions and the rules of the stock exchange on which it has listed.

- The purpose of these disclosure obligations is to allow investors equal access to information and adequate time to analyze, consider and respond to material facts and material changes that may affect their investment decisions.

FINANCIAL REPORTING

- A reporting issuer must file the following annual and interim financial statements (accompanied by appropriate note disclosures):

    - within 90 days (120 days for venture issuers) of the end of each financial year, an income statement, a statement of retained earnings and a cash flow statement for the year and the financial year immediately preceding and a balance sheet as at the end of each of those two years; and

    - within 45 days (60 days for venture issuers) of the end of each quarter, an income statement, a statement of retained earnings and a cash flow statement for the interim period and comparative financial information for the corresponding interim period in the immediately preceding financial year and a balance sheet as at the end of the most recent interim period and the immediately preceding financial year.

- These financial statements must be accompanied by MD&A.

- The annual financial statements must be audited and accompanied by an independent auditor's report with no reservation. If an auditor has not reviewed the interim financial statements, a notice to that effect must accompany the statements.

OTHER REPORTS

- Reporting issuers (other than venture issuers) must also file annually an Annual Information Form ("AIF"), which describes the corporate and capital structure of the issuer, its business and prospects, the market for its securities, its officers and directors, and risks and other external factors that have an impact on the issuer. This disclosure is supplemented throughout the year by the issuer through subsequent continuous disclosure filings, including quarterly financial reports (as discussed above), news releases, material change reports and business acquisition reports (as discussed below). Issuers with oil and gas properties must also file annual updates to their reserve data and other oil and gas information, which may be included in the AIF. An issuer with material mineral projects must provide additional disclosure regarding those projects in its AIF and may also be required to file new technical

reports when filing its AIF or at other times when new material scientific or technical information about the project is disclosed.

- A reporting issuer must immediately issue a press release concerning any material change in the affairs of the issuer and must file a "material change report" respecting the material change as soon as practicable and in any event within 10 days of the material change. For an issuer with oil and gas properties, the material change report must (if applicable) also discuss the issuer's reasonable expectation of how the material change has affected its reserve information. A material change is:
    - a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer; or
    - a decision to implement a change referred to above, made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable.
- As in the United States, selective disclosure is prohibited under Canadian securities law under insider trading and tipping laws which prohibit the disclosure of a "material change" or "material facts" concerning a public company which have not been broadly disclosed to the investing public unless such selective disclosure is made in the "necessary course of business".
- The TSX also requires that listed companies disclose forthwith all "material information", which encompasses both material facts and material changes. Material information is any information relating to the business and affairs of a company that results in or would reasonably be expected to result in a significant change in the market price or value of any of the company's listed securities.
- Management of an issuer must prepare an information circular to be sent to shareholders in connection with the solicitation of proxies for use at a meeting of shareholders. Please refer to the section below entitled "Shareholder Meetings and Proxy Solicitation" for further information.
- An issuer completing a significant acquisition must also file a "business acquisition report", which describes the business acquired and the effect of the acquisition on the issuer. There are three alternative financial tests for determining whether an acquisition is "significant" for purposes of these requirements. Audited annual financial statements and interim financial statements, if applicable, of the business acquired, together with *pro forma* financial statements of the issuer giving effect to the acquisition, must be included in the report.

CORPORATE GOVERNANCE DISCLOSURE

- Issuers are subject to certain corporate governance disclosure requirements in the case of a distribution under a prospectus, as well as ongoing annual corporate governance disclosure requirements. Corporate governance disclosure is intended to provide greater transparency for investors and the marketplace regarding the governance practices of reporting issuers.
- Corporate governance disclosure which is required of all issuers includes:
    - the identity of the members of the board of directors and a designation of those who are not independent from management and the basis for that determination;
    - a description of the orientation and continuing education measures for new and existing directors;

- the written code of conduct or a description of the steps taken to encourage or promote a culture of ethical business conduct;
- a description of the nomination process for new directors;
- a description of directors' and officers' compensation, including the process by which the compensation was determined;
- a description of board committees; and
- a description of whether the board, its committees and individual directors are individually assessed with respect to their effectiveness and contribution.

- Additional corporate governance disclosure which must be made by issuers (other than venture issuers) includes:
  - whether the majority of the board is independent and, if not, a description of what the board does to facilitate its exercise of independent judgment;
  - whether any directors hold directorships with other issuers and, if so, the names of the other issuers;
  - whether the independent directors hold regularly scheduled meetings separate and apart from the non-independent directors;
  - the attendance record of each director;
  - the text of the board's written mandate and, where there is not a written mandate, a description of how the board delineates its role and responsibilities; and
  - a description of the CEO, Chair and chair of each board committee and the role and responsibilities of each.

AUDIT COMMITTEES

- Each reporting issuer must establish an audit committee of its board of directors for the purpose of overseeing the accounting and financial reporting processes of the issuer and the audit of its financial statements.
- The board delegates its responsibility for oversight of the financial reporting process to the audit committee. The functions to be performed by the audit committee include:
  - the oversight of the external auditor;
  - the recommendation for the nomination and compensation of external auditors;
  - the approval of all non-audit services; and
  - the review of financial statements, MD&A, and annual and interim earnings press releases (which, in the case of annual financial statements, must subsequently be approved by the full board of directors).

- An audit committee must be composed of a minimum of three directors. Generally, every member of the audit committee is required to be independent and financially literate. In this context, independence is defined as the absence of any direct or indirect material relationship between the director and the issuer. A material relationship is a relationship that could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment. A material relationship may include a commercial, charitable, industrial, banking, consulting, legal, accounting or familial relationship.

- Every issuer must include in its prospectus, and in its continuous disclosure, certain information relating to its audit committee and each member.

- The purpose of these audit committee requirements is to enhance the quality of an issuer's financial disclosure and thereby increase investor confidence in the capital markets.

- There are certain exemptions available from the independence or independent director/committee member and financial literacy requirements. For example, the audit committee of a new reporting issuer need not be comprised entirely of independent members for up to 90 days following the date of the receipt for its IPO prospectus provided that at least one of its audit committee members is independent (or up to one year if a majority of its audit committee members are independent). A director may also be appointed to the committee without the required financial literacy provided that director becomes financially literate in a reasonable period of time. To rely on these exemptions, the issuer's board must be of the view that it will not adversely impair the committee's ability to act independently and otherwise satisfy its obligations.

DISCLOSURE CONTROLS & PROCEDURES AND INTERNAL CONTROLS OVER FINANCIAL REPORTING

- Reporting issuers (other than venture issuers) are responsible for establishing and maintaining enhanced disclosure controls and procedures ("DC&P") and internal control over financial reporting ("ICFR"), which must be evaluated on an annual basis. The enhanced DC&P and ICFR are intended to improve the quality, reliability and transparency of annual filings, interim filings and other materials that issuers submit under securities laws.

- CEOs and CFOs of reporting issuers, or persons performing similar functions, must individually certify, among other things, annual and interim filings and their responsibility for the design and evaluation of DC&P and ICFR. Specifically, with regard to the issuer's annual filings, each of the CEO and CFO must individually certify that:

    - they have reviewed the filings;

    - there is no untrue statement of material fact or omission to state a material fact in the filings, based on that individual's knowledge and having exercised reasonable due diligence;

    - the financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, based on that individual's knowledge and having exercised reasonable due diligence;

    - the certifying individual, along with the issuer's other certifying officers, have:

        - designed DC&P to provide reasonable assurance that material information relating to the issuer is made known to the certifying individuals and that information required to be disclosed is

recorded, processed, summarized and reported within the time periods specified by securities legislation; and

- designed ICFR to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP;

- any material weaknesses relating to design and any limitations on the scope of design of the ICFR have been disclosed, where applicable;

- the certifying individual has evaluated the effectiveness of the DC&P and the ICFR;

- the issuer has disclosed any changes that have or are reasonably likely to materially affect the issuer's ICFR; and

- any fraud that involves management or other employees who have a significant role in the issuer's ICFR has been disclosed to the issuer's auditors and to the board of directors or the audit committee of the board of directors.

- Venture issuers are not required to establish and maintain enhanced DC&P and ICFR, and can provide a more basic certificate that does not include representations regarding DC&P and ICFR.

SHAREHOLDER MEETINGS AND PROXY SOLICITATION

- Annual and other meetings of shareholders are largely governed by the law of the issuer's jurisdiction of incorporation. However, the securities laws contain extensive requirements as to content and form of information circulars and proxies used by reporting issuers in soliciting proxies for their shareholder meetings and the manner in which a reporting issuer communicates with its shareholders in connection with a proxy solicitation.

- Directors of public companies are generally elected annually, and, therefore, the management of most public companies will solicit proxies in favour of the election of a slate of proposed directors. Management may also solicit proxies in connection with other matters to be considered at annual or special meetings of shareholders. In order to solicit proxies in connection with any shareholder meeting, an information circular of management must be distributed together with the form of proxy and the notice of the meeting.

- Under applicable securities laws, management information circulars require disclosure of, among other things:

  - matters to be acted upon at the annual meeting, including details of any director standing for election and any other matters such as alterations of share capital, charter amendments, property acquisitions or dispositions, RTOs, amalgamations, mergers, arrangements, or reorganizations and other similar transactions;

  - any direct or indirect material interest that directors, proposed directors, executive officers and significant shareholders (and their respective associates and affiliates) may have in matters to be acted upon at the meeting or had in any material transaction occurring since the beginning of the most recent fiscal year;

  - extensive information regarding the compensation of directors and officers, including equity compensation plan information and a discussion and analysis of all significant elements of

compensation awarded;

- any indebtedness of directors and executive officers owed to the issuer; and
- security ownership of management, directors, and principal shareholders.

- Where a matter to be acted upon involves a transaction with a related party, special rules for the protection of minority shareholders may apply. Generally speaking, these rules require that the circular include further disclosure and may require that a formal valuation be prepared and/or that approval of the minority shareholders be obtained in order to consummate the transaction.

EXEMPTIONS FOR CERTAIN FOREIGN ISSUERS

- Exemptions to the Canadian securities laws generally permit foreign issuers with U.S. reporting obligations, as well as foreign issuers with reporting obligations in certain other designated foreign jurisdictions, to satisfy their Canadian continuous disclosure, proxy solicitation and corporate governance obligations by complying with their equivalent obligations in their local jurisdiction.
- Generally speaking, these exemptions will be available where these foreign issuers:
  - are in compliance with the securities law requirements in their local jurisdictions;
  - file a copy of the relevant disclosure document in Canada at the same time as, or as soon as practicable after, the filing or furnishing of that document with the SEC or other applicable foreign regulatory authority; and
  - provide Canadian securityholders with the relevant disclosure document at the same time and in the same manner as securityholders in the issuer's local jurisdiction.

CIVIL LIABILITY FOR MISREPRESENTATIONS IN SECONDARY MARKET DISCLOSURE

- Issuers, their directors, officers and certain other persons may face civil liability under certain Canadian securities laws to persons who acquire or dispose of the issuer's securities while there is a misrepresentation in certain secondary market disclosure.
- Potential liability for misrepresentations in secondary market disclosure can arise in respect of the following (each referred to as "deficient disclosure"):
  - a misrepresentation in a document released by or on behalf of the issuer;
  - a misrepresentation made in a public oral statement by or on behalf of the issuer; and
  - the failure by the issuer to make timely disclosure in respect of a material change.
- If there is a misrepresentation in certain documents released by the issuer, a plaintiff may bring an action if the plaintiff acquires or disposes of the issuer's securities during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected.

