

TORONTO STOCK EXCHANGE

REQUEST FOR FEEDBACK REGARDING PROPOSED AMENDMENTS TO ORIGINAL LISTING REQUIREMENTS

Toronto Stock Exchange (“**TSX**” or “**we**”) is publishing this Consultation Paper to solicit initial feedback regarding its proposal to revise the original listing requirements (“**OLRs**”) set out at Part III of the TSX Company Manual (“**Manual**”) as described below. TSX intends to use the feedback received to inform its decision on how to proceed with the proposal, including potentially modifying the proposal based on the feedback received, soliciting additional feedback, and determining whether to submit an application to the Ontario Securities Commission for regulatory approval (including publishing a formal Request for Comment).

TSX encourages stakeholders to provide feedback on the OLRs proposal. In connection therewith, TSX also intends to conduct a series of in-person consultations in Vancouver, Calgary, Toronto and Montreal in order to solicit feedback on the proposal. Stakeholders wishing to arrange a meeting are invited to contact us using the contact information provided below. Comments may also be provided to TSX in writing. Comments received will not be published.

Comments must be delivered to TSX by September 16, 2024 to:

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I. Background

TSX continues to seek out opportunities to improve the quality of the marketplace and ensure our rules make markets better and reflect the current needs and expectations of Canadian (and global) capital markets participants. With that aim in mind, we have recently completed an extensive assessment of our OLRs. We have analyzed historical data, examined the listing requirements of our peer exchanges and consulted with both our Listings Committee and our Listings Advisory Committee¹. We have considered the strength of the TSX Venture Exchange-to-TSX graduation ecosystem and our unique ability to provide a platform for small and medium sized enterprises to access public funding at an earlier stage than is available in many other jurisdictions globally. We have also considered our position as a global leader in providing

¹ The Listings Advisory Committee of TSX is a committee of capital market participants established by TSX to provide advice to TSX on general regulatory and business issues related to the TSX listings business. Committee members represent a variety of backgrounds, including legal, business, accounting and regulatory professions across TSX participating organizations, issuers and investors. The Listings Advisory Committee Terms of Reference can be found [here](#).

markets for mining and oil & gas issuers. Throughout this review, we have been mindful of the need to balance access to markets with robust requirements which support marketplace quality.

The results of this internal review have led us to (i) re-envision our approach to listing industrial issuers (Section 309 (Minimum Listing Requirements for Industrial Companies) of the Manual), (ii) clarifying and updating our approach to listing mining issuers (Section 314 (Minimum Listing Requirements for Mining Companies) of the Manual) and (iii) modernize our approach to listing oil & gas issuers (Section 319 (Minimum Listing Requirements for Oil and Gas Companies) of the Manual). We are also proposing to remove Part V - Special Requirements for Non-Exempt Issuers from the Manual, and to revise various aspects of our sponsorship requirements set out in Sections 312 (Sponsorship or Affiliation - Industrial Companies), 317 (Sponsorship or Affiliation - Mining Companies), 322 (Sponsorship or Affiliation - Oil and Gas Companies) and 326 (Sponsorship) of the Manual. The proposed amendments seek to increase predictability and transparency in the listing process by reducing the need for discretionary waivers and exemptions, thereby reducing issuer burden, while maintaining sound requirements to protect the quality of our market. We intend to maintain the TSX Sandbox™ program and will also retain customary discretion to allow for waivers and exemptions where circumstances merit. We anticipate that if the OLRs are amended, revisions to our continued listing requirements would necessarily follow in due course.

II. Proposed Amendments to the OLRs

(A) Section 309: Industrial Issuers

The current OLRs for industrial issuers are organized in five categories: (i) Profitable Non- Exempt, (ii) Profitable Exempt; (iii) Forecasting Profitability; (iv) Technology; and (v) Research & Development). Historically, nearly all notable exemptions relating to the OLRs made by the Listings Committee, and all applications made pursuant to TSX Sandbox™, have been in relation to the minimum listing requirements set out in Section 309. We conducted an in-depth review of how these listing categories have been used and what exemptions are most commonly requested by applicants. We compared our requirements to those of other senior international exchanges. We considered various safeguards incorporated into the existing OLRs and their effectiveness, as well as the burden to issuers associated with such safeguards.

