

securities and public markets bulletin

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TSX Listing Requirements for Mining and Exploration Companies

Toronto Stock Exchange (the “TSX”) has three separate listing standards, which facilitates the listing of companies at different stages of development: (i) mineral exploration or development-stage companies; (ii) producing mining companies; and (iii) senior mining companies.

Companies are generally reviewed under one of three listing standards indicated above regardless of jurisdiction of incorporation or location of head office, management or key projects. The following is a summary of the listing requirements for mineral exploration or development-stage companies.

A. LISTING REQUIREMENTS FOR MINERAL EXPLORATION OR DEVELOPMENT-STAGE COMPANIES

1. Financial and Technical Listing Requirements for Mineral Exploration

The following are listing requirements for a mineral exploration or development-stage company:

- (a) A National Instrument 43-101 (“NI 43-101”) report for an advanced-stage exploration property¹ prepared by an independent qualified person².
- (b) A planned program of exploration and/or development, of at least C\$750,000³ that will sufficiently advance the property and is recommended by the independent qualified person.
- (c) Sufficient funds to complete the planned program of exploration and/or developments on the company’s properties, to cover estimated general and administrative costs, anticipated property payments and capital expenditures for at least 18 months. The applicant must supply a management-prepared 18-month projection (by quarter) of sources and uses of funds detailing all planned and required expenditures signed by the Chief Financial Officer.

¹ The TSX will generally consider a property to be sufficiently advanced if continuity of mineralization is demonstrated in three dimensions at economically interesting grades.

² Reports prepared by independent qualified persons, and the acceptability of the authors, shall conform with National Instrument 43-101 (“NI 43-101”) and be acceptable to the TSX.

³ The TSX will consider companies undertaking an exploration or development programme of at least \$500,000 on a qualifying property if planned program expenditures on all properties aggregate at least \$750,000. The additional properties will be considered with the submission of appropriate technical documentation, conforming to NI 43-101.

- (d) Working capital of at least C\$2 million⁴ and an appropriate capital structure.
- (e) Net tangible assets of C\$3 million.
- (f) A company is generally required to have at least a 50% interest or the right to earn at least a 50% interest in the qualifying property. Lesser ownership interests in the qualifying property are assessed on a case-by-case basis and may be considered on an exceptional basis, based on program size, availability of funding, stage of advancement of the property and strategic alliances.

2. Financial and Technical Listing Requirements for Producing Mining Company

The following are listing requirements for a producing mining company:

- (a) Property with three years proven and probable reserves that is either in production or production decision made as calculated by a qualified person.
- (b) Reasonable likelihood of future profitability supported by feasibility study or historical production and financial performance.
- (c) Sufficient funds either to bring the mine into commercial production or adequate working capital to carry on the business.
- (d) Appropriate capital structure (debt and equity).
- (e) Minimum C\$4 million net tangible assets.

3. Financial and Technical Listing Requirements for Senior Producers

The following are the listing requirements for a senior producer:

- (a) Three years proven and probable reserves with reasonable likelihood of future profitability calculated by a qualified person.
- (b) Pre-tax profitability from on-going operations in the last fiscal year.

- (c) Pre-tax cash flow of C\$700,000 in the last fiscal year and an average of C\$500,000 for the past two fiscal years.
- (d) Adequate working capital for business plan and appropriate capital structure.
- (e) Minimum C\$7.5 million net tangible assets.

4. Management Requirements

- (a) The TSX will consider the management's quality and expertise when assessing an applicant's suitability for listing. All officers, directors and holders of more than 10% of the applicant's voting securities must complete Personal Information Forms.
- (b) Management (including the board of directors) must have experience and technical expertise relevant to an applicant's mining projects, and sufficient knowledge of the Canadian capital markets usually satisfied by acceptable Canadian public company experience. At least one Canadian director with relevant public company experience is recommended.
- (c) At least two independent directors.
- (d) One Canadian director (recommended but not required).
- (e) A contact person in Canada to be accessible for shareholder and analyst inquiries (recommended).

