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Canada

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MAIN EQUITY MARKETS/EXCHANGES

1. Please summarise the main equity markets/exchanges in your jurisdiction. In particular:

- **Please state the names, website addresses and brief structure of the main markets/exchanges.**
- **Are there many listings of foreign companies?**
- **Please outline market/exchange activity generally, including the most significant deals over the past year.**
- **Have there been many IPOs postponed in the last year? Please briefly outline the process for postponing an IPO.**

Main markets/exchanges

The Toronto Stock Exchange (TSX) provides the main market for senior equities. Therefore, this chapter deals only with the TSX unless otherwise specified (*see website, www.tmx.com*).

Canada's other stock exchanges are:

- The TSX Venture Exchange, an exchange for the securities of early-stage businesses (*see website, www.tmx.com*).
- The Canadian National Stock Exchange, an exchange designed for emerging issuers (*see website, www.cnq.ca*).
- The Montreal Exchange, which facilitates the trade of derivative products (*see website, www.m-x.ca/accueil_en.php*).
- ICE Futures Canada (formerly the Winnipeg Commodity Exchange), a subsidiary of the Intercontinental Exchange, which provides a market for agricultural futures and options (*see website, www.theice.com/futures_canada.jhtml*).

Listings of foreign companies

The number of foreign listings on the TSX has risen in recent years. In 2010, 71 new foreign issuers were added to the TSX. A significant portion of these new listings are in the mining sector.

Market activity and initial public offerings (IPOs)

Although overall financing activity was down in 2010, compared with 2009, the number of IPOs rose from 60 in 2009 to 119 in 2010, and IPO financing more than doubled from Can$4.8 billion to Can$10.7 billion in 2010 (as at 1 January 2011, Canadian and US dollars were at almost parity). The mining sector experienced the most significant increase in listings, setting a record of 204 issues in 2010. Overall, the TSX added 187 new issuers in 2010, compared with 100 in 2009, bringing the total number of listed issuers to 1,516.

Major equity financings from 2010 include the following:

- Can$1.3 billion common share IPO by Athabasca Oil Sands Corp.
- Can$700 million common share IPO by MED Energy Corp.
- Can$660 million common share IPO by SMART Technologies Inc.
- Can$575 million unit IPO by Sprott Physical Silver Trust.
- Can$442 million unit IPO by Sprott Physical Gold Trust.

In 2010, several proposed IPOs were postponed and/or abandoned. Marketing for an IPO occurs after the company has publicly filed a preliminary prospectus (*see Question 8*). In general, the rules require that a final prospectus be filed no longer than 75 days after the preliminary prospectus, although this deadline can be extended. If investor demand is such that the IPO cannot be successfully completed at the price and/or size the company intends, the preliminary prospectus will be withdrawn. The company may elect to re-initiate the IPO process in the future, by filing a new preliminary prospectus.

2. Please set out the main regulators and legislation that applies to the equity markets/exchanges.

Regulators

Commissions in each of Canada's ten provinces and three territories regulate the securities industry. (References in this chapter to "provinces" or "provincial" include the territories.) Although provincial securities laws are similar in many respects, issuers often deal with up to 13 different regulators. Reforms have been implemented to harmonise securities laws across Canada (for example, through National Instruments and Multilateral Instruments promulgated by all or some of the commissions, which apply consistently across all or some provinces). In general, to obtain full access to the capital markets in Québec, a company's public disclosure documents must be filed in both English and French. Unless otherwise specified, the following answers are based on Ontario law.

Canada's capital markets are also regulated by:

- Various business corporations statutes and regulations of the federal and provincial governments, which govern corporations and their conduct.
- Self-regulatory organisations, such as the Investment Industry Regulatory Organization of Canada (IIROC), which oversees all investment dealers and trading activity on equity and debt marketplaces in Canada.
- Rules of the Canadian stock exchanges.

EQUITY OFFERINGS

3. Please summarise the main requirements for a primary listing on the main markets/exchanges (distinguish if appropriate requirements for foreign companies seeking a primary listing in your jurisdiction). Consider:

- **Main admission/registration requirements and which authorities are involved (for example, admission to trading and listing).**
- **Minimum size requirements.**
- **Minimum trading record and accounts requirements.**
- **Working capital requirements.**
- **Minimum number of shares in public hands.**

Listing requirements

The TSX places issuers applying for listing in one of three categories, each with different minimum listing requirements:

- Industrial (General).
- Mining.
- Oil and Gas.

Generally, an industrial applicant must have:

- Net tangible assets of at least Can$7.5 million.
- Pre-extraordinary items and pre-tax earnings from ongoing operations in the last fiscal year of at least Can$300,000, and pre-tax cash flow from ongoing operations in the last fiscal year of at least Can$700,000.
- An average pre-tax cash flow from ongoing operations for the past two fiscal years of Can$500,000.
- An appropriate capital structure and adequate working capital to carry on the business.