- If there is a misrepresentation in a public oral statement by or on behalf of the issuer, a plaintiff may bring an action if the plaintiff acquires or disposes of the issuer's securities during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected.

- If an issuer fails to make timely disclosure in respect of a material change, a plaintiff may bring an action if the plaintiff acquires or disposes of the issuer's securities during the period between the time when the material change was required to be disclosed and the subsequent disclosure of the material change.

- There is no requirement to prove reliance as the right of action is available without regard to whether the plaintiff has actually relied on the deficient disclosure.

- For an action against a person or issuer in respect of a misrepresentation contained in: (i) a document that is not a core document, or (ii) a public oral statement, the plaintiff is required to prove that the person or issuer:

    - knew, at the time the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;

    - deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation at or before the time that the document was released or public oral statement was made; or

    - was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or making of the public oral statement that contained the misrepresentation.

- A plaintiff is not required to prove knowledge, wilful blindness or gross misconduct in the case of a misrepresentation in a "core document", which includes an issuer's MD&A, AIF, information circular, annual financial statements, interim financial statements and material change report, or for an action against an issuer or an officer of the issuer in the case of a failure to make timely disclosure.

- A defendant is not liable if it proves that the plaintiff acquired or disposed of the issuer's securities with prior knowledge of the deficient disclosure.

- A defendant may assert a "reasonable investigation" defence if the defendant can prove that:

    - a reasonable investigation was conducted prior to the deficient disclosure; and

    - at the time of the deficient disclosure, the defendant had no reasonable grounds to believe that: (i) the document or public oral statement contained the misrepresentation, or (ii) the failure to make timely disclosure would occur.

- There are statutory safe harbour defences that may be relied upon for reasonable forward-looking information accompanied by adequate cautionary language. The safe harbour defence does not apply in respect of: (i) forward-looking information contained in financial statements, or (ii) forward-looking information contained in a document released in connection with an IPO.

CORRUPTION OF FOREIGN PUBLIC OFFICIALS ACT (CANADA)

- Reporting issuers and their directors, officers and employees are subject to the *Canadian Corruption of Foreign Public Officials Act* ("CFPO").

- The CFPO prohibits the conferring of a benefit or advantage of any kind on a foreign public official as consideration for an act or omission by that official or inducing that official to use his or her position to influence any acts or decisions of a foreign state or public organization in order to obtain or retain an advantage in the course of business.

- There are safe harbour defences to this offence that apply if the benefit or advantage:

    - is permitted or required under the laws of the foreign state; or

    - is a reasonable and *bona fide* expenditure directly related to promoting products or services or to executing or performing a contract with a foreign government or agency.

Subsequent Financings in Canada

Using a Short Form Prospectus

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Subsequent Financings in Canada Using a Short Form Prospectus

GENERAL

- Once an issuer has gone public, its subsequent financings in the Canadian capital markets generally involve significantly less time and expense than the IPO.

- A reporting issuer can sell its securities by way of a public offering qualified by a prospectus or a private placement that is exempt from the prospectus requirements. Generally, the securities privately placed will become freely tradeable in Canada after four months. However, certain privately placed securities (like those distributed to officers, directors and employees) are subject only to a "seasoning period" and may generally be resold immediately where the issuer has been a reporting issuer for more than four months. The types of private placement are numerous and are not discussed in this guide.

- Generally speaking, all listed reporting issuers that are current in their continuous disclosure filings are qualified to use a "short form" prospectus to distribute their securities to the public. As a result, these issuers tend to opt for this short form over the long form prospectus used in an IPO. An issuer must file a notice declaring its intention to be qualified to file a short form prospectus at least 10 days prior to filing its first preliminary short form prospectus.

PREPARING A SHORT FORM PROSPECTUS

- A short form prospectus is a condensed form of prospectus that provides the bulk of the required disclosure by incorporating by reference an issuer's AIF, financial statements, MD&A and other continuous disclosure filings. As a result, it typically requires much less time to prepare than a long form prospectus.

- In preparing the prospectus, issuers must be mindful that a short form prospectus is held to the same "full, true and plain" disclosure standard as a long form prospectus and the same due diligence must be performed by it and the underwriters. However, this process should be expedited by virtue of the issuer's public reports and its enhanced disclosure controls and procedures, which should ensure that the disclosure in the issuer's incorporated reports has been thoroughly vetted in advance and has all the support necessary for the parties due diligence.

FILING AND QUALIFYING A SHORT FORM PROSPECTUS

- The process for filing and qualifying a short form prospectus is much the same as the process for a long form prospectus. A preliminary version of the short form prospectus must be filed with the securities regulators in the provinces and territories where the securities will be offered. A receipt is issued following this filing and there is a "waiting period" that ensues, concluding upon the issuance of a receipt for the final version of the short form prospectus.

- However, the review period for a short form prospectus is considerably shorter than that for a long

form prospectus. The principal securities regulator charged with the review is to use its best efforts to provide a first comment letter in respect of a short form filing within three working days absent any novel or complex elements that might delay the review.

- In addition to the shorter review period, responding to comments of the securities regulators on a short form filing should also require less time and effort as the issuer becomes more seasoned in its reporting. In many cases, particularly where the issuer is a seasoned issuer, these comments can be settled promptly and an issuer can therefore be cleared to file a final prospectus in as few as three to four business days after filing its preliminary prospectus.

- Where the underwriters commit to purchase an entire offering of securities at the time the offering is first announced (referred to as a "bought deal"), the underwriters may solicit expressions of interest immediately following the announcement of the transaction without having first filed the preliminary prospectus, provided that the preliminary prospectus is filed within four business days of that agreement.

SHELF OFFERINGS

- Rather than qualify each distribution by a separate prospectus, an issuer may instead use a "shelf" prospectus to qualify future offerings of its securities. A shelf prospectus can qualify that dollar value of securities that the issuer reasonably expects will be offered and sold within the 25 months following its filing. The shelf prospectus can be limited to a single type of security or can be "unallocated", qualifying a number of different types of securities without allocating a dollar value to any of them.

- A shelf prospectus is comprised of two parts, a "base" prospectus and a prospectus supplement, which together provide all of the information called for in a short form prospectus.

    - The base prospectus includes (or incorporates, as applicable) the same information as would be provided in a short form prospectus but excludes information that is specific to a particular securities offering to be made using the shelf. The base prospectus is filed with, and reviewed by, the securities regulators. The process and timing for clearing the base prospectus is the same as for a short form prospectus.

    - The prospectus supplement provides offering specific information (*e.g.*, the type of security, the amount to be sold, the price, the identity and certificate of the underwriters and other terms and information specific to the security and the distribution). The supplement is prepared and delivered to prospective purchasers at the time of the offering, together with the base prospectus, and is filed on or before the date it is first delivered or, if earlier, two business days after pricing the offering. The prospectus supplement is not reviewed by the securities regulators.

- The major advantage of using a shelf prospectus is that it provides an issuer with the flexibility to publicly offer additional securities without needing to file in advance, and then clear, a prospectus at the time of the offering. Once a final receipt has been obtained for the base prospectus, the issuer may offer and sell its securities using a prospectus supplement at any time in a 25 month period when market conditions appear favourable. In addition, as the bulk of the disclosure is contained in the previously cleared base prospectus, it takes little time to prepare the prospectus supplement for the offering. This timing advantage is particularly important for large, seasoned issuers whose marketing window in a capital raising can be as little as a few hours.

Overview of Initial Public Offerings in the United States

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Overview of Initial Public Offerings in the United States

REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933

- No public offering of securities may be made in the United States unless a registration statement for the offering has been filed with the U.S. Securities and Exchange Commission (the "SEC").
- Various restrictions apply to the offer and sale of securities while the company is "in registration," a time which generally begins when the company reaches an understanding with a managing underwriter for an IPO and ends when the distribution of the securities is complete.
- While the company is in registration, it may not make written or oral offers until a registration statement has been filed with the SEC.
- After the registration statement has been filed but before it is declared effective, the company may make oral offers but may not make written offers except pursuant to the preliminary prospectus included in the registration statement. In some instances, free writing prospectuses, which are written materials not included in the statutory prospectus, may also be used in the offering.
- No sales of securities may be made until the registration statement is declared effective. Following the effectiveness of the registration statement, the final prospectus is filed with the SEC, sales of securities may be made, and securities are delivered to the purchasers. An offering will generally close within three or four business days of pricing.
- The definition of "offer" under the Securities Act of 1933, as amended (the "Securities Act") is very broad and companies need to be careful that publicity concerning the offering or the company's business is not deemed to be an offer of the securities.
    - Press releases and other public notices of the offering must conform to SEC rules.
    - The company's website and other advertising and publicity should be scrutinized to make sure that they will not be deemed to be "gun jumping" publicity for the offering.

FOREIGN PRIVATE ISSUERS

- "Foreign private issuers" are generally entitled to use different registration forms than U.S. companies and may benefit from more limited disclosure requirements.
- Canadian companies that are foreign private issuers and are already public companies in Canada may be eligible to use special registration forms and may benefit from deference to home jurisdiction review, as described later on in this Guide under the heading, "Utilizing the U.S./Canadian Multijurisdictional Disclosure System ("MJDS")."

- An issuer (other than a foreign government) that is incorporated outside the United States is a "foreign private issuer" unless:
    - More than 50% of its voting securities are held, directly or indirectly, by U.S. residents, and any of the following is true:
        - more than 50% of its assets are located in the United States;
        - a majority of its executive officers or directors are U.S. citizens or residents; or
        - its business is principally administered in the United States.

PREPARATION OF THE REGISTRATION STATEMENT

- A U.S. company or a non-U.S. company that does not qualify as a foreign private issuer would typically use Form S-1 (with smaller companies eligible for scaled down disclosure requirements) to prepare its registration statement in connection with an IPO in the United States.
- A foreign private issuer would typically use Form F-1 to prepare its registration statement in connection with a U.S. IPO.
- Once complete, the registration statement will be filed with the SEC on EDGAR, the SEC's electronic filing system and is publicly available on the SEC website. (Foreign private issuers using a Form F-1 for an IPO may submit a draft of the F-1 to the SEC for review on a confidential basis prior to filing, to help them identify any significant issues without disclosing publicly that they intend to conduct an IPO. In the case of any insurmountable issues, the company could choose not to file without having created a record of the review on the SEC website.)
- Once a registration statement is filed, the SEC will review the filing, generally within approximately 30 days after the filing date, and will issue a comment letter addressed to the company. The issuer must then amend the registration statement to incorporate its responses to the SEC's comments.
- Issuers typically must file several amendments to the registration statement before all SEC comments are resolved and the registration statement is declared effective. The SEC's comment letters, and the issuer's written responses to the comment letters, become publicly available after the review is completed and the SEC has declared the registration statement effective.

CONTENTS OF THE REGISTRATION STATEMENT

- Both Forms S-1 and F-1 set forth detailed requirements regarding the contents of the registration statement. Generally, a registration statement on either form will include:
    - A summary section that includes a brief description of the company and its business, the terms of the offering, condensed financial information about the company, and other information that may be useful or interesting to investors.
    - Risk Factors
        - A detailed discussion of company and industry specific risks and uncertainties facing the company and its business, as well as risks relating to investing in the company's securities.

