



2013-0003

November 7, 2013

**Subsection 314(b)  
Original Listing Requirements  
Mineral Exploration and Development-Stage Companies  
Economically Interesting Grades**

**Part III  
Original Listing Requirements  
Appendix A—Original Listing Application  
Financial Statements**

**Section 613  
Security Based Compensation Arrangements**

**STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND PARTICIPATING ORGANIZATIONS**

Toronto Stock Exchange ("TSX") is providing guidance with respect to: (i) the meaning of "economically interesting grades" for its original listing requirements for mineral exploration and development-stage companies; (ii) financial statements submitted to TSX in support of an original listing application (an "Application"); and (iii) the pricing of stock options, rights and other entitlements ("Options") granted prior to an issuer's initial public offering ("IPO").

**1. Economically Interesting Grades**

Subsection 314(b)(i) of the TSX Company Manual (the "Manual") requires that issuers applying to list under the mineral exploration and development-stage category have a property where continuity of mineralization is demonstrated in three dimensions at "economically interesting grades" (an "Advanced Property") as detailed in a report (the "Technical Report") prepared in accordance with National Instrument 43-101—*Standards of Disclosure for Mineral Projects* ("NI 43-101") by an independent qualified person (a "Qualified Person"). Technical Reports are reviewed by TSX staff geologists who determine whether the project qualifies as an Advanced Property, considering a variety of factors, including mineralization, commodity grades, current and forecast commodity prices, geology and size of the deposit, location and infrastructure, among other things. Considerations regarding infrastructure are discussed below.

TSX recommends that prospective applicants submit Technical Reports to obtain a preliminary opinion as to whether a particular project qualifies as an Advanced Property. TSX assesses each property individually, based on the information provided in the Technical Report, together with other relevant information available to TSX.

*When infrastructure may be an important consideration in determining "economically interesting grades"*

When a project is located in a remote or isolated area that is not readily accessible either by road, railway or port, infrastructure is a particularly important factor to determine whether a project qualifies as an Advanced Property. More specifically, infrastructure is a key consideration for commodities shipped in bulk such as coal, iron ore, all base and precious metal concentrates, and industrial minerals, such as sand and gravel, limestone, commercial clay, and gypsum ("Bulk Commodities"). For Bulk Commodities, proper infrastructure such as roads, railways and ports are required to deliver large amounts of materials to the market. Furthermore, industrial mineral projects located in remote areas which are far away from their targeted markets will typically not be economical given their low intrinsic value.

Applicants with Bulk Commodity projects in remote or isolated locations that are not readily or easily accessible by existing roads, railway or port should have a plan to develop or obtain access to the required infrastructure together with a cost estimate and this plan must not be unreasonable. TSX will assess the reasonableness of the plan, taking into consideration:

1. whether infrastructure has been built over similar terrain and circumstances in the past and the cost associated with building such infrastructure,
2. whether the infrastructure will be unconventional, such as a barge canal or a slurry pipeline that brings concentrate from mines to smelters downhill, and
3. the assumptions in respect of the funding of the infrastructure, specifically whether the applicant will fund the infrastructure or rely on third parties to fund or develop the infrastructure.

To satisfy of the requirement of having "economically interesting grades" for Bulk Commodity projects in remote or isolated locations, the assumptions, plans and cost estimates for infrastructure should ideally be outlined in a Technical Report under items 18 and 21 of Form 43-101F1 and supported by a Preliminary Economic Assessment, Pre-feasibility Study or Feasibility Study<sup>1</sup>. Where the Technical Report does not address infrastructure, Applicants should consult with TSX to determine whether alternative supporting information may be provided to satisfy the requirement for "economically interesting grades".

While the cost associated with the development of any necessary infrastructure should be taken into consideration to assess the economic viability of the project, TSX does not require that the applicant have the necessary funds on hand to develop the infrastructure as a condition of listing.