Industrial applicants must have at least one million freely tradable shares with an aggregate market value of Can$4 million. On being listed, these shares must be held by at least 300 public shareholders, each holding one board lot or more. A "board lot" for securities trading means one of the following:

- 100 securities having a market value of Can$1 per security or greater.
- 500 securities having a market value of less than Can$1 and no less than Can$0.1 per security.
- 1,000 securities having a market value of less than Can$0.1 per security.

Applicants that do not meet the requirements set out above may still qualify for listing, but are subject to a higher standard of review. Applicants must also demonstrate satisfactory management expertise and experience relating not only to the company's business and industry but also to public company experience.

International issuers

International issuers are issuers that are incorporated outside Canada and are listed on another recognised exchange that is acceptable to the TSX. There are no management or financial requirements specific to international issuers. Like all issuers, international issuers must be able to demonstrate that they satisfy all their reporting and public company obligations in Canada. International issuers are generally required to have some presence in Canada, which 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. It is also beneficial, although not required by the TSX in all cases, to have directors or management with public company experience in the Canadian markets.

4. What are the main ways of structuring an IPO?

The most common way to structure an IPO is to issue shares from treasury, with the proceeds accruing to the company.

A shareholder can also effect an IPO by selling shares in a private company through a prospectus, either alone or in conjunction with a treasury offering. The application proceeds accrue to the selling shareholder, who also assumes prospectus liability.

Under an "indirect offering", interests in the operating entity are not offered directly to the public but are acquired by a separate entity (for example, a real estate investment trust or its subsidiary). The securities of this separate entity are offered to the public under a prospectus.

The TSX Venture Exchange's Capital Pool Company (CPC) programme allows sponsors to form a CPC with no commercial operations and raise between Can$200,000 and Can$4.75 million, with the stipulation that within 24 months the CPC will acquire a business that meets listing criteria, known as a "qualifying transaction". Once a qualifying transaction has been completed, the CPC obtains regular listing status on the TSX Venture Exchange. Since the CPC programme's inception in 1988, more than 2,140 CPCs have been created and more than 1,700 of those have completed a qualifying transaction. In 2010, 128 qualifying transactions were completed.

The TSX's Special Purpose Acquisition Corporation (SPAC) programme, established in December 2008, involves a similar two-step listing process, except that the SPAC programme requires the initial IPO to raise a minimum of Can$30 million, the SPAC's securities are listed on the TSX, not on the TSX Venture Exchange, and the subsequent acquisition transaction must take place within 36 months. As at the time of writing, no SPAC has yet been listed on the TSX.

5. What are the main ways of structuring a subsequent equity offering?

The most common is offering equities by way of prospectus.

Where an exemption is available, equity can be offered by way of a private placement (*see Question 9*).

In the case of a "control person" (that is, a person or company holding more than 20% of the voting securities of a company), any sale of these securities must be completed under a prospectus or by way of a prospectus exemption.

6. Please outline the main steps for a company applying for a primary listing of its shares. Is the procedure different for a foreign company? Is a foreign company likely to seek a listing for shares or depositary receipts?

To initiate the listing process on the TSX, an issuer must submit a listing application together with supporting documents that demonstrate that the issuer is able to meet the minimum listing requirements (*see Question 3*). Generally, these documents include information about the issuer's business, investments and properties, the securities that are to be listed and any material legal proceedings affecting the applicant.

The procedures for listing the securities of a foreign issuer are the same as those for a Canadian issuer. A foreign company will almost invariably seek a listing for shares, as depositary receipts are rarely listed in Canada.

A foreign issuer and its counsel are recommended to contact TSX staff to review listing suitability and filing requirements, and to provide guidance on timing and other matters related to dual-listed companies.

ADVISERS: EQUITY OFFERING

7. Please briefly outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

The role of advisers is the same for an IPO or any subsequent equity offering.

Underwriters

The underwriters:

- Negotiate the offering's terms, structure and pricing.
- Work with the issuer and issuer's legal counsel to co-ordinate the deal's timetable and the drafting of the prospectus.
- Organise the road show and market the offering.
- Build the "book" of orders from potential investors.

Issuer's legal counsel

The issuer's legal counsel:

- Assist with structuring the offering.
- Advise on any changes or restructuring required before the offering.
- Prepare the prospectus and other key documents.
- Assist with the regulatory review process and listing applications.
- Perform due diligence for the benefit of the issuer and its board of directors.
- Prepare the issuer for its continuing obligations following the offering.