- Use of Proceeds
  - Disclosure of the company's proposed use(s) of the proceeds of the offering or, if the company has no specific plan for the proceeds, of the reasons for the offering.
- Business Information
  - Detailed information regarding the company's business during the past three (for non-U.S. companies) or five (for U.S. companies) years and operating plans or strategies, including information regarding the company's products, services and market position.
  - Information regarding properties, plant and equipment.
  - A description of any material litigation in which the company is involved.
- Financial Information
  - Selected financial data for the most recently ended five fiscal years (or the life of the company, if less) and any interim periods.
  - Consolidated audited financial statements including balance sheets as of the two most recently ended fiscal years, together with statements of income and changes in financial position as of the three most recently ended fiscal years, and detailed notes to the financial statements. Interim financial statements are also required, depending on the age of the most recent annual financial statements.
  - U.S. issuers must prepare their financial statements in accordance with U.S. GAAP. Non-U.S. issuers may (i) use U.S. GAAP, (ii) reconcile to U.S. GAAP or (iii) use International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") without reconciliation to U.S. GAAP. The SEC has proposed a "roadmap" to allow U.S. companies to use IFRS as issued by the IASB in the future, but no date has yet been set.
  - Information concerning the issuer's capitalization.
- Management's Discussion and Analysis of Financial Condition and Results of Operations
  - Management must discuss its view of the factors underlying the company's financial and business performance, as well as identify and discuss any known trends and uncertainties likely to affect the company's business, including, for non-U.S. companies, any governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect their operations or investments by U.S. nationals. The discussion will include information on liquidity and capital resources, including short- and long-term capital commitments, plans for capital expenditures and expected sources of capital, and any off-balance sheet transactions, and must include tabular disclosure of the company's contractual obligations. Year-to-year or period-to-period comparisons of significant changes in financial statement line items should be disclosed and explained, together with any other information believed necessary to investors' understanding of the issuer's financial condition or results of operations. Additionally, the SEC has strongly encouraged companies to explain their "critical accounting policies", to discuss the judgments and uncertainties affecting the application of such policies, and the likelihood that materially different results would be reported under different conditions or using different assumptions.
  - Quantitative and qualitative information concerning market risk.

- Management and Principal Shareholders
  - Detailed information regarding the company's officers and directors, including descriptions of their experience and qualifications, compensation arrangements, and any other relationships and transactions with the company.
  - Information regarding the company's principal shareholders, including the nature and extent of their ownership interests and any relationships and transactions they have with the company.
- Description of the Securities
  - A detailed description of the securities being offered for sale and the company's other authorized securities.
  - If material, a description of the tax consequences of owning and disposing of the securities.
- Plan of Distribution
  - A description of the plan of distribution of the securities and any arrangements with the underwriters.
  - Information concerning any selling security holders.
- Other Information
  - Disclosure of changes in and disagreements with the company's accountants on accounting and financial disclosure (for non-U.S. issuers, for fiscal years ending on or after December 15, 2009).
- Various exhibits must be filed with the registration statement, including the company's organizational documents and its material contracts, including employment agreements with senior management and any agreements with directors, and consents of accountants and any other experts named in the prospectus.
- The front and back cover pages, the summary section, and the risk factors must be written in "plain English", and, generally, companies prepare the rest of the prospectus in the same way.
- The registration statement must be signed by the company, its principal executive officer(s), its principal financial officer, its controller or principal accounting officer, a majority of its directors, and, for non-U.S. companies, its authorized representative in the United States (*e.g.*, a director resident in the United States or a subsidiary organized in the United States).

INDUSTRY GUIDES FOR OIL & GAS AND MINING OPERATORS; OTHER INDUSTRIES

- The SEC has prescribed industry guides for certain industries, including oil and gas and mining operators, for use in preparing the registration statements of companies engaged in these activities.
- The oil and gas guide was amended (effective January 2010) to modernize it and update disclosure requirements to align with current industry practices and changes in technology.
- Additional information about proven reserves, production capacity, land available for extraction and similar information must be disclosed in the registration statement for companies involved in the oil and gas and mining industries, and information about probable and possible reserves may be provided if desired.

U.S. EXCHANGE LISTING REQUIREMENTS

- The New York Stock Exchange (the "NYSE"), the Nasdaq Global Select Market and the Nasdaq Global Market are the principal exchanges on which companies list their securities in the U.S. The Nasdaq Capital Market, the NYSE Amex (formerly the American Stock Exchange) and the NYSE ARCA provide stock market venues for securities that do not meet the listing standards for the NYSE itself or the two upper tiers of Nasdaq.

- Listing of a security on any of the markets identified above provides an exemption from state "Blue Sky" regulation of the offering of the security.

LISTING REQUIREMENTS ON THE NYSE

- To be eligible to list securities on the NYSE, an issuer must meet various financial, market float and share ownership distribution requirements. These requirements are set forth in detail at Appendix "D".

- The issuer must at all times meet certain financial criteria in order to maintain its NYSE listing.

- The listing process entails completing an application, signing a listing agreement and paying initial and annual listing fees based on the number of shares to be traded on the NYSE.

CORPORATE GOVERNANCE STANDARDS APPLICABLE TO NYSE-LISTED COMPANIES

- Unless an exemption is available, the NYSE requires listed companies to comply with the corporate governance standards set forth in its Rule 303A. Under these standards, the issuer's board of directors must:

    - include a majority of independent directors;

    - have an audit committee that, in accordance with Rule 10A-3 under the Securities Exchange Act of 1934 ("Rule 10A-3") is composed of at least three directors, all of whom are independent under Rule 10A-3 and the NYSE rules and who are "financially literate", including one member who is a financial expert;

    - have a compensation committee and a nominating/corporate governance committee composed entirely of independent directors;

    - have written charters for each of the committees referenced above that address each committee's purpose and responsibilities, which must be posted on the company's website, and conduct an annual performance evaluation for the board and each committee;

    - adopt and disclose on its website corporate governance guidelines and a code of business conduct and ethics for directors, officers and employees and promptly disclose any waivers of the code for directors or executive officers; and

    - meet periodically in executive session (*i.e.*, without management directors).

- Newly public companies may comply with the independence requirements on a gradual basis over the first year following their IPO.

- A director is not "independent" unless the board affirmatively determines that he or she has no material relationship with the company (either directly or as a partner, shareholder, or officer of an organization that has a relationship with the company). The NYSE Rules include a list of transactions and relationships that preclude a determination of independence (but stock ownership, by itself, is not a bar to an independence finding). Under Rule 10A-3, a director is not independent if he or she is an affiliate of the issuer or any of its subsidiaries or accepts any consulting, advisory or other compensatory fee from the issuer or any of its subsidiaries (other than directors' retainers and meeting fees or fixed compensation under a retirement plan for prior service, payment of which is not contingent on continued service).

- Additionally the CEO of an NYSE listed company must certify to the NYSE each year that he or she is not aware of any violation by the company of any NYSE corporate governance standard and must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with an NYSE corporate governance standard. Additionally, the company must provide an annual written affirmation describing the company's compliance or non-compliance with the NYSE's corporate governance requirements and interim affirmations each time a change occurs to the board or to the audit, nominating/corporate governance or compensation committees.

EXEMPTIONS FROM NYSE CORPORATE GOVERNANCE STANDARDS APPLICABLE TO FOREIGN PRIVATE ISSUERS

- Foreign private issuers are exempt from most of the NYSE's corporate governance standards and are permitted to follow the corporate governance practices of their home countries, but they must comply with the following NYSE standards:

    - maintain a fully independent audit committee comprised of at least three members;

    - disclose to investors (either on their websites or their annual reports distributed to shareholders in the United States) the significant ways in which their corporate governance practices differ from those followed by U.S. NYSE listed companies; and

    - comply with the CEO notification and affirmation requirements.

LISTING REQUIREMENTS ON NASDAQ

- Like the NYSE, Nasdaq has certain minimum financial and market float requirements for listing. These requirements are set forth in detail at Appendix "E".

- The issuer must at all times meet certain financial criteria in order to maintain its listing on Nasdaq.

- The listing process will entail completing an application with Nasdaq, signing a listing agreement, and paying initial and regular listing fees based on the number of shares to be traded on Nasdaq.

CORPORATE GOVERNANCE STANDARDS APPLICABLE TO NASDAQ-LISTED COMPANIES

- Nasdaq has established corporate governance rules applicable to its listed companies that are similar to those established by the NYSE.
- A foreign private issuer will be exempt from most of the detailed corporate governance requirements applicable to domestic Nasdaq issuers if it:
    - provides Nasdaq with a letter from outside counsel certifying that the company's corporate governance practices are not prohibited by the law of its home jurisdiction; and
    - discloses in its annual reports filed with the SEC or on its website and in its registration statement filed in connection with its IPO each Nasdaq corporate governance requirement it does not follow and the alternative home country practice it does follow.
    - complies with the audit committee requirements set forth in Rule 10A-3 in the same manner as NYSE-listed companies.
    - ensures that the audit committee (or a comparable body of independent directors) reviews and approves all related party transactions.
    - gives Nasdaq prompt notice of non-compliance with a corporate governance or listing standard and discloses publicly receipt of a "going concern" opinion received from its accountants.
- Listed securities of foreign private issuers (except securities that are book-entry only) must be eligible for a direct registration program (*i.e.*, uncertificated shares) operated by a U.S.-registered clearing agency, unless prohibited from doing so by a home country law or regulation.

LIABILITY FOR MISREPRESENTATIONS OR OMISSIONS IN A REGISTRATION STATEMENT OR PROSPECTUS

Companies, their directors and certain other persons may have liability under the Securities Act to purchasers of the company's securities if a registration statement or prospectus misrepresents or omits to state a material fact.

- A fact is "material" if there is a substantial likelihood that a reasonable investor would consider it important in making a decision to buy the securities.
- Section 11 of the Securities Act imposes liability if any part of a registration statement (principally the prospectus included in the registration statement) at the time it was declared effective by the SEC contained "an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading".
    - A plaintiff must prove that the securities were issued under the registration statement and that the plaintiff suffered damages (typically a loss due to a decline in the price of the security);
    - The parties against whom claims under Section 11 may be made include:
        - the issuer;
        - each person who signed the registration statement;

- each director of the issuer;
- any underwriter of the offering;
- any expert (*e.g.*, the auditor) who, with his, her, or its consent, is named as having prepared or certified any part of the registration statement or any report or valuation used in connection with the registration statement; and
- any person who "controls" any of these persons.

- No proof of *scienter* (*i.e.*, knowledge, intent, or recklessness) is required, and issuers have strict liability under Section 11.
- Other Section 11 defendants may assert a "due diligence" defense (that is, after reasonable investigation they had reasonable grounds to believe, and did believe, that the information in the registration statement was true and there were no omissions of material fact), but the defense is difficult to establish for executive officers and management directors.
- A plaintiff may not recover damages if it knew of the misrepresentation or omission when it purchased the securities, or if the defendant can prove that the misrepresentation or omission did not cause the plaintiff's loss.

- Section 12(a)(2) of the Securities Act imposes liability on any person who offers or sells a security by means of a prospectus or any oral communication that includes "an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading".
  - Section 12 applies to "sellers" of securities, including the issuer and securities dealers, but generally does not apply to officers and directors of the company unless they engage in securities marketing activities in connection with an offering.
  - No proof of *scienter* is required for recovery of damages, but the plaintiff must not have known of the material misrepresentation or omission when purchasing the securities, and may not recover if the defendant can prove that plaintiff's loss was caused other than by the alleged misrepresentation or omission.
  - Defendants may assert a due diligence defense (*i.e.*, reasonable care) similar to the defense available under Section 11.
  - A successful plaintiff is entitled to rescind the transaction if it still owns the securities or, if it no longer owns the securities, to recover generally the difference between the price it paid for the securities and the price it received upon selling them.
- In addition, the general anti-fraud rules under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder apply to all sales of securities in the United States, as discussed in the next section of this Guide.