Our findings have led us to conclude that: (i) it is unnecessary to subcategorize by business sector within the industrial category as it creates needless complexity and appears out of date in relation to our peer exchanges; and (ii) the primary hallmarks of a successful listing, along with management and governance-related matters, are a viable business, adequate funding and market support.

We are therefore proposing new industrial listing categories that will allow industrial applicants to demonstrate that they satisfy these criteria in different ways. The new categories provide various routes to listing and allow issuers the flexibility to access the market at different stages

of the business cycle, while requiring evidence of operations, funding and market support to provide safeguards and ensure a robust stock list.

We propose replacing the existing Section 309 listing categories with the following new categories (the “**New Categories**”):

1. “Senior Income & Revenue-Producing” for applicants which are profitable or produce significant revenue;
2. “Pre Income-Producing” for applicants which carry on an existing business but do not produce significant revenue; and
3. “New Venture” for applicants which do not have an existing business but which have either an experienced management team or a proof of business concept, along with adequate funding for the next 12 to 24 months.

The table below summarizes the proposed OLRs for the New Categories:

| New Category | Proposed Requirements | | |
|--|---|---|-----------------------------------|
| | Operations¹ | Funding² | Market Support³ |
| Senior Income & Revenue-Producing | Annual audited pre-tax net income from continuing operations of \$750,000 | If the income test is met, evidence of an appropriate capital structure | \$100 million market cap |
| | OR Annual audited revenue of \$10 million | If the revenue test is met, (i) positive cash flow from operations in the most recently completed audited and interim financial statements OR (ii) demonstrate adequate funding for 12 month cash run rate | |

| New Category | Proposed Requirements | | |
|---------------------------------------|---|--|--|
| | Operations ¹ | Funding ² | Market Support ³ |
| Pre Income-Producing | <p>Audited income statement demonstrating at least one year of operating expenses to advance the business. If the applicant has not operated for one year the business that, once listed, would reasonably be considered the issuer's primary business, TSX may, in lieu of an audited income statement, accept historical financial statements for the business.</p> <p>OR</p> <p>Assets under construction reported in an audited balance sheet along with signed imminent leases</p> | <p>Demonstrate adequate funding for 24 month cash run rate</p> <p>OR</p> <p>With signed leases in hand, demonstrate adequate funding for 12 month cash run rate (if the primary business intends to generate rental revenue from constructed assets)</p> | <p>\$50 million market cap</p> |
| New Venture, (Excluding SPACs) | <p>Management track record of taking a business public</p> <p>OR</p> <p>Proof of business concept for a new venture</p> | <p>Raise \$100 million equity in the six months prior to the date of listing AND pass a 12 month cash run rate test</p> <p>OR</p> <p>Demonstrate adequate funding for 24 month cash run rate, evidencing sufficient cash in treasury to advance the project as per stated targets identified in feasibility report</p> | <p>If equity raise, \$100 million market cap</p> <p>If no equity raise, \$200 million market cap</p> |

Notes:

1. We intend to maintain our ability to list pre-revenue issuers and propose, in such cases, to consider evidence of viability beyond only income or revenue. That may take the form of audited operating expenses (to differentiate the early stage business from a shell), or, in the case of very early stage issuers, evidence of management experience (or "management track record") in taking issuers public or a proof of business concept.