Underwriters' legal counsel

The underwriters' legal counsel:

- Conduct due diligence on the issuer.
- Work with the issuer's lawyers in the preparation of the prospectus and other key documents.
- Prepare the underwriting agreement.
- Advise the underwriters in relation to their obligations.

Auditors

The auditors:

- Provide accounting advice.
- Assist with due diligence.
- Prepare financial statements and financial disclosure that forms part of the prospectus, to the public company standard.
- Prepare comfort letters relating to such financial information.

EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

8. Please summarise when a prospectus (or other main offering document) is required and its main publication/delivery requirements.

No person or company can "trade" in a security if the trade is a "distribution" of the security unless, in the absence of an applicable exemption, a prospectus is filed with the securities regulatory authority in each of the provinces where the trade occurs.

Trade is broadly defined and includes a sale of securities (including treasury issuances) or any act in furtherance of a sale of securities (such as an offer to sell). A trade constitutes a distribution if it involves one of the following:

- The issuer is issuing securities not previously issued.
- A trade in previously issued securities of an issuer from the holdings of any "control person" (*see Question 5*).
- A subsequent trade in securities previously issued under an exemption from the prospectus requirements (*see Question 9*).

Under Canadian securities laws, underwriters must distribute the preliminary prospectus to any person who indicates an interest in the offering and requests a copy, as well as a copy of the final prospectus to each purchaser of the securities.

Although an IPO requires the use of a long form prospectus, three other types of offering document can be used in a subsequent offering. In general, the following companies are eligible to file a short form prospectus:

- Electronic filers.
- Reporting issuers in at least one Canadian jurisdiction.
- Companies that have filed all periodic and timely disclosure documents required by securities legislation.

- Companies that have current annual financial statements and a current annual information form.

The main benefit to filing a short form prospectus is that disclosure documents are incorporated by reference in the prospectus rather than being included in full.

Companies that qualify to use a short form prospectus will also qualify for the use of a shelf prospectus (that is, a prospectus filed with no particular deal attached). This system involves the submission of a base shelf prospectus for review by securities authorities, after which, for a period of two years, securities can be offered by way of supplement, which does not undergo regulatory review before the closing of the offering.

Finally, securities can be sold in reliance on an exemption from the prospectus requirements (*see Question 9*). Although typically not required, in this situation, the issuer may choose to provide potential investors with an offering memorandum, containing information necessary to evaluate the issuer and the securities being offered. A Canadian offering memorandum must contain certain cautionary language on its cover page.

9. What are the main exemptions from the requirements for publication/delivery of a prospectus (or other main offering document)?

A number of exemptions from the prospectus requirements are available, including distributions:

- To "accredited investors" such as institutional investors and high net-worth individuals.
- To certain non-public purchasers by a "private issuer" (an issuer with fewer than 50 security holders that has not distributed its securities to the public and is not a mutual fund or investment fund).
- To a person purchasing as principal and to whom the acquisition cost is not less than Can$150,000 paid in cash at the time of the trade.
- In certain cases, to employees, executive officers, directors and consultants of the issuer.

In addition to the listed statutory exemptions, an issuer may be granted an exemption from the prospectus requirements if regulators are satisfied that it is not prejudicial to the public interest. This power is usually exercised when a statutory exemption is unavailable and the protections afforded by the prospectus requirements are unnecessary.

10. What are the main content/disclosure requirements for a prospectus (or other main offering document). What main categories of information are included?

The main requirements for prospectus disclosure are outlined in National Instrument 41-101. Because the purpose of a prospectus is to allow the public to make an informed investment decision, it must contain full, true and plain disclosure of all material facts relating to the securities being distributed and must not contain a misrepresentation. A "material fact" is defined as a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of the company's securities. A misrepresentation is defined as an untrue statement or material fact, or an omission to state a material fact that must be stated.

The following are the main categories of information included in a prospectus:

- A description of the issuer and its business.
- The planned use of proceeds received from the issuance of the securities.
- Financial information and management's discussion and analysis of the financial condition and results of operations.
- A description of the securities being distributed.
- Information regarding the issuer's directors and officers.
- Information regarding the audit committee and corporate governance practices.
- The plan of distribution.
- Any risk factors facing the issuer or relating to the securities being issued.
- Any other material facts.

At the same time as filing the prospectus, the issuer must also file supporting documents, including:

- Any documents that affect the rights of security holders (for example, constating documents (that is, those governing an organisation's powers, decisions and the way it conducts business) and any security holders' rights plans).
- Material contracts, reports and valuations, if applicable.
- Personal information forms for each of the issuer's directors and executive officers, if not previously filed.
- An auditor's comfort letter regarding the audited financial statements.

11. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The prospectus is generally prepared by the issuer and its legal counsel, with the significant involvement of the lead underwriters, their legal counsel and the issuer's auditors.

The underwriters and their counsel verify (to the extent possible) the facts and statements made in the prospectus on the basis of their due diligence review of the issuer.

The provincial securities commissions comment on the preliminary prospectus, normally within ten business days of the prospectus being filed. The issuer must then resolve any deficiencies or inaccuracies before the final prospectus is approved for filing.

If the final prospectus contains a misrepresentation, the following may be liable to the purchasers of the securities:

- The company.
- Any promoter or selling shareholders.

- The chief executive officer (CEO) and chief financial officer (CFO).
- Each director.
- Each underwriter.
- Every person or company whose consent to disclosure of information in the prospectus was required to be filed with the prospectus, such as lawyers and accountants (but only with respect to reports, opinions or statements made by them).

If the prospectus contains a misrepresentation, a purchaser is deemed to have relied on the misrepresentation and has the choice to rescind the purchase or sue for damages up to the purchase price.

The company's CEO, CFO and directors can all be held personally liable for a misrepresentation. However, these individuals, along with the promoter, underwriters and experts, have a due diligence defence available to them.

MARKETING EQUITY OFFERINGS

12. Please briefly explain how offered equity securities are marketed.

The marketing process commences after the preliminary prospectus is filed and receipted. Although companies often wait for initial comments from the relevant securities regulators, clearance from the securities commissions is not required before initiating marketing activities.

In Canada, marketing efforts revolve around solicitations of interest through distribution of the company's preliminary prospectus, which is the only marketing document that can be distributed to the public. Potential investors cannot make binding commitments to buy the securities being offered under the prospectus until the final prospectus is filed. However, the underwriters can solicit investor interest and begin to build a tentative book of orders.

The underwriters will also prepare a "green sheet", a short document that outlines the terms of the offering by summarising essential portions of the preliminary prospectus. It is distributed on a confidential basis to salespersons of registered dealers and is used to solicit interest in the securities being offered; but it is not allowed to be distributed to the public.

The marketing period for an IPO typically lasts two to four weeks, and involves a road show in which management and the lead underwriters visit various cities and meet with retail brokers and institutional investors to generate interest in the company's securities.

If a sufficient order book has developed throughout the marketing period, the underwriters and the issuer negotiate a price for the offering, to be reflected in the final prospectus (for rules on distribution of the prospectus, see *Question 8*).

Under Canadian securities laws, a purchaser can withdraw from its agreement to purchase the securities within two business days of receipt of the final prospectus.

13. Please outline any potential liability from publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Securities legislation and IIROC's Universal Market Integrity Rules generally prohibit fraudulent, manipulative and deceptive activities. In addition, IIROC's Dealer Member Rules contain rules governing the behaviour of analysts to minimise potential conflicts of interest when publishing research reports. Additionally, these rules require that all research reports must be approved by an IIROC supervisor before publication.

In addition to civil, regulatory and criminal liability for breaches of securities laws (*see Question 21*), IIROC hearing panels have the power to impose a number of sanctions on dealer members and their partners, directors, officers and employees who are approved by IIROC or another self-regulatory organisation (Approved Persons) for a violation of the Universal Market Integrity Rules and the Dealer Member Rules, including:

- Reprimands.
- Fines of up to Can$1 million for Approved Persons and Can$5 million for dealer members.
- Suspension and expulsion of membership in IIROC.

BOOKBUILDING

14. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with?

Most Canadian securities offerings involve building a book of orders. If bookbuilding is used, about 20% is allocated to retail investors with the rest to institutional investors. This percentage will vary according to the nature of the securities being offered and the level of demand from institutional and retail investors. The retail offer is dealt with by the brokerage or, where a syndicate of underwriters is involved in the offering, by the syndicate on a prorated basis.

UNDERWRITING: EQUITY OFFERING

15. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement? What is a typical underwriting fee?

The underwriting of an equity offering is accomplished by using an underwriting or an agency agreement.

These are structured either as "firm commitment" or as "best efforts".

Firm-commitment underwriting. In firm-commitment underwriting, the underwriters agree to purchase all the offered securities, at a price to be specified in the final prospectus, and agree to attempt to resell them to the public. Underwriters receive a fee or commission per share sold as specified in the underwriting agreement and prospectus. Most larger IPOs are underwritten on a firm-commitment basis.

Best-efforts underwriting. In best-efforts underwriting, the underwriters are only obligated to use reasonable best efforts to sell the company's securities on behalf of the company. In this case, the securities issued to the investors identified by the underwriters pass directly to the investors from the issuer without the underwriters ever taking title. (The agreement between the syndicate and the company is an "agency", rather than an "underwriting" agreement.) The underwriters receive a commission only for those securities sold and are not responsible for any unsold securities.