5. Public Distribution

- (a) All applicants must have at least 1 million freely tradable shares with an aggregate market value of C\$4 million in Canada. These securities must be held by at least 300 public security holders in Canada, each with one board lot⁵ or more.
- (b) Where the Company is listed and in good standing on another recognized exchange and is incorporated outside of Canada, the TSX will not impose any unique requirements for the management or the financial requirements of

⁴ Companies with working capital of less than C\$2 million may be eligible if the company's minimum work program will be funded by a substantial industry partner.

⁵ If the shares are trading at a price greater than \$1.00, one board lot means 100 shares. If the shares are trading at a price less than \$1.00, one board lot means 500 shares.

the Company. However, the Company will be required to have some presence in Canada and must be able to demonstrate, that they are able to satisfy all of their reporting and public company obligations in Canada. This may be satisfied by having a member of the board of directors or management, or an employee, or a consultant of the Company situated in Canada.

- (c) Where a foreign exchange is the primary market for the Company's securities, the TSX will require a sufficient level of distribution and a satisfactory plan for a liquid market on the TSX.
- (d) A transfer or co-transfer agent and registrar or co-registrar must be appointed.
- (e) An acceptable settlement system must be used.
- (f) An acceptable news wire service must be contracted.

6. Sponsorship

- (a) A sponsorship letter from a TSX Participating Organization can be significant in determining the applicant's suitability for listing. Applicants that do not meet the Senior Mining Company listing criteria are generally required to be sponsored by a TSX Participating Organization.
- (b) Sponsors must confirm whether the issuer satisfies all the listing requirements and comment on the company's ability to meet its obligations as a TSX public company.
- (c) The sponsor must also review and comment on:
 - (i) completeness of the management prepared 18-month projected expenditures;
 - (ii) any site visits to the applicant's properties;
 - (iii) issues and material agreements relating to land tenure for the applicant's principal properties, including the political risk, legal system, ability to mine, terms of maintaining mineral rights, legal impediments and any impediments to maintaining or securing the property; and

(iv) management credentials, experience and technical expertise related to the applicant's mining properties.

7. Property Requirements

- (a) Property ownership is expected to be at least 50% or if a significant joint venture partner is involved, at least 30%.
- (b) Other ownership is assessed on a case-by-case basis and will consider the structure of any joint venture agreements, the size of the project, operator status, etc.
- (c) Satisfactory land tenure:
 - (i) Satisfactory comfort will depend on jurisdiction
 - (ii) Discuss with the TSX – provide available documentation or other pre-existing comfort (i.e. legal opinions, prior or current prospectus disclosure, history of ownership by company or previous owner, sponsorship, other third party due diligence, etc.)

B. DUE DILIGENCE REQUIREMENTS FOR THE SPONSORSHIP LETTER

The following are due diligence requirements for the sponsor to provide a sponsorship letter:

1. All available audited, unaudited and pro-forma financial statements of the Company.
2. All available technical reports (draft or otherwise), title reports, valuations, patents, trademarks and copyrights representing the operations and assets of the Company.
3. A current copy of the Company's business plan, together with financial projections and details of all underlying assumptions made by management.
4. A copy of the Company's listing application.
5. Copies of all material contracts.
6. Personal Information Forms ("PIFs") and resumes for each of the directors, officers and holders of more than 10% of the Company's voting securities.

