Securities

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Listing on a Stock Exchange

By Larry Markowitz and Johanne Duchesne

A company that lists its securities on a stock exchange gains a number of advantages for its securityholders and for itself. The more significant advantages include increased marketability of its securities and a wider securityholder base. In addition, stock options and stock purchase plans gain a known value, thereby creating an incentive for employees to remain with the company.

Financing is facilitated by listing on a stock exchange. In the event of a merger, shareholders receive greater value, since shares often trade at a premium to their book value and listed securities may more easily be used as a currency in effecting a take-over.

There are a number of stock exchanges on which Canadian companies can apply to have their securities listed and posted for trading. These include The Toronto Stock Exchange (the "**TSX**") and the TSX Venture Exchange (the "**TSX Venture**"), as well as the New York Stock Exchange (the "**NYSE**") and the NASDAQ National Market ("**NASDAQ**"). Of course, Canadian issuers may also apply to list their securities on exchanges outside of Canada and the United States, including those in Europe or elsewhere. We will not, however, deal with the listing requirements and procedures for exchanges located outside of North America in this bulletin.

The TSX is the senior stock exchange in Canada and is therefore its most prestigious and high profile exchange. Companies that do not qualify to be listed on the TSX may apply to be listed on the TSX Venture, Canada's junior exchange. An issuer may not be listed on both the TSX and TSX Venture at the same time. As TSX Venture issuers grow, they may apply to transfer their listing to the TSX.

The NYSE and NASDAQ have more stringent listing requirements than the TSX and require compliance with the securities laws of the United States. That being said, many Canadian issuers have nevertheless chosen to list their shares on the NYSE or NASDAQ or, in some cases, to be listed concurrently in both countries.

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In order to list a company's shares on the TSX or the TSX Venture, a number of documents must be filed with exchange officials. The information contained in these documents is analyzed and, if listing requirements are met, the exchange in question grants a conditional approval for listing, following which applicants have a period of time (generally 90 days) to comply with any additional outstanding listing pre-requisites. The entire process, from initial application to conditional approval, typically takes from six to eight weeks.

Continuous Disclosure Requirements

A company that lists its shares on either the TSX or the TSX Venture becomes, by definition, a reporting issuer in at least one Canadian province, if not more. As a reporting issuer, an issuer is required to adhere to continuous disclosure requirements under applicable securities laws. Such requirements include, among others, the

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obligation to publish and file with the relevant securities commissions annual audited financial statements, as well as quarterly financial statements. These statements must be accompanied by a Management's Discussion and Analysis (MD&A) and must be sent to all security-holders of the reporting issuer, other than holders of debt securities. Moreover, reporting issuers must immediately disclose information about material changes that occur in their affairs, both through the publication of news releases and the filing of material change reports with securities regulatory authorities.

There are legal fees, accounting fees and securities commission filing fees associated with meeting continuous disclosure requirements.

TSX Listing Requirements

The TSX has set several basic requirements that apply to all companies applying to list their securities on the exchange.

Public Distribution

In general, companies must have at least one million free trading public shares having an aggregate market value of $4 million. Technology companies must have a market value of at least $10 million. The shares must be held by at least 300 public shareholders, each holding one board lot or more.

Management

The TSX assesses the quality of an applicant company's management. All officers, directors and holders of more than 10% of the company's stock must provide details of their background, business experience and industry knowledge. This information is provided in a Personal Information Form which is essentially a detailed questionnaire regarding the background of the person who completes it. The Personal Information Form must be signed and sworn before a commissioner of oaths.

Sponsorship

All junior companies, as well as any company that only narrowly meets the listing requirements, should file a sponsorship letter from a TSX Participating Organization with its application. Participating Organizations are those firms entitled to trade through the TSX. These generally include underwriters and other firms in the business of corporate finance. A sponsorship letter provides an assessment of the company and addresses any specific concerns the TSX may have.

Financial Condition and Prospects

The TSX has established separate financial criteria for three types of companies: industrial, oil and gas, and mining. Within each of these categories, there are two levels of financial standards. The first level applies to established companies with strong balance sheets that have met prescribed levels of pre-tax profitability and cash flow in the previous year. The second level relates to more junior companies that may have lower levels of net tangible assets, cash flow or profits. Junior companies are subject to closer regulation by the TSX once they are listed. For example, such companies are required to obtain the TSX's consent prior to making any material change in their affairs.

Listing Application Procedure

Applicant companies may make an appointment with TSX staff to discuss their eligibility to list their securities, prior to filing a formal application.