Bought-deal underwriting. A bought-deal underwriting is a firm-commitment underwriting, which involves an offering in which the underwriters commit to purchase all the securities before a prospectus is filed, without a marketing period or road show. This structure of underwriting is available only in a short form offering (*see Question 8*).

Key terms in a typical underwriting agreement include the following:

- The underwriters' obligation, if any, to purchase the offered securities.
- The over-allotment option (or green shoe), if any, that allows the underwriters to purchase additional securities under the same prospectus.
- Terms related to the underwriters' distribution obligations, including each underwriter's purchase commitment, the offering price and the jurisdictions in which the securities will be sold.
- Commissions payable to the underwriters.
- Indemnity provisions in favour of the underwriters, which will require the company, promoters and selling shareholders to reimburse them for certain liabilities, such as for a misrepresentation in the prospectus.
- Contribution provisions permitting an underwriter subject to a legal claim, and whoever pays out that claim, to seek reimbursement from other parties.
- Various representations, warranties and covenants made by the company and any promoter or selling shareholder, including those relating to the company's business and operations, and the offering.
- Various conditions of the underwriters' obligation to complete the offering (including the delivery of specific documents such as the legal opinions of counsel, as mentioned above).
- Termination rights in favour of the underwriters, specifying the conditions under which they will not be obligated to proceed with the offering, such as a material change in market conditions.
- A blackout provision, restricting the company from selling additional securities for a specified period of time following the closing of the offering.

Typical underwriting fees range from 5% to 7% of the total proceeds of the offering. The underwriters' fee depends on a number of factors, including the size of the offering and the issuer, the type of security offered and the listing jurisdictions, and is determined by negotiations between the underwriters and the issuer, with reference to market precedents.

TIMETABLE: EQUITY OFFERINGS

16. Please provide a summary of the timetable for a typical equity offering. Does it differ for an IPO?

Any equity offering can be divided into two stages:

- From commencement of work until filing of the preliminary prospectus.
- From filing the preliminary prospectus until the closing of the offering. This stage comprises two parts:
  - from filing the preliminary prospectus to filing the final prospectus;
  - from filing the final prospectus to the closing of the offering.

The length of each stage will vary depending on what type of equity offering is being made.

In an IPO the duration of the first phase will depend on several factors, including the availability of information about the issuer, the complexity of the structure and the state of the financial statements and other due diligence materials. If the IPO is to be offered in Québec, the schedule must account for the time necessary to translate the prospectus, including the financial statements, into French. A reasonable time period for this stage is about six weeks.

The entire second phase of the IPO generally takes between four and seven weeks. Canada has an efficient prospectus clearing process, which typically takes three to five weeks, although this can vary. Once the final prospectus has been filed, the offering typically closes within one week to ten days, allowing time for the final prospectus to be mailed to all purchasers and for the mechanics of closing to be implemented.

A shorter timeline applies to subsequent equity offerings. For example, in a short form offering, timelines are significantly shorter because documents are incorporated by reference in the prospectus and regulatory approval can be obtained as quickly as one week after the preliminary prospectus is approved.

STABILISATION

17. Are there rules on price stabilisation in connection with an equity offering?

Under Canadian securities laws, underwriters can engage in price stabilisation activities in the period after trading starts, if the securities subsequently sold do not exceed a specified maximum price and the details of the proposed price stabilisation are included in the prospectus.

IIROC's Universal Market Integrity Rules also permit stabilisation activities, subject to price limitations, for the purpose of maintaining a fair and orderly market in the offered security and preventing erratic and disorderly changes in price. However, IIROC considers it to be inappropriate for a dealer to engage in market stabilisation activities when it knows or should reasonably know that the market price is not fairly and properly determined by supply and demand.

TAX: EQUITY ISSUES

18. What are the main tax issues when issuing and listing equity securities?

In an equity offering, a number of tax issues may arise that require specialist tax advice. These issues include the following.

Financing expenses

A corporation that undertakes an equity offering invariably incurs a number of expenses such as:

- Underwriters', lawyers' and accountants' fees.
- Costs of printing the prospectus and share certificates.
- Costs related to marketing the offering to potential investors.

In general, a corporation can deduct these expenses, on a straight-line basis over a five-year period, pro-rated to the number of days in a tax year. Other expenses may be fully deductible in the year incurred, including transfer agent fees, stock exchange listing fees, financial reporting-related fees and business representation fees.