If the project is unlikely to be economically viable taking into account the value of the mineral deposit, the costs associated with development, extraction and delivery of the resource to market, including the development of any necessary infrastructure, TSX may determine that the project is not an Advanced Property and does not therefore meet TSX original listing requirements.

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<sup>1</sup> As defined in "Estimation of Mineral Resources & Mineral Reserves Best Practice Guidelines (May 30, 2003)"—Adopted by CIM Council on November 23, 2003.

Infrastructure is not a material consideration for commodities that can be produced on-site in relatively small quantities, which have a high value relative to their weight and can be transported to market by air, even if the project is located in a remote area. Such commodities include gold and diamonds.

### *Mineral reserves and resources in the assessment of an Advanced Property*

The Canadian Institute of Mining, Metallurgy and Petroleum ("CIM") defines a Mineral Reserve as the economically mineable part of a Measured or Indicated Mineral Resource<sup>2</sup> demonstrated by at least a Preliminary Feasibility Study<sup>3</sup>. This study must include adequate information on mining, processing, metallurgical, economic and other relevant factors that demonstrate, at the time of reporting, that economic extraction can be justified.

CIM defines a Mineral Resource as a concentration or occurrence of diamonds, natural solid inorganic material, or natural solid fossilized organic material including base and precious metals, coal and industrial minerals in or on the earth's crust in such form and quantity and of such a grade or quality that it has reasonable prospects for economic extraction. The location, quantity, grade, geological characteristics and continuity of a Mineral Resource are known, estimated or interpreted from specific geological evidence and knowledge.

Generally, a project that is located in a remote or isolated area with either a Mineral Reserve or Mineral Resource will qualify as an Advanced Property, but infrastructure will remain an important aspect of that determination. In such instance, the determination of a Mineral Reserve must be demonstrated by at least a Preliminary Feasibility Study which accounts for the cost of developing the required infrastructure if such cost is to be born by the issuer. Otherwise, the Qualified Person should state that he or she has assumed that a third party will fund or develop the required infrastructure and support such assumption on a factual basis.

A property with neither a Mineral Reserve nor a Mineral Resource may still qualify as Advanced Property where infrastructure or other material considerations do not appear to impede the economic viability of the project. New discoveries or new interpretations where geological continuity is shown on plans, levels and sections may qualify on that basis. Historical resources may also, in some instances, qualify a project as an Advanced Property.

## **2. Financial Statements in Support of an Application**

For the purpose of assessing whether an applicant meets certain original listing requirements, TSX relies on the following financial information: i) audited financial statements for the most recently completed financial year; ii) unaudited financial statements for the most recently completed financial quarter; iii) audited forecast financial statements for the current or next fiscal year<sup>4</sup> and iv) pro forma financial statements<sup>5</sup>.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Audited forecast financial statements are required for issuers applying under Subsection 309(b)—Forecasting Profitability of the Manual

<sup>5</sup> Pro forma financial statements may be required when the issuer has recently completed or proposes to complete a material transaction such as a business acquisition. Refer to Appendix A—Original Listing Application of the Manual for further information.

In most cases, TSX relies on the financial statements that are publicly available on SEDAR or included in a prospectus for an IPO. However, TSX may require, or applicants may provide financial information solely for the purpose of establishing whether TSX original listing requirements are met. Accordingly, TSX staff wishes to provide guidance with regard to: i) the use of audited forecast financial statements for an Application under the forecasting profitability category set out in Subsection 309(b) of the Manual; ii) the use of pro forma financial statements in support of an Application; and iii) accounting standards that are acceptable to TSX in the context of an Application.

The following information should not be interpreted as guidance regarding securities laws or other laws and regulations applicable to financial statements and other related information.

#### *Audited forecast financial statements*

Issuers applying to list on TSX under the forecasting profitability category must demonstrate that they meet the financial tests set out in Subsection 309(b) of the Manual. In particular, they must meet the net tangible asset, earnings and cash flow tests for the current or next fiscal year, as evidenced by a complete set of forecast financial statements covering the current or next fiscal year (on a quarterly basis), accompanied by an independent auditor's opinion that complies with the Canadian Institute of Chartered Accountants' Auditing Standards for future-oriented financial information (an "Audited Forecast").