C. KEY DOCUMENTS REQUIRED TO BE FILED WITH THE TSX APPLICATION TO OBTAIN CONDITIONAL LISTING APPROVAL

1. Cover Letter with respect to listing application should include the following information:
 - (a) any specific timing target or events for TSX listing;
 - (b) any pending changes relating to
 - (i) financings, (ii) acquisitions, divestitures or other transactions and (iii) management changes or additions;
 - (c) stock symbol request if necessary; and
 - (d) overview of any unique aspects of company, project, ownership, litigation or other issues.
2. Technical reports should comply with the following conditions:
 - (a) prepared by independent qualified person as defined in NI 43-101;
 - (b) in compliance with NI 43-101 or accepted equivalent;
 - (c) prepared for all significant properties (to be discussed with TSX);
 - (d) must be up-to-date and comprehensive; and
 - (e) must be filed on SEDAR within 30 days of listing, if the Company is not already a reporting issuers in the province of Ontario.
3. 18-month projection of sources and uses should be presented in the following manner:
 - (a) one page simple spreadsheet;
 - (b) by quarter;
 - (c) uses of funds should be broken down to include the following:
 - (i) next planned work programs on advanced stage project and any other planned programs;
 - (ii) any capital expenditure requirements;
 - (iii) any anticipated property payment over next 18 months; and
 - (iv) distinguish discretionary from committed if applicable.
 - (d) sources of funds must be certain, committed or concurrent with listing:
 - (i) any projected cash flow streams must be consistent with cash flow projections in independent technical report; and
 - (ii) planned financings, in the money options, etc. can be footnoted.
 - (e) projection may be submit in draft; and
 - (f) final projection must be signed by Chief Financial Officer prior to listing.
4. Disclosure document and Listing Application should be submitted as follows:
 - (a) TSX will accept any current, comprehensive disclosure document deemed equivalent to prospectus level disclosure (documents may be submitted to TSX for determination); and
 - (b) draft disclosure document and/or listing application is sufficient to initiate review for listing (details of current share distribution are important).
5. Financial Statements should be submitted as follows:
 - (a) drafts may be submitted upon application with finals received prior to listing;
 - (b) either audited financial statements within 120 days of the period end or a comfort letter on interims within 90 days of the period end; and
 - (c) comfort letter on interim financials should comply with the CICA Handbook.
6. PIFs for all officers, directors and >10% shareholders are required as follows:
 - (a) if person has been previously cleared by TSX or TSX Venture within the last 12 months a statutory declaration form is adequate;
 - (b) if >10% shareholder is widely held fund, provide information or brochures on fund and may be exempt from PIF filing; and
 - (c) non-Canadians will take longer to clear.

7. Draft of the sponsorship letter can be submitted to be finalized prior to committee meeting.
8. Application fee of \$10,000 is required.

D. POTENTIAL ISSUES OR DELAYS IN THE LISTING PROCESS

1. Partial documents submitted to the TSX, i.e. missing PIFs or partially completed PIFs, may cause delay in the TSX listing process.
2. Pending major transactions of the company that arise during the listing process that would materially change the business may cause delay in the TSX listing process.
3. Timing issues on technical reports or financial statements may cause delay in the TSX listing process.
4. Where the TSX determined that the disclosure document is not considered as equivalent to prospectus level disclosure, the TSX may request preparation of a prospectus level disclosure document.
5. Where there is inadequate public distribution in Canada as determined by the TSX, the TSX may request a prospectus offering.

E. FINANCIAL STATEMENTS

1. "Foreign issuers" can file financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") or accounting principals that meet the foreign disclosure requirements of designated foreign jurisdictions such as Australia. A "foreign issuer" is defined as an issuer, that is incorporated or organized under the laws of a foreign jurisdiction, and where less than 50% of the outstanding voting securities for the election of directors are owned, directly or indirectly, by residents of Canada; the majority of the executive officers or directors of the issuer are not residents of Canada; more than 50 % of the consolidated assets of the issuer are not located in Canada; and the business of the issuer is not administered principally in Canada. In this instance no reconciliation to Canadian GAAP is required.

2. Financial statements prepared in accordance with IFRS or another recognized accounting standard must be accompanied by an auditor's report prepared in accordance with the International Standards on Auditing and the auditor's report must be accompanied by a statement by the auditor that describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS and indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation.
3. A foreign reporting issuer's audit report must be prepared by an accounting firm that is a registered with the Canadian Public Accountability Board ("CPAB").
4. Until January 2011, all issuers can file financial statements prepared in accordance with IFRS. After January 2011, all financial statements must be filed in accordance with IFRS.