Loss of status as a Canadian Controlled Private Corporation (CCPC)

CCPCs are entitled to various tax benefits under the Income Tax Act (Canada), including favourable tax treatment of stock options and a reduced tax rate for small businesses. When a company becomes public (due to either listing shares on a designated stock exchange or merging with or being acquired by an existing public company), it, and any subsidiaries, lose their status as a CCPC, resulting in a loss of the above tax benefits. If the corporation issuing and listing securities is a CCPC, in its pre-IPO planning, it should consider taking advantage of these benefits before losing its CCPC status.

Loss of certain tax-free dividends

Only private corporations are entitled to distribute tax-free capital dividends. Once a corporation has completed an IPO, it will be unable to distribute such dividends, and should consider clearing out its capital dividend account before going public.

Capital gains exemption

Holders of "qualified small business corporation shares" may be eligible for a one-time enhanced capital gains exemption on the disposition of such shares. This exemption permits up to Can$750,000 of the gain from the disposition to be realised tax-free. In general, "qualified small business corporation" status will be lost when a corporation ceases to be a CCPC. Accordingly, to use this exemption, shareholders may wish to consider crystallising accrued gains in the shares of the corporation before the IPO.

CONTINUING OBLIGATIONS

19. Please outline the main areas of continuing obligations applicable to listed companies and the legislation that applies. Consider:

- **Periodic financial reporting.**
- **Other disclosure obligations.**
- **Significant transactions and related party transactions.**
- **Any significant shareholder voting restrictions.**

National Instrument 51-102, Continuous Disclosure Obligations, outlines the majority of an issuer's responsibilities to continuously disclose the following items.

Periodic financial reporting

Annual financial statements including management discussion and analysis (MD&A). The annual financial statements are typically contained in an issuer's annual report, which will also include a report to the issuer's shareholders together with MD&A of the current financial situation and operating results of the issuer. All these documents, together with the issuer's annual information form on the business and operations of the issuer, must be filed with securities regulators, as prescribed by applicable securities legislation and stock exchange rules and regulations, within 90 days of each financial year-end.

Unaudited interim financial statements. Unaudited interim financial statements must be prepared for each of the first three quarterly periods of each fiscal year. The interim financial statements, along with the accompanying MD&A, must be sent to each shareholder who requests a copy, and filed with securities regulators and stock exchanges within 45 days of the relevant quarter end. The CEO and CFO of most listed issuers must certify that the issuer's annual and interim filings contain no misrepresentations, as well as certifying certain matters regarding the issuer's disclosure controls and procedures and internal controls over financial reporting.

Annual meeting. The TSX requires each of its listed issuers to hold an annual meeting of shareholders within six months of its fiscal year-end, at which, in addition to any special business shareholders:

- Review the issuer's financial statements for the most recent fiscal year.
- Elect the issuer's directors.
- Appoint the issuer's auditors for the ensuing period.

Before holding its annual meeting of shareholders, the issuer must prepare and send to each shareholder a notice of the meeting, a copy of its annual financial statements and proxy solicitation materials.

Insider reporting. An issuer's insiders, including its directors, officers and significant shareholders, must prepare, file and regularly update "insider reports" with securities regulators, disclosing their relationships with, and shareholdings of, the issuer, including any changes to their ownership of the issuer's shares.

Other disclosure obligations

Press releases and material change reports. If a material change occurs in the issuer's affairs, the issuer must immediately issue a press release and file a material change report with securities regulators within ten days. Additionally, the issuer must notify and, in certain circumstances, obtain the prior consent of its stock exchange for any proposed material change in its business or affairs. The TSX requires listed issuers to disclose "material information", which is considered to be broader than a "material change".

Business acquisition reports. A business acquisition report tells investors about significant business acquired and their effect on the issuer. The report must be filed within 75 days of the acquisition. It must include the acquired business's historical financial statements, and the issuer's pro forma financial statements, including those of the acquired business.

Significant transactions and related party transactions

Ontario and Québec have rules applicable to certain business transactions involving the company's insiders or related parties. Insider bids and related party transactions may require the following, unless an exemption is available:

- Additional disclosure.
- Review and approval by an independent committee of the issuer's board.
- A formal valuation prepared by an independent financial adviser.
- Approval by the "majority of the minority" of the company's shareholders (that is, approval by 50% of the shares voted that are held by shareholders other than the insider or related party).

Applicable corporate statutes govern the level of shareholder approval required for specified significant transactions. Certain corporate steps require shareholder approval by way of special resolution (that is, two thirds of the shares voted at a meeting). These matters include amalgamation, changing jurisdiction, sale of all or substantially all assets, and winding-up.

For specified transactions, the securities or TSX rules may require shareholder approval by a group in addition to that required by corporate law. See the discussion of insider bids and related party transactions above. Other examples include TSX requirements that equity-based compensation plans, such as option plans, be approved by a majority of the shares other than those held by persons who may receive options. A shareholder rights plan ("poison pill") must be approved by a majority vote of shares held other than by persons who hold 20% or more of the company's shares.