Where an issuer applies under the forecasting profitability category, TSX will generally require sponsorship if the Audited Forecast is not published in a prospectus or other disclosure document and is not subject to the requirements of future-oriented financial information in Part 4B of National Instrument 51-102—*Continuous Disclosure Obligations*. Where sponsorship is required in support of the Application, the sponsor must review and comment on the Audited Forecast and any other future-oriented financial information that has been presented with the Application, in accordance with Sections 312 and 326 of the Manual.

#### *Pro forma financial statements*

Pro forma financial statements may be used by applicants or be required by TSX if a significant transaction, such as an acquisition or disposition of assets has been recently completed or will be completed concurrently with, or shortly after, listing on TSX. To assess whether an applicant meets original listing requirements, TSX staff may rely on pro forma financial statements provided in a prospectus, business acquisition report or other publicly available document. TSX may also require that pro forma financial statements not otherwise publicly available be filed in support of an Application in order to satisfy TSX that the applicant meets original listing requirements.

As there are no generally accepted accounting standards in Canada regarding the preparation and presentation of pro forma financial statements that allow auditors to assess the fairness of presentation of the pro forma financial statements, it is generally not feasible for the auditor to provide an audit or any other form of assurance in regards to pro forma financial statements. Accordingly, TSX reviews pro forma adjustments to consider if they reflect, in all material respects, the transactions that have been or are in the process of being completed. TSX staff may make further adjustments for TSX's internal purposes or require the applicant to make further adjustments if, in the opinion of TSX staff, the proposed adjustments do not adequately reflect such transactions. Where TSX relies on pro forma financial statements not publicly

available in support of an Application, TSX may require the sponsor or auditor to comment or provide comfort on the adjustments.

### *Accounting standards*

In addition to financial statements prepared in accordance with IFRS, TSX will accept financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP") in the United States ("US GAAP") for SEC issuers<sup>6</sup> that are currently filing or anticipate filing such statements with the Canadian Securities Administrators under NI 52-107.

Financial statements prepared in accordance with GAAP of other jurisdictions may also be acceptable. In making such determination, TSX will take into account a variety of factors, including whether the applicant is from a "designated foreign jurisdiction" or an "SEC foreign issuer" as defined in National Instrument 71-102—*Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. TSX may also require a submission from the issuer's auditors or financial advisors (including the sponsor) in support of accepting financial statements not prepared in accordance with IFRS or US GAAP. TSX encourages applicants to consult TSX staff on a pre-filing basis with questions relating to accounting standards for the purposes of an Application.

### **3. Pricing of Stock Options Granted Prior to an IPO**

Subsection 613(h)(i) of the Manual requires that Options granted under a security based compensation agreement or otherwise may not be granted with an exercise price which is lower than the market price at the time the Option is granted. In the context of an IPO, TSX considers market price of the listed securities to be the offering price of the applicable security (the "Offering Price").

Accordingly, Options granted within the three months immediately prior to the filing of a preliminary prospectus (the "Pre-IPO Period") are generally expected to be priced at or above the Offering Price. TSX has followed the Pre-IPO Period as a guideline to establish a proxy for the period during which an issuer has knowledge of an upcoming IPO and should therefore not be pricing Options at a discount to the Offering Price. Options granted within three months immediately prior to the filing of a preliminary prospectus which are priced below the Offering Price will likely be required to be cancelled, forfeited or re-priced to the Offering Price as a condition of listing.

TSX may consider accepting Options with an exercise price that is not lower than the price at which the relevant securities have been issued pursuant to a recent material financing to arm's length parties, notwithstanding that such price may be lower than the Offering Price.

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<sup>6</sup> As defined in National Instrument 52-107—*Acceptable Accounting Principles and Auditing Standards* ("NI 52-107").