F. FAVOURED RULES FOR DESIGNATED FOREIGN ISSUERS

1. If the Company qualifies as a designated foreign issuer ("DFI") by virtue of it being subject to foreign disclosure requirements and the total number of its equity securities owned, directly or indirectly, by residents of Canada not exceeding 10 per cent, on a fully diluted basis it will be exempt from the majority of Canadian periodic reporting and filing requirements (as set out in Appendix A). This threshold percentage must be calculated by the Company as of the date the Company becomes a reporting issuer in Ontario and must be re-calculated thereafter annually at the end of the Company's financial year to determine whether it still qualifies as a DFI.
2. DFIs are exempt from a number of Canadian securities legislation requirements on the condition that they comply with the requirements of their home jurisdictions in a number of areas, including news releases, material change reporting, financial

statements, AIF and MD&A, proxy and proxy solicitation, early warning, insider reporting and communication with beneficial owners of securities requirements.

3. In order to rely on these exemptions, the Company must, at least once a year, disclose in or as an appendix to a document that it is required to send its security holders and that it sends to its security holders in Canada that:
 - (a) it is a DFI;
 - (b) it is subject to the requirements of AIM/other UK authorities; and
 - (c) the name of the UK regulatory authority it is subject to.
4. To maintain its DFI status the Company must file in Canada all documents filed with AIM/other UK authorities at the same time as, or as soon as practicable after, the filing of those documents with AIM/other UK authorities.
5. Please note that a DFI is not exempt from the requirement to have an auditor that is registered with the Canadian Public Accountability Board.
6. Please also note that a DFI is not exempt from the application of NI 43-101. NI 43-101 requires an issuer becoming a reporting issuer for the first time in a Canadian jurisdiction to file a technical report for its "material mineral projects". "Mineral projects" include any exploration, development or production activity. "Materiality" is to be determined in the context of the issuer's overall business and financial condition and in assessing materiality the issuer should consider the effect on both the market price and value of the issuer's securities in light of the current market activity.

APPENDIX A

Continuous Disclosure and Other Exemptions Relating to Designated Foreign Issuers

NI 71-102 sets out statutory exemptions from Canadian securities legislation requirements for designated foreign issuers ("DFIs"). The following sets out several of these exemptions.

Financial Disclosure

A DFI is generally exempt from the requirements of Canadian securities laws relating to the preparation, approval, filing and delivery of its interim financial statements, annual statements and auditors reports on annual statements if the DFI:

- complies with foreign disclosure requirements relating to the preparation, approval, filing and delivery of its interim financial statements, and annual financial statements and auditor's reports on annual financial statements;
- files on SEDAR the interim financial statements, annual financial statements and auditor's reports on annual financial statements filed with or furnished to the foreign regulatory authority; and
- sends the documents to shareholders resident in Canada in the same manner and time as they are sent to non Canadian shareholders.

AIFs & MD&A

A DFI is generally exempt from the requirements of Canadian securities laws relating to the preparation, approval, filing and delivery of AIFs and MD&A provided the DFI:

- complies with the requirements of foreign disclosure requirements relating to annual reports, quarterly reports, current reports and MD&A;
- files on SEDAR each annual report, quarterly report, current report and MD&A filed with or furnished to the foreign regulatory authority; and
- sends the documents to shareholders resident in Canada in the same manner and time as they are sent to non Canadian shareholders.

Material Change Reporting

Material change reporting requirements under Canadian securities laws will not apply to a DFI provided the DFI:

- complies with foreign disclosure requirements for making public disclosure of material information on a timely basis; and
- promptly files on SEDI material reports filed with the foreign regulatory authority and any news release issued by it for the purpose of complying with foreign regulatory requirements.