Shareholder voting restrictions

The TSX rules require shareholder approval if more than 25% of outstanding shares would be issued as consideration for an acquisition.

20. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

There are two categories of non-Canadian reporting issuers that are eligible for relief from various continuous disclosure obligations under Canadian securities law:

- **SEC foreign issuers.** These include both US domestic issuers and foreign private issuers subject to the rules of the US Securities and Exchange Commission (SEC).
- **Designated foreign issuers.** These are foreign reporting issuers:
  - that are not subject to the SEC rules but to the securities laws of Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, The Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland, UK and Northern Ireland; and
  - for which the total number of equity securities owned, directly or indirectly, by residents of Canada does not exceed 10%, on a fully diluted basis, of the total number of equity securities of the issuer, calculated, in most cases, as of the first day of the issuer's current financial year.

The exemptions are contingent on the non-Canadian reporting issuer's compliance with the securities regulatory requirements in its home jurisdiction and the rules of the stock exchange(s) on which its securities are listed. Documents that the non-Canadian reporting issuer files with the SEC or the designated foreign issuer's regulators must also be filed in Canada, and any documents that the home country requires to be sent to security holders must also be sent to Canadian security holders.

21. What are the penalties for breaching the continuing obligations?

In addition to the liability attached to prospectus disclosure (*see Question 11*), Canadian securities laws impose a statutory regime of civil liability for an issuer's continuous disclosure. The regime provides secondary market investors with a limited right of action for damages resulting from an issuer's misrepresentation in public disclosure or a failure to make timely disclosure of a material change. The list of potential defendants includes:

- The issuer and its directors.
- Responsible senior officers.
- Auditors.
- Responsible experts.
- "Influential persons" (including control persons (see definition in *Question 5*), promoters, investment fund managers if the issuer is an investment fund, and insiders).
- Each director or officer who knowingly influenced the misrepresentation.

Misrepresentations in continuous disclosure

In Ontario, a person or company may be liable for a fine of up to Can$5 million, or imprisoned for a term of up to five years less a

day, or both, in the following circumstances: a person or company makes a statement, or a director or officer of a company authorises or permits the company to make a statement, in any material, evidence or information submitted to the Ontario Securities Commission (OSC) (or files under Ontario's Securities Act (OSA) information or material that contains a statement) that is in a material respect misleading or untrue, or does not contain a fact that is required to be included or that is necessary to make the statement not misleading, or that otherwise contravenes Ontario securities law.

Further, if the OSC is of the opinion that it is in the public interest to do so, it can order a person or company that has not complied with Ontario securities law to pay an administrative penalty of up to Can$1 million for each failure to comply.

Insider trading

Provincial securities laws also prohibit insiders of an issuer from:

- Trading in securities while in possession of knowledge of a material fact or change with respect to the issuer that has not been disclosed publicly.
- Informing others of that material fact or change.

The definition of an insider includes the reporting issuer's directors, officers, employees, advisers or shareholders owning more than 10% of the voting securities of a reporting issuer, among others.

These prohibitions are enforced using a wide range of sanctions, including:

- Penal and/or administrative sanctions.
- Significant fines.
- Civil actions by investors.

Under the OSA, a person or company that contravenes these rules is liable for a fine of the greater of Can$5 million and triple the profit made or loss avoided due to the contravention.

Criminal offences

In addition to liabilities for breaches of provincial securities laws, certain offences set out in the Criminal Code may apply to the trading of securities. Among other things, these provisions prohibit the following:

- Intentional fraud, such as defrauding any person of property, money or valuable security.
- Fraudulently affecting the public market price of shares.
- Use of the mail to defraud.

Commission of the most serious criminal offences, fraud over Can$5,000 and fraud affecting public markets, may result in a conviction and up to 14 years' imprisonment. Insider trading, issuing a false prospectus and fraudulent manipulation of stock exchange transactions may result in imprisonment for up to ten years.

DE-LISTING

22. When can a company be de-listed? In particular, consider:

- **Voluntary de-listing and the procedure and requirements for this.**
- **Compulsory de-listing by a regulator and the circumstances when this would occur.**
- **Whether there have been many de-listings on your markets/exchanges in the past year.**

Voluntary de-listing

A listed issuer wishing to have all its listed securities, or any class of its securities, de-listed from the TSX must submit a formal application to the TSX. In 2010, 134 issuers were de-listed from the TSX. An issuer whose securities are de-listed can submit an application to cease to be a reporting issuer to the securities commissions. Once the application is approved, the issuer is relieved of the continuous obligations applicable to listed issuers.