2. With the benefit of examining this issue in the context of previous waiver applications, we believe that increased focus on adequate funding, rather than whether that funding occurred by way of public offering or private placement, may be more appropriate (i.e. the result of financing rather than the means of financing may be the appropriate proper benchmark). We believe that market forces, rather than OLRs, will determine whether an issuer is best served by a public or private financing. We do not currently anticipate reducing our public distribution requirements and issuers will need to demonstrate a sufficient public float at the time of listing. Applicants reporting net income would not need to demonstrate adequacy of funding, specifically, whereas other applicants would need to demonstrate sufficient funding, based on projected run rate, for 12 to 24 months.
3. TSX views market support as a fundamental requirement for a successful listing. In our experience, market capitalization is generally a good indicator of market support. We are aware that there are points in the economic cycle where industry-specific market capitalizations may not reflect historical norms. However, we believe that a holistic approach to listing requirements, which incorporates operations and funding requirements as well as a benchmark for market capitalization, acts as a safeguard in this respect.

As a result, while TSX has not previously specified a minimum market capitalization other than for issuers listing pursuant to Subsection 309(c), we propose that a market capitalization requirement is merited. We believe that a stated market capitalization requirement would provide the market with clear and transparent guidance on this point.

We note that 83% of the TSX stock list (ETFs excluded) has a market cap greater than \$50 million and 75% of the TSX stock list (ETFs excluded) has a market cap greater than \$100 million (based on April 2024 market capitalizations published in the May 2024 MiG Report).

We are therefore proposing minimum market capitalization requirements, based on the listing category, as set out in the chart above.

(B) Section 314: Mining Issuers

TSX has a long and successful track record of listing mining issuers and believes that mining-specific listing requirements provide the industry and capital market participants with clear guidelines of what constitutes a TSX-caliber mining issuer. Consequently, we are not proposing major revisions to the existing requirements, but rather aim to clarify certain terms and modernize the requirements based on updates to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (“NI 43-101”), as well as update certain monetary requirements for inflation. We therefore propose the following:

- (a) clarifying the definition of an Advanced Property by substituting the often misunderstood concept of “continuity of mineralization in three dimension at economically interesting

grades” for that of a property supported by a “resource” or “reserve” estimate as defined by NI 43-101;

- (b) removing the net tangible asset requirements on the basis that, in our experience, sufficient funding / working capital for budgetary requirements is a more pertinent requirement;
- (c) increasing the required work programme spend to \$1,500,000 (from \$750,000);
- (d) increasing the required working capital to \$3,500,000 (from \$2,000,000); and
- (e) increasing the pre-tax cash flow requirement within the exempt mining category (the **“Senior Mining Category”**) to \$1,250,000 (from \$700,000) in the fiscal year immediately preceding and an average of \$900,000 (from \$500,000) for the two fiscal years immediately preceding.

(C) Section 319: Oil & Gas Issuers

We believe TSX should continue its specialized approach to oil & gas issuers, with tailored requirements for the sector. The current OLRs for oil & gas issuers, however, include both outdated reserve numbers and a category for contingent resources which is very rarely used.

In addition to increasing the required value of reserves, we believe qualifying reserves should be expanded to include not only 1P (proved reserves) but also 2P (proved and probable reserves). Alongside a proposed large increase in required reserves value, we believe that the integrity of the OLRs is protected, and applicants also gain increased flexibility if the requirement may be met on the basis of 1P, 2P, or a combination thereof. Additionally, this expanded metric better aligns with industry practice.

We believe it may be appropriate to structure oil & gas OLRs in the same way as industrial OLRs (i.e. requirements for operations (reserves), funding (production or cash flow) and market support (market capitalization)), with various pathways to listing.