SAMPLE TIMELINE FOR GOING PUBLIC IN THE U.S.

- Please see a sample timeline for going public in the United States attached as Appendix "F".

Overview of Reporting Requirements under the Securities Exchange Act of 1934

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Overview of Reporting Requirements under the Securities Exchange Act of 1934

REPORTING OBLIGATIONS GENERALLY

- Completion of an IPO under the Securities Act gives rise to ongoing reporting requirements under the Securities Exchange Act of 1934 (the "Exchange Act").
- Listing on a U.S. stock exchange, even in the absence of an IPO, requires registration under the Exchange Act and thus also creates reporting obligations under the Exchange Act.
- U.S. issuers (and non-U.S. issuers that either do not qualify as foreign private issuers or voluntarily adopt the U.S. filing regime) must file:
    - Annual Reports on Form 10-K;
    - Quarterly Reports on Form 10-Q, which contain considerably less information than annual reports and include unaudited interim financial statements; and
    - Current Reports on Form 8-K, which generally must be filed within four business days following various enumerated occurrences and events that are deemed to be material to investors.
- Foreign private issuers must file:
    - Annual Reports on Form 20-F (or Form 40-F for MJDS issuers, as described below); and
    - Reports on Form 6-K.
- There is no general duty to disclose promptly all material corporate information. However, disclosure is mandatory when:
    - an SEC filing (*e.g.*, an annual report or registration statement) is required;
    - required by stock exchange rules;
    - the company is buying or selling its securities;
    - prior statements made by the company were incorrect or, if correct when made, are no longer accurate; and
    - material, non-public information is selectively disclosed to a market participant (*e.g.*, a securities analyst) or to a shareholder (for U.S. companies only).

CONTENTS OF ANNUAL REPORTS

- The contents of annual reports on Forms 10-K and 20-F are somewhat similar and include many of the items included in a registration statement on Forms S-1 or F-1. Among other things, these annual reports will include:
  - for any company, audited consolidated financial statements prepared in accordance with U.S. GAAP or, for foreign private issuers, audited consolidated financial statements either (i) prepared in accordance with IFRS as issued by the IASB, or (ii) reconciled to U.S. GAAP;
  - risk factors;
  - management's discussion and analysis of financial condition and results of operations;
  - the Sarbanes-Oxley internal control reports (discussed below);
  - management's conclusions regarding the effectiveness of disclosure controls and procedures and changes in internal control over financial reporting; and
  - exhibits, including material contracts.

CONTENTS OF QUARTERLY REPORTS

- Quarterly reports on Form 10-Q include:
  - unaudited interim (for the quarter and year-to-date) financial statements;
  - management's discussion and analysis of financial condition and results of operations;
  - any updates to risk factors in the annual report;
  - management's conclusions regarding the effectiveness of disclosure controls and procedures; and
  - any changes in internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.
- Form 10-Q must be signed by the company and by the company's principal financial or chief accounting officer.

OFFICER CERTIFICATION REQUIREMENTS

- Reports on Forms 10-K, 10-Q, 20-F and 40-F require certifications by the CEO and CFO:
  - that to their knowledge, the report does not contain any untrue statement of a material fact or omission to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading with respect to the period covered by the report;
  - that they have designed or caused to be designed disclosure controls and procedures, have evaluated the company's disclosure controls and procedures, and have presented in the report their conclusions about the effectiveness of the disclosure controls as of the end of the period

covered by the report;

- that they have designed or caused to be designed "internal control over financial reporting" to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and disclosed in the report any change in the company's internal control over financial reporting that has materially affected or is reasonably likely to materially affect the company's internal control over financial reporting;

- that they have disclosed, based on their most recent evaluations of internal control over financial reporting, to the company's auditors and the audit committee of the board of directors (i) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize, and report financial information, and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting; and

- that the report complies with applicable requirements under the Exchange Act and that the financial statements and other information in the report fairly presents in all material respects the issuer's financial condition and results of operations as of and for the periods presented in the report.

- In addition to the officer certifications, Form 10-K must be signed by the company and by its principal executive officer(s), principal financial officer(s), controller or principal accounting officer, and a majority of its directors. Forms 20-F and 40-F must be signed only by the company.

SARBANES OXLEY SECTION 404 INTERNAL CONTROL REPORTS

- The Form 10-K or 20-F (or 40-F) must include an annual report by management on the company's internal control over financial reporting as well as an attestation report by the company's independent auditors on the company's internal control over financial reporting. These reports are not required in quarterly reports.

  - All reporting issuers, U.S. and non-U.S., regardless of size, must provide management's report on internal control over financial reporting in their annual reports. All U.S. and non-U.S. accelerated filers (*i.e.*, those with a worldwide market float, exclusive of affiliates' holdings, of at least US$75 million) are required to include the auditor's attestation report. Non-accelerated filers (U.S. and non-U.S.) are not required to provide the auditor attestation report until their annual reports for fiscal years ending on or after December 15, 2009.

- Newly public companies, including foreign private issuers, do not need to comply with the internal control report requirements until their second annual report.

OTHER SARBANES OXLEY REQUIREMENTS

In addition to the Sarbanes-Oxley requirements for internal control reports and annual and quarterly (for U.S. companies) officer certifications, Sarbanes-Oxley contains a number of provisions applicable to all reporting issuers, including:

- prohibition of personal loans and other extensions of credit by the issuer to executive officers and

directors;

- disgorgement of bonus and incentive- or equity-based compensation and stock sale profits by CEOs and CFOs upon financial statement restatements due to misconduct;
- liability for improper influence on the conduct of audits;
- requirement (with some exceptions for non-U.S. issuers) to reconcile non-GAAP financial measures used in public disclosures to comparable GAAP measures;
- prohibition (with criminal sanctions) against intentional retaliatory action against whistleblowers; and
- prohibition against directors and executive officers from buying or selling the issuer's equity securities during certain "blackout" periods imposed on pension funds.

TIME FOR FILING ANNUAL AND QUARTERLY REPORTS

- For the first year as a reporting company, the issuer must file its Form 10-K within 90 days of the end of its fiscal year, while a Form 10-Q must be filed within 45 days after the end of each fiscal quarter other than the fourth quarter.
- After an issuer has been a reporting company for 12 calendar months, and has filed at least one annual report, the time periods for filing are shorter if an issuer is an accelerated filer or a large accelerated filer, which is determined based on the size of its public float on the last business day of its second fiscal quarter.
- Form 20-F must be filed within six months of the end of the foreign private issuer's fiscal year regardless of the issuer's size. However, commencing with reports covering fiscal years ending on or after December 15, 2011, Form 20-F must be filed within four months of the end of an issuer's fiscal year.
- Annual reports on Form 40-F are due on the same day that the information is due to be (or is) filed with the relevant Canadian securities regulatory authority.

CURRENT REPORTS ON FORM 8-K: U.S. ISSUERS

- U.S. issuers are required to file Current Reports on Form 8-K describing certain enumerated events and occurrences and other material information including:
    - entry into, and amendment or termination of, a material definitive agreement;
    - completion of significant acquisitions or dispositions of assets;
    - release of material non-public information regarding results of operations or financial condition for a completed fiscal period;
    - creation of events that accelerate or increase a direct financial obligation or an obligation under an off-balance sheet arrangement;
    - addition or departure of executive officers and directors;

- changes with respect to the issuer's auditors or non-reliance upon previously issued financial statements, audit report or completed interim review; and
- changes in control of the issuer.

- A Form 8-K must generally be filed within four business days of the event giving rise to the filing obligation.

INFORMATION FURNISHED ON FORM 6-K: FOREIGN PRIVATE ISSUERS

- Foreign private issuers are required to provide to the SEC promptly (*i.e.*, generally within one business day) under cover of Form 6-K any information:
  - made or required to be made public in their home jurisdiction pursuant to a legal or regulatory requirement;
  - filed or required to be filed with a non-U.S. exchange and made public by such exchange; or
  - distributed or required to be distributed to security holders.
- Form 6-K serves as a cover under which such information is furnished to the SEC.

XBRL

- In 2009, the SEC began requiring companies to include certain financial information in their annual and quarterly reports in interactive data format using eXtensible Business Reporting Language, or "XBRL" . The requirement to provide interactive data phases in gradually depending on the market capitalization of the issuer.

SHAREHOLDER MEETINGS

- Annual and other meetings of shareholders are largely governed by the law of the issuer's jurisdiction of incorporation.
- U.S. issuers (but not foreign private issuers) must comply with SEC rules concerning the filing, content, and distribution of proxy statements, annual reports to shareholders, and the solicitation of proxies.
- For U.S. issuers, the proxy statement for an annual meeting will describe:
  - matters to be acted upon at the annual meeting, including election of directors, ratification of independent auditors, and any other matters before the meeting;
  - information regarding the compensation of directors and officers;
  - corporate governance matters;
  - security ownership of management, directors, and principal shareholders; and
  - related party transactions.

- Proxy materials for U.S. issuers are subject to prior SEC review for meetings where the shareholders will be asked to vote upon any extraordinary matters (*e.g.*, mergers).

- U.S. issuers are required to comply with the SEC's e-proxy rules, which provide for Internet access to proxy materials in place of actual delivery of paper proxy materials.

- Foreign private issuers are exempt from SEC rules relating to the filing, content, and distribution of proxy statements, annual reports to shareholders, and the solicitation of proxies, but a copy of any proxy materials they distribute to shareholders must be furnished to the SEC on Form 6-K.

INSIDER REPORTING

- Section 16 of the Exchange Act imposes certain reporting requirements on directors and executive officers of a company (other than a foreign private issuer) that has registered a class of equity securities under the Exchange Act. Holders of more than 10 percent of such securities are subject to the same reporting requirements.

- Section 16 also provides that the company is entitled to recoup any so-called "short swing profit" realized by a Section 16 reporting person resulting from purchases and sales of the security within a 6 month period.

- Section 13(d) of the Exchange Act imposes a different set of reporting requirements on persons (including groups of persons) holding more than 5 percent of any class of equity securities registered under the Exchange Act, including securities of foreign private issuers.

SELECTIVE DISCLOSURE OF MATERIAL NONPUBLIC INFORMATION – REGULATION FD UNDER THE EXCHANGE ACT

- Regulation FD requires an issuer to publicly disclose any previously nonpublic material information that it discloses to (i) investment professionals (such as broker-dealers, investment advisers or investment funds) or (ii) security holders (under circumstances in which it is reasonably foreseeable that the security holder will purchase or sell the issuer's securities).

- The public disclosure must be made simultaneously, in the case of intentional disclosures of nonpublic information, or promptly, by the next trading day, in the case of unintentional disclosures.

- Regulation FD does not apply if:

    - the recipient owes a duty of trust or confidence to the issuer or agrees to keep the information confidential;

    - the disclosure is made to a credit rating agency solely for the purpose of developing a credit rating and the agency's ratings are publicly available; or

    - the disclosure is made in connection with certain registered securities offerings.

- Regulation FD does not apply to foreign private issuers, but stock exchange rules prohibit selective disclosure of material nonpublic information.

- A foreign private issuer that selectively disclosed material nonpublic information could also potentially face liability for insider trading by persons who received the information.

THE U.S. FOREIGN CORRUPT PRACTICES ACT

All reporting issuers are subject to the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA"). In general, the FCPA:

- imposes requirements on all reporting issuers for record-keeping and internal control over financial reporting.
- prohibits payments (other than payments to expedite or secure the performance of routine governmental action) by a reporting issuer and its officers, directors, employees, agents, and shareholders acting on their behalf to foreign government officials and others for the purpose of influencing such persons to assist the issuer in obtaining or maintaining business or directing business to any person.