News Releases

DFIs have an exemption from Canadian securities requirements relating to the filing of news releases that disclose information regarding its results of operations or financial condition provided the DFI:

- complies with foreign regulatory requirements relating to the filing of news releases disclosing financial information; and
- files on SEDAR a copy of each news release disclosing financial information that is filed with or furnished to the foreign regulatory authority.

Proxies and Proxy Solicitation and Information Circulars

DFIs are generally exempt from the requirements under Canadian securities laws relating to information circulars, proxies and proxy solicitation provided the DFI:

- complies with the requirements of foreign disclosure requirements relating to proxy statements, proxies and proxy solicitation;
- files on SEDAR all material relating to a meeting of shareholders that is filed with the foreign regulatory authority; and
- sends documents sent to shareholders to shareholders resident in Canada in the same manner and time as they are sent to non Canadian shareholders.

Early Warning Requirements

DFIs have an exemption from the early warning requirements under the Canadian securities laws provided the DFI:

- complies with foreign disclosure requirements relating to the reporting of beneficial ownership of equity securities; and
- files on SEDAR each report of beneficial ownership that is filed with or furnished to the foreign regulatory authority.

A Cautionary Note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

Insider Reporting

DFIs have an exemption from the insider reporting requirements under the Canadian securities laws provided the DFI complies with foreign disclosure requirements relating to insider reporting.

Communications with Beneficial Owners of Securities

DFIs have an exemption from the communications with beneficial owners requirements under Canadian securities laws provided:

- complies with foreign disclosure requirements relating to the communication with beneficial owners; and
- complies with the requirements of Canadian securities laws with respect to fees payable to intermediaries, for any depositary and any intermediary located in Canada.

Written by Barbara Hendrickson

ABOUT McMILLAN LLP'S SECURITIES AND PUBLIC MARKETS GROUP

Our Securities and Public Markets Group acts for a variety of clients (domestic and foreign issuers of debt and equity securities, municipal, territorial and provincial governments, financial institutions, investment banks and securities dealers) and have extensive experience in all areas of public market securities law practice. Our experience includes corporate finance, mergers and acquisitions, public company servicing, capital markets and registration, and securities litigation.

For further information, please contact one of the members of our Securities and Public Markets Group:

Stewart Ash	416.865.7165	stewart.ash@mcmillan.ca
Patrice Beaudin	514.987.5006	patrice.beaudin@mcmillan.ca
Michael Burns	416.865.7261	michael.burns@mcmillan.ca
Carmen Diges	416.865.7925	carmen.diges@mcmillan.ca
Sean Farrell	416.865.7910	sean.farrell@mcmillan.ca
Patrick Goudreau	514.987.5004	patrick.goudreau@mcmillan.ca
Barbara Hendrickson	416.865.7903	barbara.hendrickson@mcmillan.ca
David Hudson	416.865.7237	david.hudson@mcmillan.ca
David Kent	416.865.7143	david.kent@mcmillan.ca
Jonathan Labranche	514.987.5019	jonathan.labranche@mcmillan.ca
Larry Markowitz	514.987.5052	larry.markowitz@mcmillan.ca
Robert McDermott	416.865.7085	robert.mcdermott@mcmillan.ca
Margaret McNee	416.865.7284	margaret.mcnee@mcmillan.ca
Jennifer Parkin	416.865.7109	jennifer.parkin@mcmillan.ca
Jean-François Pelland	514.987.5081	jean-francois.pelland@mcmillan.ca
Kimberly Poster	416.865.7890	kimberly.poster@mcmillan.ca
Mark Pratt	416.865.7141	mark.pratt@mcmillan.ca
Stephen Rigby	416.865.7793	stephen.rigby@mcmillan.ca
Jennifer Schwartz	416.865.7945	jennifer.schwartz@mcmillan.ca
Cindy Wan	416.865.7190	cindy.wan@mcmillan.ca

mcmillan.ca

McMillan LLP

Toronto | t 416.865.7000 | f 416.865.7048

Montreal | t 514.987.5000 | f 514.987.1213

Barristers & Solicitors

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