The table below summarizes the proposed OLRs for oil & gas issuers:

| Category | Proposed Requirements | | |
|------------------|---------------------------|--|--------------------------|
| | Operations | Funding | Market Support |
| Senior Oil & Gas | \$100 million 1P reserves | Average of 10,000 boepd for the most recently completed quarter AND | \$100 million market cap |

| Category | Proposed Requirements | | |
|----------------------|---|--|--------------------------|
| | Operations | Funding | Market Support |
| | | positive cash flow from operations in the most recently completed audited and interim financial statements | |
| Oil & Gas | \$100 million 1P + 2P, majority of which is 1P reserves | positive cash flow from operations in the most recently completed audited and interim financial statements OR pass a 12 month cash run rate test | \$100 million market cap |

(D) Part V: Non-Exempt Issuers

Current OLRs include subcategories for Exempt Issuers at Sections 309.1 (Industrial companies), 314.1 (Mining companies) and 319.1 (Oil and Gas companies) of the Manual. Issuers listed pursuant to an exempt category are exempted from Part V² of the Manual for as long as they are listed on TSX (“**Exempt Issuers**”). Issuers listed pursuant to a non-exempt category are subject to the requirements of Part V of the Manual and are “**Non-Exempt Issuers**”.

Exempt Issuers are also exempt from escrow pursuant to National Policy 46-201 *Escrow for Initial Public Offerings*, which defines an “exempt issuer” as an issuer that, after its initial public offering, has securities listed on TSX and is classified by TSX as “exempt”. Therefore, while we are proposing to remove Part V from the Manual as set out below, we must continue to differentiate between Exempt Issuers and Non-Exempt Issuers for the purposes of escrow. As such, we propose that issuers listing under the Senior Income & Revenue-Producing, Senior Oil & Gas and Senior Mining categories be categorized as Exempt Issuers. We propose that issuers listing under the all remaining categories be categorized as Non-Exempt Issuers and therefore would remain subject to securities law escrow requirements, as issuers listing pursuant to these categories may have a limited history or operations.

As a part of our OLRs review, we considered the current distinction between Exempt Issuers and Non-Exempt Issuers, whether it is appropriate to categorize an issuer as an Exempt Issuer or a Non-Exempt Issuer at the time of original listing, and whether an issuer’s status as an Exempt Issuer or a Non-Exempt Issuer should periodically be reviewed. We also considered the

² Part V includes special requirements applicable to Non-Exempt Issuers only. For example, Non-Exempt Issuers are required to give prompt notice to TSX of any proposed material change in the business or affairs of the issuer, and TSX acceptance is required for certain transactions involving insiders and other related parties of Non-Exempt Issuers.

application of Part V and the quantitative thresholds set out therein, and whether this criteria continues to be relevant and meaningful.

We propose that Part V be removed from the Manual for the following reasons:

- (a) Fairness: Issuers who satisfy OLRs and list on TSX should be subject to the same criteria for the life of their TSX listing, regardless of relative strength at the time of initial listing.
- (b) Transparency: The classification of an issuer as Exempt / Non-Exempt is not widely published and not well understood by the market. It would be more transparent to dispense with Part V to provide the market with a clear view on the ongoing requirements applicable to all TSX issuers regardless of how they met OLRs.
- (c) Burden Reduction: Part V provides protections to minority security holders of Non-Exempt Issuers in transactions that do not involve treasury issuances of listed securities. However, since the implementation of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*, we believe minority security holders receive adequate protections under securities law. Maintaining a separate TSX requirement to serve the same purpose simply adds to regulatory burden.

The standards and thresholds in Part V of the Manual are more stringent than under securities laws. We examined whether this was justified for issuers listing on a senior stock exchange and noted that none of our peer exchanges have an equivalent set of rules regarding insider participation in non-treasury transactions for Non-Exempt Issuers. We also examined historical applications and did not identify significant policy concerns which would have gone unaddressed but for the application of Part V. Therefore, TSX believes that removing Part V will reduce issuer burden without detracting from quality of the marketplace.

(E) Sponsorship

In the interest of making our sponsorship requirements simpler and more transparent to the marketplace, we are considering non-material amendments to the sponsorship requirements. These proposed amendments do not change how we apply our sponsorship requirements to applicants, but instead describe the most common scenarios where sponsorship will be required.