Two safe harbors permit payments that are either:

- lawful in the jurisdiction where made; or
- a reasonable and bona fide expenditure directly related to promoting products or services or to executing or performing a contract with a foreign government or agency.

LIABILITIES UNDER THE EXCHANGE ACT

Issuers, their directors and officers, and certain other persons may face civil liability (and, in extreme cases, criminal prosecution) for violations of the Exchange Act.

- Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder prohibit fraudulent conduct, including the making of any material misrepresentation or omission of fact, in connection with the sale or purchase of any security.
- To prevail on a claim of material misrepresentation or omission of a material fact, a plaintiff must prove that the defendant:
    - made a false statement or omitted to state a material fact;
    - with *scienter* (*i.e.*, knowledge, intent or recklessness);
    - in connection with the purchase or sale of a security;
    - upon which plaintiff justifiably relied; and
    - that proximately caused the plaintiff's loss.
- Civil actions based on Rule 10b-5 may be brought by the SEC and by private litigants. Criminal prosecutions for "willful" violations may be instituted by the U.S. Department of Justice.

In addition to Section 10(b) and Rule 10b-5, Section 18(a) of the Exchange Act creates an express private right of action for any person who purchases or sells a security in reliance upon a false or misleading statement included in any document required to be "filed" with the SEC under the Exchange Act.

- Documents "filed" with the SEC include annual reports on Forms 10-K, 20-F and 40-F, portions of Form 10-Q, and most Form 8-K filings, but do not include current reports on Form 6-K filed by non-U.S.

issuers unless the issuer expressly provides that the information is to be "filed".

- The issuer and its directors, officers, and public accounting firm may be liable under Section 18(a).
- Plaintiffs need not prove *scienter*; however, the availability of a due diligence defense, in which the defendant must prove good faith and lack of knowledge, creates close to a *scienter* requirement.

Public Offerings in the U.S. Following the IPO

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Public Offerings in the U.S. Following the IPO

Following completion of its IPO, a company may continue to publicly offer its securities to raise additional capital and for other purposes, including the acquisition of other companies. Although the legal and marketing concerns will be substantially the same as for an IPO, subsequent public offerings will generally involve less time and expense than the IPO, particularly once the company grows and becomes more "seasoned".

PRIMARY OFFERINGS BY THE COMPANY

Primary offerings are offerings that are conducted by the issuer of the securities, generally to raise additional capital.

- During the first year following its IPO, a company must use a Form S-1 registration statement (or Form F-1, for foreign private issuers) for primary offerings, and the offering process is very similar to the IPO process.
- After reporting under the Exchange Act for one year, and satisfying the eligibility requirements (primarily a US$75 million public, *i.e.*, non-affiliate, equity float), a company may use Form S-3 (Form F-3 for foreign private issuers) to register primary offerings of its securities.
- Form S-3 (and F-3) offer substantial advantages over Form S-1 (and F-1), including:
    - incorporation by reference of the company's Exchange Act filings, which lessens preparation time and expense, as well as facilitating the use of "shelf" registrations;
    - availability for specific offerings, including underwritten offerings, and shelf offerings;
    - full use of the SEC's "shelf" registration procedures, which allow for "universal" shelf registrations, in which different types of securities (common stock, debt, warrants, etc.) are registered for "takedown" (i.e., offering) by the company when capital is needed and/or market conditions are favorable;
    - often (but not always) limited or no review by the SEC; and
    - effectiveness upon filing (*i.e.*, no SEC review) for "automatic" shelf registration statements filed by well-known seasoned issuers, which are companies that have either a public (non-affiliate) equity float of at least US$700 million or have issued at least US$1.0 billion in principal amount of non-convertible securities, other than common equity, in primary registered offerings for cash in each of the prior three years.

SECONDARY OFFERINGS

Secondary offerings are registered offerings for the account of persons other than the issuer of the securities, *e.g.*, substantial stockholders. Forms S-3 and F-3 are available for registered secondary offerings, which may be conducted as either a specific offering or a shelf offering.

EMPLOYEE BENEFIT PLANS

Reporting public companies (U.S. and foreign private issuers) may register securities for issuance under benefit plans (*e.g.*, stock option plans, stock incentive plans) to employees, directors and certain consultants using Form S-8. Form S-8 is a simplified registration statement that is effective upon filing with the SEC. Registration on Form S-8 permits non-affiliates of the company to resell their stock freely in the U.S. public markets and enables affiliates to resell their stock in reliance on Rule 144 under the Securities Act without having to satisfy a holding period.

MERGERS AND ACQUISITIONS; EXCHANGE OFFERS

A public company may use a Form S-4 registration statement (Form F-4 for foreign private issuers) to register its securities to be issued in business combination transactions, including statutory mergers and consolidations, acquisitions of assets, reclassifications of securities, and exchange offers where the target company's security holders have voted on or consented to the transaction. The registration statement may be filed for a specific transaction or as a shelf registration statement to be used for future, unspecified transactions. Forms S-4 and F-4 require substantial disclosure but permit incorporation by reference to Exchange Act filings if the issuer (and target company) meet the eligibility criteria.

Forms S-4 and F-4 may also be used in Rule 144A exchange offer transactions. In these transactions, issuers sell debt securities privately to large institutional investors (known as "qualified institutional buyers"), in an initial offering that generally takes less time than a comparable registered offering. Virtually identical securities are then registered with the SEC on Form S-4 or F-4 for exchange with the investors, with the result that the investors receive "freely tradable" securities to replace the "restricted" securities acquired in the 144A offering. Rule 144A is not available for securities that are traded on a U.S. national securities exchange or are convertible into such securities at less than a 10 percent premium over their market price.

MJDS OFFERINGS

As discussed elsewhere in this guide, a qualifying Canadian reporting issuer may conduct an IPO in the United States using the MJDS Form F-10. MJDS-eligible Canadian issuers may also conduct subsequent public offerings in the United States using the applicable MJDS registration statement forms.

The most commonly used MJDS registration statement is Form F-10, which may be used for any type of offering, and is generally used for specific and shelf offerings of equity and non-investment grade securities. Form F-9 is available for offerings of investment grade securities, and Form F-8 (and Form F-80) are designed for exchange offers and business combinations. Form F-7 may be used to register rights offerings.

Using MJDS provides a company with significant advantages, including that the prospectus may be prepared in accordance with Canadian rather than U.S. disclosure requirements (subject to the requirement of Form F-10 that financial statements prepared in accordance with Canadian GAAP be reconciled to U.S. GAAP) and, if applicable, that Canadian rather than U.S. shelf offering procedures will apply. Additionally, MJDS registration statements are ordinarily not reviewed by the SEC and may become effective upon filing.

Utilizing the U.S./Canadian Multijurisdictional Disclosure System ("MJDS")

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Utilizing the U.S./Canadian Multijurisdictional Disclosure System ("MJDS")

MJDS GENERALLY

- The MJDS is a joint initiative by the CSA and the SEC intended to remove unnecessary obstacles to public offerings by seasoned U.S. issuers in Canada, and seasoned Canadian issuers in the United States.

- The MJDS generally allows eligible Canadian issuers to publicly offer securities in the United States and to satisfy U.S. reporting obligations on the basis of disclosure documents prepared principally in accordance with Canadian disclosure requirements. The MJDS offers a reciprocal regime for eligible U.S. issuers, permitting them to offer securities in Canada and satisfy Canadian reporting obligations on the basis of disclosure documents prepared in compliance with applicable SEC rules.

- MJDS offerings made by U.S. issuers in Canada are regulated almost entirely by the SEC, and MJDS offerings made by Canadian issuers in the United States are regulated almost entirely by the applicable provincial Canadian securities regulators.

THE MJDS PROCESS FOR CANADIAN ISSUERS: "SOUTHBOUND MJDS"

- Canadian reporting issuers wishing to make an offering via the MJDS in the United States (or in both Canada and the United States) must file a Canadian prospectus with the applicable securities regulators in Canada and file with the SEC a version of that same prospectus (revised to include certain legends and other information prescribed by the U.S. rules) and certain exhibits under cover of an MJDS registration form. The registration forms typically used for an MJDS offering are the registration form for investment grade securities, Form F-9, and the general registration form, Form F-10. To be eligible to use either MJDS form, a Canadian issuer must be a foreign private issuer and have been subject to continuous disclosure requirements in Canada for at least 12 months (and be in compliance with those requirements). To use Form F-10, the issuer must also have a public float (*i.e.*, outstanding equity securities held by non-affiliates of the issuer) of at least U.S.$75 million.

- The prospectus included in the MJDS registration statement is prepared principally in accordance with Canadian disclosure requirements and is substantially the same as the prospectus filed in Canada. Certain legends prescribed by the U.S. rules must be included in this MJDS prospectus. In addition, Form F-10 requires issuers to fully reconcile financial statements prepared in accordance with Canadian GAAP to U.S. GAAP. No reconciliation is required for financial statements prepared in accordance with IFRS as issued by the IASB. The MJDS offering is subject to those provisions of the U.S. securities laws creating civil liability for misrepresentations in or omissions from registration statements and prospectuses. Accordingly, additional disclosure may be included in the prospectus in order to meet U.S. liability concerns. Additional disclosure may also be included to facilitate U.S. marketing efforts.

- The prospectus for an MJDS offering is reviewed by the applicable securities regulators in Canada. Although filed with the SEC, the SEC will not ordinarily review a MJDS registration statement. MJDS

registration statements become effective automatically upon filing with the SEC a final version of the registration statement containing the final prospectus (in the case of a concurrent offering in Canada and the United States) or upon providing the SEC with the receipt issued by the relevant Canadian securities regulator in respect of that prospectus (in the case of an offering only in the United States).

- Canadian issuers that meet the MJDS requirements set forth above may satisfy their U.S. reporting obligations by using the MJDS reporting forms. This involves:
    - filing with the SEC, under cover of Form 40-F, the AIF, audited financial statements, and annual MD&A filed by the issuer in Canada; and
    - furnishing with the SEC, under cover of Form 6-K, any other material information filed or otherwise made public by the issuer in Canada, including unaudited interim financial statements and related MD&A and material change reports.
- Form 40-F also requires certain disclosure additional to that contained in an issuer's Canadian reports; however, other than the two significant exceptions noted below, this additional disclosure is generally similar to disclosure that Canadian reporting issuers are required to make under applicable Canadian securities law requirements. The most significant additional disclosure called for by Form 40-F is:
    - the auditor's attestation report in respect of an issuer's internal controls required by Sarbanes-Oxley; and
    - a reconciliation of their annual financial statements to U.S. GAAP under Item 17 of Form 20-F (or Item 18, if the financial statements will be incorporated by reference into a registration statement filed under the Securities Act) if those financial statements are prepared other than in accordance with U.S. GAAP or IFRS as issued by the IASB.

A more detailed discussion of "Southbound MJDS" can be found in our publication entitled "Multijurisdictional Disclosure System - Offering Securities and Reporting in the United States".