A formal application involves the submission of a detailed TSX listing application, as well as numerous supporting documents, such as the Personal Information Forms described above and, in the case of natural resource companies, geological reports. The information disclosed in the TSX listing application resembles that found in a prospectus. In fact, if a company is issuing a prospectus at the same time as it is applying to list its securities on the TSX, the exchange will accept the prospectus in place of the TSX listing application.

Supporting documents also include copies of corporate charter documents, annual reports, audited financial statements, copies of stock option plans, copies of material agreements, a list of shareholders and other certificates and legal opinions, as well as various agreements and declarations to be signed by officers of the applicant company.

TSX Listing Fees

The number of shares to be listed must be the total number of shares actually issued and outstanding, together with any shares which have been authorized for issuance for a specific purpose such as securities to be issued upon exercise of an exchange, conversion or subscription right. Listing fees must be paid on a per-share basis. Total fees can range from $10,000 to $60,000.

Other Fees

Other fees include those charged by lawyers and any Participating Organization that acts as a sponsor.

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TSX Venture

The procedure for listing securities on the TSX Venture is quite similar to that for listing on the TSX. However, the levels of assets and profitability that are required are lower. For instance, an industrial company may list its shares on Tier 2 of the TSX Venture if it has as little as $500,000 in net tangible assets or $50,000 of pre-tax earnings (or even less, in certain cases), whereas the TSX requires, at the very least, $2 million of net tangible assets and $200,000 of pre-tax earnings.

The TSX Venture is divided into two tiers: Tier 1 is the senior tier and is reserved for the more advanced issuers listed on the exchange. Tier 2 represents early stage companies, often in innovative fields. The filing requirements for Tier 2 companies are generally more stringent than for Tier 1 companies, while the minimum requirements for qualifying to be listed are less stringent for Tier 2 companies.

Companies may graduate from Tier 2 to Tier 1 once they meet Tier 1 minimum listing requirements. Tier 1 companies generally need to have $1 million of net tangible assets or $100,000 of pre-tax earnings.

To be listed, companies must have at least 300 public shareholders, each holding one board lot or more. In addition, 20 percent of the issued and outstanding shares must be in the hands of the public. For Tier 1, there must be one million free trading public shares having an aggregate market value of at least $1 million. For Tier 2, the corresponding requirements are 500,000 free trading public shares having an aggregate market value of at least $500,000.

There are a number of sub-categories depending on the industry in which the company listing its shares operates, as well as its stage of development. For instance small cap start-ups will often not be required to earn a profit at the time of listing, but merely to have an expectation of future profitability.

Listing fees on the TSX Venture can range from $5,000 to $15,000 in listing fees.

NASDAQ

NASDAQ is an electronic stock market run by the National Association of Securities Dealers in the United States. It is divided into two sections, the NASDAQ National Market and the NASDAQ SmallCap market. To be listed on the NASDAQ National Market, a company requires either stockholders' equity of at least US$15 million or, in the alternative, either a market capitalization of at least US$75 million, total assets of US$75 million or total revenue of US$75 million. It must also have a public float of at least 1.1 million shares, defined as the total number of shares outstanding less any shares held by officers, directors or beneficial owners of ten percent or more.

To be listed on the NASDAQ SmallCap Market, a company must have either stockholders' equity of US$5 million, a market capitalization of US$50 million or net income of US$750,000, as well as a public float of one million shares.

NASDAQ also operates the American Stock Exchange for even smaller issuers. Listing requirements include either pre-tax income of US$750,000 and a public float of 500,000 shares (or one million, depending on the applicable standard) having an aggregate market value of at least US$3 million, or a two-year operating history and a public float having an aggregate market value of at least US$15 million. In both cases, stockholders' equity must be at least US$4 million.

NASDAQ has also announced the founding of "NASDAQ Canada" which is eventually intended to become an alternative market structure to the traditional Canadian equity exchanges. At this time, a Canadian company wishing to list its securities on NASDAQ still has to follow the same procedure as would any other company and will thus have to apply to list its securities on either the NASDAQ National Market or the NASDAQ SmallCap Market, as described above.

New York Stock Exchange

The NYSE is the most "Blue-Chip" of stock markets. Only the most major corporations qualify to list their securities on the NYSE. A company based outside of the United States would need to have at least 5,000 shareholders worldwide. There must be a public float of at least 2.5 million shares having an aggregate market value of at least US$100 million.

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The Securities Law team at *Lavery, de Billy* can help you list your company's shares on a stock market. For further information, please contact Larry Markowitz at (514) 877-3048 or Johanne Duchesne at (514) 877-3045.

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