We propose decoupling sponsorship from the determination of whether an issuer is Exempt / Non-Exempt and propose that sponsorship be required in certain specific situations, namely where:

1. no prospectus has been filed within six months prior to listing,
2. the application is made in the context of emerging market issues,
3. there are governance and/or personal information form matters meriting additional review, or

4. additional commentary is required regarding title and ownership of a resource property.

We propose that sponsorship may also be required on a discretionary basis, however it is our intention that with the proposed prescribed list of sponsorship “triggers” as set out above, this discretion would be rarely required.

III. Questions

Industrial Issuers

1. We propose to use the concept of “management track record” when considering whether an issuer’s operations meet the required threshold for pre-revenue issuers. Do you agree with this approach? Are there other factors we should consider?
2. “Management track record” is currently undefined. What factors are appropriate to be considered for “management track record”?
3. Our proposed approach is to refrain from specifically defining “proof of business concept”. We anticipate the term will include an issuer obtaining regulatory approval to proceed with a stated project or a feasibility report. While we acknowledge that a defined term provides clarity, “proof of business concept” is, and ought to remain, somewhat dependent on the type of business being reviewed. Therefore, we wish to retain the ability to assess applicants under this category on a case-by-case basis. Do you agree with this approach? Are there other issues or concerns that we should consider?
4. Do you agree with our approach to use cash “run rate” to evaluate sufficiency of funding? A cash run rate calculation uses historical revenue data to estimate future revenues assuming current conditions will continue and is not intended to be a forecast. The calculation would also consider expected expenditures (based on historical data or committed/expected activity levels) and upcoming cash flow obligations including scheduled debt maturities and interest payments, and would exclude financing proceeds unless completed concurrent with a TSX listing. Is “run rate” generally well understood, or should a definition be provided?
5. Is the \$750,000 pre-tax net income from operations requirement appropriate for Senior Income & Revenue-Producing?
6. Is the \$10 million annual revenue requirement (in a single year) appropriate for Senior Income & Revenue-Producing? Our current practice has been to view aggregate audited revenue of \$3 million (potentially over multiple fiscal years) as an indicator of “commercialization”. This proposed amendment takes into account that Senior Income & Revenue-Producing would be considered an “Exempt” category under our proposal, and more suitable for later-stage revenue-producers and issuers with positive earnings.

7. Our proposed approach is not to define “appropriate capital structure”. We believe that the concept is case specific to the business and we propose either (a) positive working capital (calculated as excess of current assets over current liabilities in the most recent interim and audited annual periods) or (b) alternate evidence of liquidity, which may include (i) undrawn capacity on existing credit facilities sufficient to cover current deficit and / or (ii) other firm funding commitments could satisfy the concept of “appropriate capital structure”. Do you agree with this approach? Are there other factors that we should consider?
8. Is the \$100 million market capitalization appropriate for the Senior Income & Revenue-Producing category (as an exempt category for more senior issuers)?
9. Is a \$50 million market capitalization appropriate for the Pre Income-Producing category?

Mining Issuers

10. Do you agree that the current OLRs for mining issuers are working well and do not require major revisions?
11. Are there any concerns about the proposed removal of the net tangible asset requirements for mining issuers?

Oil & Gas Issuers

12. For oil & gas issuers, is it appropriate to (i) increase the dollar threshold for the reserves requirement and (ii) permit the inclusion of 2P reserves as well as 1P?
13. Is it appropriate to implement a (a) \$100 million 1P reserves requirement for Exempt oil & gas issuers and (b) \$100 million 1P plus 2P reserves requirement (majority of which is 1P) for Non-Exempt oil & gas issuers?
14. Is it appropriate to implement the \$100 million market cap requirement for all oil & gas issuers?

Part V - Exempt and Non-Exempt Issuers

15. Are there concerns with the proposed removal of Part V requirements?

Sponsorship

16. Do you have concerns with our proposed approach to sponsorship?
17. What are your views on the value of obtaining a sponsorship report, relative to the costs involved?

General

18. May TSX contact you to discuss your responses to the questions above, and the proposed amendments to the OLRs, generally?