THE MJDS PROCESS FOR U.S. ISSUERS: "NORTHBOUND MJDS"

- A similar process is available for eligible U.S. issuers that want to offer securities in Canada via the MJDS. To be eligible to use the MJDS for a "Northbound MJDS" offering, an issuer must: (i) be a foreign issuer that is incorporated or organized in a U.S. jurisdiction, (ii) have been subject to U.S. reporting obligations for at least 12 months and be in compliance with those obligations, and (iii) satisfy certain other eligibility criteria. Where the securities offered do not have an investment grade rating (or, in certain cases, where the securities are rights that are to be issued to existing securityholders), the U.S. issuer must also have a public float of at least U.S.$75 million in order to be eligible.
- The registration statement filed for the offering with the SEC is filed in Canada (unless the offering is made only in Canada) together with a Canadian version of the prospectus contained in that registration statement which has additional Canadian legends and other disclosure prescribed by applicable Canadian rules and includes the certificates of the issuer and underwriters. The issuer must also file in Canada all documents incorporated by reference in the MJDS prospectus. Unless the securities offered have an investment grade rating (or, in certain cases, where the securities are rights that are to be issued to existing securityholders), the financial statements that are included (or incorporated by reference) in the prospectus must be reconciled to Canadian GAAP. However, an exemption from the Canadian GAAP reconciliation requirement should be obtainable in light of the

fact that US GAAP is now accepted as an alternative to Canadian GAAP under Canadian rules applicable to the content of Canadian prospectuses and reports of foreign issuers.

- If the offering is extended into Québec, Québec law requires that a French language version of the prospectus be made available (except in certain rights offerings by U.S. issuers that, but for their rights offerings, would not be reporting issuers in Québec). The French translation requirement will apply to documents incorporated by reference into the prospectus, including exhibits. In order to minimize French translation requirements, a Northbound MJDS issuer should be able to obtain exemptive relief limiting the type of documents required to be incorporated by reference into the prospectus and limiting the type of continuous disclosure documents required to be filed in Canada by excluding, for example, non-material current reports on Form 8-K or exhibits attached to quarterly reports on Form 10-Q or annual reports on Form 10-K that would not be included in a Canadian issuer's quarterly or annual financial statements or AIF.

- The prospectus and other materials filed for a Northbound MJDS offering are reviewed by the SEC. Although they are also filed with Canadian securities regulators, these securities regulator will ordinarily only monitor these materials to confirm their compliance with the requirements specific to the Canadian rules governing Northbound MJDS.

- U.S. issuers are generally exempted from the Canadian continuous disclosure requirements so long as they are in compliance with their U.S. reporting obligations and file in Canada all documents required to be filed in the United States. Ongoing continuous disclosure documents will not have to be translated into French unless and until they are incorporated by reference into a Canadian prospectus for another offering.

Appendices to Canadian Requirements

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Appendix A: TSX Minimum Listing Requirements

OIL & GAS AND MINING ISSUERS					
Minimum Listing Requirements	**TSX Non-Exempt Oil & Gas Issuers**	**TSX Exempt Oil & Gas Issuers[4]**	**TSX Non-Exempt Mining Development Stage or Producing Issuers**	**TSX Non-Exempt Mining Senior Producing Issuers**	**TSX Exempt Mining Issuers[4]**
Net Tangible Assets Earnings or Revenue	No requirement	Pre-tax profitability from ongoing operations in last fiscal year; pre-tax cash flow of $700,000 in last fiscal year and average pre-tax cash flow of $500,000 for the past 2 fiscal years	$3,000,000 net tangible assets	$4,000,000 net tangible assets; evidence indicating a reasonable likelihood of future profitability supported by a feasibility study or documented historical production and financial performance	$7,500,000 net tangible assets; pre-tax profitability from ongoing operations in last fiscal year; pre-tax cash flow of $700,000 in last fiscal year and average pre-tax cash flow of $500,000 for the past 2 fiscal years
Property Requirements	$3,000,000 proved developed reserves[1]	$7,500,000 proved developed reserves[1]	Advanced exploration property;[2] minimum 50% ownership in the property[3]	3 years proven and probable reserves as estimated by independent qualified person	3 years proven and probable reserves as estimated by independent qualified person
Recommended Work Program	Clearly defined program which can reasonably be expected to increase reserves	No requirement	$750,000 on advanced exploration property[2] as recommended by independent qualified person	Be in production or have made a production decision based on above	Commercial level mining operations

OIL & GAS AND MINING ISSUERS					
Minimum Listing Requirements	**TSX Non-Exempt Oil & Gas Issuers**	**TSX Exempt Oil & Gas Issuers[4]**	**TSX Non-Exempt Mining Development Stage or Producing Issuers**	**TSX Non-Exempt Mining Senior Producing Issuers**	**TSX Exempt Mining Issuers[4]**
Working Capital and Financial Resources	Adequate funds to execute the program and cover all other capital expenditures plus G&A[5] plus debt service expenses for 18 months with a contingency allowance; appropriate capital structure	Adequate to carry on business; appropriate capital structure	Minimum $2,000,000 working capital; must be sufficient to complete planned programs, plus 18 months G&A,[5] anticipated property payments and capital expenditures;[6] appropriate capital structure	Adequate funds to bring the property into commercial production plus adequate working capital for all budgeted capital expenditures and to carry on the business; appropriate capital structure	Adequate to carry on business; appropriate capital structure
Distribution, Market Capitalization & Public Float	At least 1,000,000 freely tradable shares with an aggregate market value of $4,000,000; 300 public holders, each with one board lot or more				
Sponsorship	Required (may be waived)	No requirement	Required (may be waived)	Required (may be waived)	No requirement
Other Criteria	Up-to-date, comprehensive technical report prepared by an independent qualified person; 18-month projection (by quarter) of sources and uses of funds signed by CFO	Up-to-date, comprehensive technical report prepared by an independent qualified person	Up-to-date, comprehensive technical report prepared by an independent qualified person; 18-month projection (by quarter) of sources & uses of funds, signed by CFO	Up-to-date, comprehensive technical report prepared by an independent qualified person; 18-month projection (by quarter) of sources & uses of funds, signed by CFO	Up-to-date, comprehensive technical report prepared by an independent qualified person

Source: TSX

1 "Proved developed reserves" are defined as those reserves that are expected to be recovered from existing wells and installed facilities, or, if facilities have not been installed, that would involve low expenditure, when compared to the cost of drilling a well, to put the reserves on production.

2 A property will generally be considered to be sufficiently advanced where a zone of mineralization has been demonstrated in three dimensions with reasonable continuity indicated, and the mineralization identified has economically interesting grades.

3 A company must hold or have the right to earn and maintain a 50% interest in the qualifying property. Companies holding between a 30% and 50% interest will be considered on a case-by-case basis looking at program size, stage of advancement of the property and strategic alliances.

4 Exceptional circumstances may justify the granting of Exempt status notwithstanding the minimum requirements - generally an affiliation with an established business and/or exceptionally strong financial position is required.

5 "G&A" means general and administrative expenses.

6 Prorated based on % of property owned.

TECHNOLOGY, R&D AND INDUSTRIAL ISSUERS					
Minimum Listing Requirements	**TSX Non-Exempt Technology Issuers[1, 7]**	**TSX Non-Exempt Research & Development (R&D) Issuers[7]**	**TSX Non-Exempt Issuers Forecasting Profitability[7]**	**TSX Non-Exempt Profitable Issuers[7]**	**TSX Exempt Industrial Issuers[8]**
Net Tangible Assets Earnings or Revenue	No requirement	No requirement	$7,500,000 net tangible assets;[3] evidence of pre-tax earnings from ongoing operations for the current or next fiscal year of at least $200,000;[2] evidence of pre-tax cash flow from ongoing operations for the current or next fiscal year of at least $500,000[2]	$2,000,000 net tangible assets;[3, 4] pre-tax earnings from ongoing operations of at least $200,000 in the last fiscal year; pre-tax cash flow of $500,000 in the last fiscal year	$7,500,000 net tangible assets;[3] pre-tax earnings from ongoing operations of at least $300,000 in the last fiscal year; pre-tax cash flow of $700,000 in the last fiscal year, and an average pre-tax cash flow of $500,000 for the past 2 fiscal years
Adequate Working Capital and Capital Structure	Funds to cover all planned development expenditures, capital expenditures, and G&A[5] expenses for 1 year[6]	Funds to cover all planned R&D expenditures, capital expenditures, and G&A[5] expenses for 2 years[6]	Working capital to carry on the business, and an appropriate capital structure		
Cash in Treasury	Minimum $10,000,000 in the treasury, with majority raised by prospectus offering	Minimum $12,000,000 in the treasury, with majority raised by prospectus offering	No requirement		
Products and Services	Evidence that products and services at an advanced stage of development or commercialization and that management has the expertise and resources to develop the business[9]	Minimum 2-year operating history that includes R&D activities; evidence of technical expertise and resources to advance its R&D programs[10]	No requirement	No requirement	No requirement

TECHNOLOGY, R&D AND INDUSTRIAL ISSUERS					
Minimum Listing Requirements	**TSX Non-Exempt Technology Issuers[1, 7]**	**TSX Non-Exempt Research & Development (R&D) Issuers[7]**	**TSX Non-Exempt Issuers Forecasting Profitability[7]**	**TSX Non-Exempt Profitable Issuers[7]**	**TSX Exempt Industrial Issuers[8]**
Management and Board of Directors	Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience; companies are required to have at least two independent directors, a CEO, a CFO who is not also the CEO and a corporate secretary				
Public Distribution and Market Capitalization	Minimum $50,000,000 market capitalization; at least 1,000,000 freely tradable shares with an aggregate market value of $10,000,000; 300 public holders, each with one board lot or more	At least 1,000,000 freely tradable shares with an aggregate market value of $4,000,000; 300 public holders, each with one board lot or more			
Sponsorship	Generally required				Not required

Source: TSX

1 Generally includes companies engaged in hardware, software, telecommunications, data communications, information technology and new technologies that are not currently profitable or able to forecast profitability.

2 Applicants should file a complete set of forecast financial statements covering the current and/or next fiscal year (on a quarterly basis). Forecasts must be accompanied by an auditor's opinion. Applicants should have at least six months of operating history.

3 Under certain circumstances, deferred development charges or other intangible assets can be included in net tangible asset calculations.

4 Companies with less than $2,000,000 in net tangible assets may qualify for listing if the earnings and cash flow requirements for senior companies are met.

5 "G&A" means general and administrative expenses.

6 A quarterly projection of sources and uses of funds, for the relevant period, including related assumptions signed by the CFO must be submitted. Projection should exclude uncommitted payments from third parties or other contingent cash receipts. R&D issuers should also exclude cash flows from future revenues.

7 Exceptional circumstances may justify granting of a listing, notwithstanding minimum requirements. Generally an affiliation with established business and/or exceptionally strong financial position is required.

8 See also note 7, for granting of Exempt status. Special purpose issuers are generally considered on an exceptional basis.

9 "Advanced stage of development or commercialization" generally restricted to historical revenues from the issuer's main business or contracts for future sales. Other factors may also be considered.

10 All relevant factors will be considered.

Appendix B: TSX-V Minimum Listing Requirements

TIER 1 ISSUERS					
Minimum Listing Requirements	**Mining Issuers**	**Oil & Gas Issuers**	**Technology or Industrial Issuers**	**Research & Development Issuers**	**Real Estate or Investment Issuers**
Net Tangible Assets Earnings or Revenue	$2,000,000 net tangible assets	No requirement	Category 1: $1,000,000 net tangible assets; $100,000 pre-tax earnings in last year or in last 2 of 3 years Category 2: $5,000,000 net tangible assets Category 3: $200,000 pre-tax earnings in last year or in last 2 of 3 years	$5,000,000 net tangible assets	$5,000,000 net tangible assets
Property or Reserves	Material interest in a Tier 1 property[1]	$2,000,000 proven reserves	No requirement	No requirement	No requirement
Prior Expenditures	No requirement	No requirement	No requirement	Minimum $1,000,000	No requirement
Recommended Work Program	$500,000 on the Tier 1 property[1] (as recommended by geological report)	No requirement	No requirement	Minimum $1,000,000	No requirement
Working Capital and Financial Resources	Adequate for work program plus 18 months G&A[2] plus 18 months property payments to keep Tier 1 property and exploration principal properties in good standing plus $100,000 unallocated	Adequate (Minimum $500,000)	Categories 1 & 3: adequate financial resources for 18 months Category 2: adequate working capital for 18 months under business plan (incl. G&A)[2] plus $100,000 unallocated	Adequate working capital to cover work program plus 18 months G&A[2] plus $100,000 unallocated	Adequate for 18 months

TIER 1 ISSUERS					
Minimum Listing Requirements	**Mining Issuers**	**Oil & Gas Issuers**	**Technology or Industrial Issuers**	**Research & Development Issuers**	**Real Estate or Investment Issuers**
Distribution, Market Capitalization and Float	$1,000,000 held by public shareholders 1,000,000 free trading public shares 200 public shareholders with a board lot and no resale restrictions 10% public float 20% of issued and outstanding shares in the hands of public shareholders				
Other Criteria	Geological report recommending completion of work program or positive feasibility study or production levels exhibiting a likelihood of positive cash flow; sponsor report may be required	Geological report; sponsor report may be required	Sponsor report if required Category 2: management plan demonstrating reasonable expectations of earnings within 24 months	Human or technological benefits; sponsor report may be required	Investment issuers must have a disclosed investment policy and strategy; 50% of the available funds must be allocated to at least 2 specific investments; sponsor report may be required

Source: TSX

1 "Tier 1 Property" means a property that has substantial geological merit and is:

(i) a property in which the issuer holds a material interest;

(ii) a property on which previous exploration, including detailed surface geological, geophysical and/or geochemical surveying and at least an initial phase of drilling or other detailed sampling (such as trench or underground opening sampling), has been completed;

(iii) drilling or other detailed sampling on the property has identified potentially economic or economic mineralization; and

(iv) an independent Geological Report recommends a minimum $500,000 Phase 1 drilling (or other form of detailed sampling) program based on the merits of previous exploration results; or an independent, positive, feasibility study demonstrates that the property is capable of generating positive cash flow from ongoing operations.

2 "G&A" means general and administrative expenses.

TIER 2 ISSUERS					
Minimum Listing Requirements	**Mining Issuers**	**Oil & Gas Issuers**	**Technology or Industrial Issuers**	**Research & Development Issuers**	**Real Estate or Investment Issuers**
Net Tangible Assets Earnings or Revenue	No requirement	No requirement	Category 1: $500,000 net tangible assets; $50,000 pre-tax earnings in last year or in last 2 of 3 years Category 2: $750,000 net tangible assets; $250,000 operating revenue Category 3: $750,000 net tangible assets	$750,000 net tangible assets	$2,000,000 net tangible assets
Property or Reserves	Significant interest in a qualifying property or at the discretion of the Exchange, hold rights to earn a significant interest in the qualifying property	Category 1: $500,000 proven producing reserves Category 2: $750,000 proven and probable reserves Category 3: No requirement	No requirement	No requirement	No requirement
Prior Expenditures	$100,000 on the qualifying property in last 3 years by applicant issuer or sufficient expenditures incurred such that the property is a Tier 1 property[1]	No requirement	Categories 1 & 2: not required Category 3: $250,000 prior expenditures related to the development of the product or technology to be commercialized pursuant to the business plan in past 12 months	$500,000	No requirement

TIER 2 ISSUERS					
Minimum Listing Requirements	**Mining Issuers**	**Oil & Gas Issuers**	**Technology or Industrial Issuers**	**Research & Development Issuers**	**Real Estate or Investment Issuers**
Recommended Work Program	$200,000 on the qualifying property as recommended by geological report	Category 1: No requirement Category 2: $300,000 work program Category 3: satisfactorily diversified exploration program; at least $1,500,000 allocated towards a joint venture or work program	No requirement	Minimum $500,000	No requirement
Working Capital and Financial Resources	Adequate working capital and financial resources including work program plus 12 months G&A[2] plus 12 months property payments to keep qualifying property and principal properties in good standing plus $100,000 unallocated	Category 1: adequate working capital and financial resources for 12 months Category 2 and 3: adequate working capital and financial resources including work program plus 12 months G&A[2] plus $100,000 unallocated	Category 1: adequate working capital and financial resources for 12 months Category 2 and 3: adequate working capital and financial resources for 12 months under business plan including 12 months G&A[2] plus $100,000 unallocated	Adequate working capital and financial resources to cover: work program plus 12 months G&A[2] plus $100,000 unallocated	Adequate working capital and financial resources for 12 months
Distribution, Market Capitalization and Float	500,000 public free trading shares $500,000 held by public shareholders 200 public shareholders with a board lot and no resale restrictions 10% public float 20% of issued and outstanding shares in the hands of public shareholders				

TIER 2 ISSUERS					
Minimum Listing Requirements	**Mining Issuers**	**Oil & Gas Issuers**	**Technology or Industrial Issuers**	**Research & Development Issuers**	**Real Estate or Investment Issuers**
Other Criteria	Geological report recommending completion of work program; sponsor report may be required	Geological report; sponsor report may be required	Category 1: sponsor report if required Category 2: two-year management plan demonstrating reasonable likelihood of revenue within 24 months plus sponsor report if required Category 3: two-year management plan demonstrating reasonable likelihood of revenue within 24 months plus sponsor report if required plus working prototype of any industrial product or, in respect of any technology, testing satisfactory to demonstrate reasonable likelihood of commercial viability	Human or technological benefits; feasibility study or other evidence of satisfactory due diligence by sponsor; sponsor report may be required	Investment issuers must have a publicly disclosed investment policy and strategy; 50% of the available funds must be allocated to at least 2 specific investments; sponsor report may be required

Source: TSX

1 "Tier 1 Property" means a property that has substantial geological merit and is:

(i) a property in which the issuer holds a material interest;

(ii) a property on which previous exploration, including detailed surface geological, geophysical and/or geochemical surveying and at least an initial phase of drilling or other detailed sampling (such as trench or underground opening sampling), has been completed;

(iii) drilling or other detailed sampling on the property has identified potentially economic or economic mineralization; and

(iv) an independent Geological Report recommends a minimum $500,000 Phase 1 drilling (or other form of detailed sampling) program based on the merits of previous exploration results; or an independent, positive, feasibility study demonstrates that the property is capable of generating positive cash flow from ongoing operations.

2 "G&A" means general and administrative expenses.

Appendix C: Sample Timeline for Going Public in Canada

Weeks 1-2	• Management confirms the current board of directors and management team will meet the regulatory requirements of a public company • Management chooses professional advisors: agent / sponsor (underwriter / investment dealer); securities lawyers; external auditor; investor relations professionals • Organizational meeting with all participants • Pre-filing meeting with TSX or TSX-V to seek preliminary opinion • Listing vehicle selected - IPO, RTO, CPC or SPAC • Internal documentation organized to ensure due diligence and prospectus preparation are completed efficiently
Weeks 3-6	• Underwriter begins due diligence • Underwriter's counsel distributes draft underwriting agreement • Preliminary prospectus is prepared • Preliminary prospectus and supporting documents, including financial statements, filed with TSX or TSX-V and applicable provincial securities regulators • TSX or TSX-V listing application is prepared and filed
Weeks 6-9	• "Waiting period" begins: applicant issuer permitted to solicit interest in securities by forwarding copies of preliminary prospectus to prospective investors • TSX or TSX-V and provincial securities regulators review the preliminary prospectus and advise applicant issuer and professional advisors of any deficiencies • Applicant issuer to address deficiencies and file necessary amendments
Weeks 9-12	• Receive additional comments from TSX or TSX-V and provincial securities regulators and file any further necessary amendments • Deficiencies addressed to satisfaction of regulatory authorities • Final prospectus submitted
Weeks 12-14	• Final receipt received for final prospectus from securities commission(s) • Sign underwriting agreement • Completion of closing documents and closing • Trading begins

Appendices to U.S. Requirements

Appendix D: NYSE Minimum Listing Requirements

NYSE LISTING - DOMESTIC MINIMUM REQUIREMENTS	
MINIMUM LISTING REQUIREMENTS DISTRIBUTION	
Round-Lot Holders[1] or Total Shareholders	
IPO	400 round lot (100 shares) shareholders
Public Companies	400 round lot shareholders or 2,200 total shareholders and 100,000 shares average monthly trading volume (for the most recent 6 months) or 500 total shareholders and 1,000,000 shares average monthly trading volume (for the most recent 12 months)
Public Shares	1,100,000
Market Value of Public Shares[2,3]	
IPOs, Carve-outs, Spin-offs & Affiliated Companies (for new entities with a parent or affiliated company listed on the NYSE)	$60,000,000
Public Companies	$100,000,000
Stock price (IPO price or closing price)	$4.00
FINANCIALS	
Earnings	$10,000,000 Aggregate Pre-tax Earnings[4] for last 3 years and $2,000,000 Minimum Pre-Tax Earnings in each of 2 preceding years (all 3 years must be positive) or $12,000,000 Aggregate Pre-tax Earnings for last 3 years with a minimum of $5,000,000 in the most recent fiscal year and $2,000,000 in the next most recent fiscal year
or	or
Valuation/Revenues with Cash Flow	$500,000,000 Global Market Capitalization[2,5] and $100,000,000 Revenues (most recent 12-month period) and $25,000,000 Aggregate Cash Flow[6] for last 3 years (all 3 years must be positive)
or	or

Pure Valuation	$750,000,000 Global Market Capitalization[2,5] and $75,000,000 Revenues (most recent fiscal year)
or	or
Affiliated Company (For new entities with a parent or affiliated company listed on the NYSE)	$500,000,000 Global Market Capitalization[2,5] and at least 12 months of operating history and affiliated listed company is in good standing and affiliated listed company retains control[7] of the entity
or	or
Assets and Equity	$150,000,000 Global Market Capitalization[2,5] and $75,000,000 in total assets and $50,000,000 in shareholders' equity
REITs (less than 3 years operating history)[2]	$60,000,000 shareholders' equity

Source: NYSE

* Domestic listing requirements call for minimum distribution of a company's shares within the United States. Distribution of shares can be attained through U.S. public offerings, acquisitions made in the U.S., or by other similar means. Note that there are alternatives to the round lot-holders and pre-tax earnings standards. For a more complete discussion of the minimum numerical standards applicable to U.S. companies, see Section 102.00 of the Listed Company Manual.

1 The number of beneficial holders of stock held in "street name" will be considered in addition to the holders of record. The Exchange will make any necessary check of such holdings that are in the name of Exchange member organizations.

2 For IPOs, (including carve-outs) the company's underwriter, and for spin-offs the parent company's investment banker or other financial advisor, must provide a written representation that demonstrates that the company will meet the requirement upon completion of the offering or distribution.

3 If a company either has a significant concentration of stock or changing market forces have adversely impacted the public market value of a company that otherwise would qualify for an Exchange listing, such that its public market value is no more than 10% below the minimum, the Exchange generally will consider stockholders' equity of $60 million or $100 million, as applicable, as an alternate measure of size.

4 Pre-tax earnings are from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, and is adjusted for various items set forth in Section 102.01C of the NYSE Listed Company Manual.

5 Average global market capitalization for already existing public companies is represented by the most recent three months of trading history.

6 Represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities and (b) exclude changes in operating assets and liabilities.

7 "Control" means the ability to exercise significant influence over the operating and financial policies of the listing company. Ownership, direct or indirect, of 20% or more of the listing company's voting stock creates a presumption of control. Other indicia of control include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel and technological dependency. The affiliated company test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

Additional Considerations

In addition to meeting the minimum numerical standards listed above, there are other factors that must necessarily be considered. The company must be a going concern or be the successor to a going concern.

The Exchange has broad discretion regarding the listing of a company. The Exchange is committed to list only those companies that are suited for auction market trading and that have attained the status of being eligible for trading on the Exchange. Thus, the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination can be made even if the company meets the standards set forth above.

NYSE LISTING - FOREIGN MINIMUM REQUIREMENTS	
Minimum Listing Requirements	**WORLDWIDE**
Distribution	
Round-Lot Holders	5,000
Public Shares	2,500,000
Public Market Value	$100,000,000[1]
IPOs, Carve-outs & Spin-offs	$60,000,000[1]
Affiliated Companies (For new entities with a parent or afflicted company listed on the NYSE)	$60,000,000
Stock Price (IPO price or closing price)	$4.00
FINANCIALS	
Earnings	$100,000,000 Aggregate Pre-tax Earnings[2] for last 3 years and $25,000,000 Minimum Pre-Tax Earnings[2] in each of 2 preceding years
or	or
Valuation/Revenue with Cash Flow	$500,000,000 Global Market Capitalization[1] and $100,000,000 Revenues (most recent 12-month period) and $100,000,000 Aggregate Cash Flow[3] for last 3 years and $25,000,000 Minimum Cash Flow in each of 2 preceding years
or	or
Pure Valuation	$750,000,000 Global Market Capitalization[1] and $75,000,000 Revenues (most recent fiscal year)
or	or
Affiliated Company	$500,000,000 Global Market Capitalization[1] and at least 12 months of operating history and affiliated listed company is in good standing and affiliated listed company retains control of the entity

Source: NYSE

* Non-U.S. companies may qualify for listing under either the foreign requirements or the requirements for U.S. companies. Both standards include distribution and financial criteria. A company must qualify for both the distribution and financial criteria within that particular standard.

1. For IPOs, the company's underwriter (or, for carve-outs and spin-offs that do not involve an underwritten offering) the parent company's investment banker (or other financial advisor) or transfer agent must provide a written representation as to the company's compliance with this requirement upon completion of the offering or distribution.
2. Pre-tax earnings are from continuing operations and after majority interest, amortization and equity in the earnings or losses of investees, and adjusted for various items set forth in Sections 102.01C and 103.01B of the NYSE Listed Company Manual.
3. Cash flow represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities and (b) exclude changes in operating assets and liabilities.

This chart is to be used for an initial evaluation only. The Exchange will work with each company to determine which standards are best suited to that entity. For a more complete discussion of the minimum numerical standards applicable to non-U.S. companies, see Section 103.01 of the Listed Company Manual.

Appendix E: Nasdaq Minimum Listing Requirements

NASDAQ GLOBAL SELECT MARKET FINANCIAL REQUIREMENTS[1]				
Requirements	**Standard 1**	**Standard 2**	**Standard 3**	**Marketplace Rules**
Pre-tax Earnings[2] (income from continuing operations before income taxes)	Aggregate in prior three fiscal years > $11,000,000 and each of the two most recent fiscal years > $2,200,000 and each of the prior three fiscal years > $0	N/A	N/A	4426(c)(1)
Cash Flows[3]	N/A	Aggregate in prior three fiscal years > $27,500,000 and each of the prior three fiscal years > $0	N/A	4426(c)(2)
Market Capitalization[4]	N/A	Average > $550,000,000 over prior 12 months	Average > $850,000,000 over prior 12 months	4426(c)(2)(C) 4426(c)(3)(A)
Revenue	N/A	Previous fiscal year > $110,000,000	Previous fiscal year > $90,000,000	4426(c)(2)(C) 4426(c)(3)(B)
Bid Price[5]	$5.00	$5.00	$5.00	4426(d)
Market Makers[6]	3	3	4	4310(c)(1)
Corporate Governance	Yes	Yes	Yes	4350, 4351 & 4460

Source: Nasdaq

1 These requirements apply to all companies, other than closed-end management investment companies. A closed-end management investment company is not required to meet the financial requirements of Marketplace Rule 4426(c). If the common stock of an issuer is included in The Nasdaq Global Select Market, any other security of that same issuer, such as other classes of common or preferred stock, that qualifies for listing on The Nasdaq Global Market shall also be included in The Nasdaq Global Select Market.

2 In calculating income from continuing operations before income taxes for purposes of Rule 4426(c)(1), Nasdaq will rely on an issuer's annual financial information as filed with the Securities & Exchange Commission (SEC) in the issuer's most recent periodic report and/or registration statement. If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(1) if it has: (i) reported aggregate income from continuing operations before income taxes of at least $11 million and (ii) positive income from continuing operations before income taxes in each of the reported fiscal years. A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

3 In calculating cash flows for purposes of Rule 4426(c)(2), Nasdaq will rely on the net cash provided by operating activities reported in the statements of cash flows, as filed with the SEC in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities. If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(2) if it has: (i) reported aggregate cash flows of at least $27.5 million and (ii) positive cash flows in each of the reported fiscal years. A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

4 In the case of an issuer listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 4426(c)(2) and (c)(3) will be based on the company's market capitalization at the time of listing.

5 The bid price requirement is not applicable to a company listed on The Nasdaq Global Market that transfers its listing to The Nasdaq Global Select Market.

6 An electronic communications network (ECN) is not considered a market maker for the purpose of these

NASDAQ GLOBAL SELECT MARKET LIQUIDITY REQUIREMENTS				
Requirements	**Initial Public Offerings and Spin-Off Companies**	**Affiliated Companies[1]**	**Seasoned Companies Currently Trading Common Stocks or Equivalents**	**Marketplace Rules**
Round lot shareholders[2] or Total shareholders or Total shareholders and average monthly trading volume over past 12 months	450 or 2,200	450 or 2,200 or 550 and 1.1 million	450 or 2,200 or 550 and 1.1 million	4426(b)(1)
Publicly held shares[3]	1,250,000	1,250,000	1,250,000	4426(b)(2)
Market value of publicly held shares or Market value of publicly held shares and Shareholders' equity	$70,000,000	$70,000,000	$110,000,000 or $100,000,000 and $110,000,000	4426(b)(3)

Source: Nasdaq

1 Companies affiliated with another company listed on The Nasdaq Global Select Market. For purposes of Rule 4426, an issuer is affiliated with another company if that other company, directly or indirectly though one or more intermediaries, controls, is controlled by, or is under common control of the issuer. For purposes of these rules, control means having the ability to exercise significant influence. Ability to exercise significant influence will be presumed to exist where the parent or affiliated company directly or indirectly owns 20% or more of the other company's voting securities, and also can be indicated by representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

2. Round lot and total shareholders include both beneficial holders and holders of record.

3 In computing the number of publicly held shares for purposes of Rule 4426(b), Nasdaq will not consider shares held by an officer, director or 10% shareholder of the issuer.

NASDAQ GLOBAL MARKET FINANCIAL AND LIQUIDITY REQUIREMENTS			
Requirements	**Initial Listing**		
	Standard 1 Marketplace Rule 4420(a)	**Standard 2 Marketplace Rule 4420(b)**	**Standard 3 Marketplace Rule 4420(c)[1,2]**
Stockholders' equity	$15,000,000	$30,000,000	N/A
Market value of listed securities or Total assets and Total revenue	N/A	N/A	$75,000,000 or $75,000,000 and $75,000,000
Income from continuing operations before income taxes (in latest fiscal year or in 2 of last 3 fiscal years)	$1,000,000	N/A	N/A
Publicly held shares[3]	1,100,000	1,100,000	1,100,000
Market value of publicly held shares	$8,000,000	$18,000,000	$20,000,000
Bid Price	$5	$5	$5[2]
Shareholders (round lot holders)[4]	400	400	400
Market Makers[5]	3	3	4
Operating History	N/A	2 years	N/A
Corporate Governance[6]	Yes	Yes	Yes

Source: Nasdaq

1 For initial and continued listing under Standard 3, a company must satisfy one of the following: the market value of listed securities requirement or the total assets and the total revenue requirement. Under Marketplace Rule 4200(a)(20), listed securities is defined as "securities listed on Nasdaq or on another national securities exchange".

2 Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the market value of listed securities requirement of Standard 3 must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.

3 "Publicly held shares" is defined as total shares outstanding, less any shares held by officers, directors or beneficial owners of 10% or more.

4 "Round lot holders" are shareholders of 100 shares or more. The number of beneficial holders are considered in addition to holders of record.

5 An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

6 Marketplace Rules 4350, 4351 and 4360.

NASDAQ CAPITAL MARKET FINANCIAL AND LIQUIDITY REQUIREMENTS				
Requirements	**Standard 1**	**Standard 2[1]**	**Standard 3**	**Marketplace Rules[2]**
Stockholders' equity	$5 million	$4 million	$4 million	4310(c)(2) 4320(e)(2)
Market value of publicly held shares	$15 million	$15 million	$5 million	4310(c)(2) 4320(e)(2)
Operating history	2 years	N/A	N/A	4310(c)(2) 4320(e)(2)
Market value of listed securities[3]	N/A	$50 million	N/A	4310(c)(2) 4320(e)(2)
Net income from continuing operations (in the latest fiscal year or in two of the last three fiscal years)	N/A	N/A	$750,000	4310(c)(2) 4320(e)(2)
Publicly held shares[4]	1 million	1 million	1 million	4310(c)(7) 4320(e)(5)
Bid price	$4	$4	$4	4310(c)(4) 4320(e)(2)
Shareholders (round lot holders)[5]	300	300	300	4310(c)(6) 4320(e)(4)
Market makers[6]	3	3	3	4310(c)(1) 4320(e)(1)
Corporate governance	Yes	Yes	Yes	4350, 4351 and 4360

Source: Nasdaq

1 Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the market value of listed securities requirement must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.

2 Marketplace Rule 4310 is applicable to domestic (U.S.) and Canadian securities. Marketplace Rule 4320 is applicable to non-U.S. securities other than Canadian securities.

3 Under Marketplace Rule 4200(a)(20), listed securities are defined as "securities listed on NASDAQ or another national securities exchange".

4 Publicly held shares is defined as total shares outstanding, less any shares held by officers, directors or beneficial owners of 10% or more. In the case of ADRs, for initial inclusion only, at least 400,000 shall be issued.

5 Round lot holders are shareholders of 100 shares or more. The number of beneficial holders are considered in addition to holders of record.

6 An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

Appendix F: Sample Timeline for Going Public in the United States

Weeks 1	• Organizational meeting with all participants • Company and counsel begin preparation of registration statement • Underwriters begin due diligence
Weeks 2-6	• Continue preparation of registration statement and distribute for review and comment • Continue due diligence • Underwriter's counsel distributes draft Underwriting Agreement
Weeks 4-8	• Send draft of Registration Statement to financial printer • File registration statement with SEC • File listing application and related documents with chosen exchange
Weeks 8-10	• Begin preparation of road show and other marketing plans • Receive comments from SEC on registration statement • File amended registration statement
Weeks 10-12	• Receive additional comments from SEC and file any necessary amendments • Print and distribute preliminary prospectus • Begin road show
Weeks 12-14	• Sign underwriting agreement • Request acceleration of effectiveness of registration statement • Completion of closing documents and closing

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