Compulsory de-listing by the TSX

If the TSX determines that any of the prescribed de-listing criteria (for example, insolvency, insufficient trading activity or market value, or failure to comply with TSX policies) has become applicable to a listed issuer or its securities, the TSX will notify the listed issuer and the market that the issuer is under a de-listing review.

Depending on the severity of the problem, the TSX will then conduct a remedial review process or an expedited review process. In both cases, the issuer has the opportunity to present submissions to the TSX before being de-listed. Under a remedial review, the issuer has 120 days to correct the deficiencies that triggered the de-listing review. Under an expedited review, the TSX immediately moves to suspend trading and de-list the issuer if satisfied that this action is warranted on the basis of the issuer's submissions.

MAIN DEBT CAPITAL MARKETS/EXCHANGES

23. Please summarise the main debt securities markets/exchanges in your jurisdiction (including any exchange-regulated market or multi-lateral trading facility (MTF)). In particular:

- **The names, website addresses and brief structure of the main markets/exchanges.**
- **Market activity, including the most significant deals over the past year.**
- **Number of issues traded.**

The main debt securities markets/exchanges are the same as those for equity securities (*see Question 1*).

Canadian debt issuances in 2010 raised Can$162.9 billion from 378 deals. This represents a 9.7% increase compared with 2009. After government debt (54% of the total value), the largest share of the market in 2010 was dominated by the financial sector (33%) followed by the energy and power sector (5%).

Some of the largest Canadian debt offerings of 2010 include:

- Can$1.7 billion offering of notes by Canadian SWIFT Master Auto Receivables Trust.
- Can$1.4 billion and Can$1.1 billion offerings of notes by Novelis Inc.
- Can$1.25 billion offering of notes by Canadian Capital Auto Receivables Asset Trust III.
- Can$1 billion offering of notes by CDP Financial Inc.
- Significant debt offerings by Canadian banks and other financial institutions.

24. Please set out the main regulators and legislation that applies to the debt securities markets/exchanges.

In general, the main regulators and legislation that apply to the debt securities markets and exchanges are identical to those for equity securities (*see Question 2*).

LISTING DEBT SECURITIES

25. Please summarise the main listing requirements for debt securities and summarise the following in relation to each market/exchange (distinguish if appropriate requirements for foreign companies listing debt securities in your jurisdiction). Consider:

- **Main admission/registration requirements and which authorities are involved (for example, admission to trading and listing).**
- **Minimum size requirement.**
- **Minimum trading record and accounts requirements.**
- **Working capital requirements.**
- **Minimum denomination.**

The regulators, the minimum listing requirements and the annual listing fees set out in *Question 2* are generally applicable to debt securities. However, the TSX typically gives consideration to listing debt securities that do not meet the minimum listing requirements or to which certain of the requirements are not applicable.

26. What are the main types of debt securities issued in your jurisdiction (for example, bonds or MTN programmes)?

Debt securities are normally issued by way of prospectus using a similar process to that used for equity securities (*see Question 8*).

In Canada, a popular medium term note (MTN) programme is available, which allows for the continuous distribution of debt securities in which the specific variable terms of individual debt securities, such as prices, interest rates and maturity, and the method of distribution of the securities are determined only at the time of distribution. MTN programmes employ the base shelf system described in *Question 8*. Once a base shelf prospectus has been filed, a "pricing supplement" is filed for each subsequent offering of debt securities. This supplement contains the terms of the security offered and a list of the issuer's other material documents to be incorporated by reference in the base shelf prospectus, as of the date of the pricing supplement.

27. What are the main ways of structuring issues of debt securities in the debt capital markets/exchanges?

As is similar to the process for equity securities, debt securities can be issued by way of prospectus offering or by private placement (*see Question 9*). Issuers of debt securities can use, where available, a short form prospectus or base shelf prospectus with a pricing supplement (*see Question 8*).

ADVISERS: DEBT ISSUE

28. Please briefly outline the role of advisers used and the main documents produced when issuing and listing debt securities.

The role of advisers in an offering is similar to that in an equity offering (*see Question 7*). In addition to filing the preliminary and final prospectus, in certain types of debt offerings, an issuer will enter into a trust indenture with an indenture trustee. The trust indenture outlines the issuer's obligations to the debtholders, including remedies available to debtholders if the issuer fails to make scheduled payments or to satisfy certain tests of financial health. The indenture trustee is responsible for administering the trust indenture on behalf of the debtholders.

For offerings of secured debt, a package of security documents may be provided that outlines the secured parties' rights against the collateral granted by the issuer and against other secured parties. In addition, credit rating agencies may issue letters that assign ratings of creditworthiness to the debt securities being issued.

DEBT PROSPECTUS/MAIN OFFERING DOCUMENT

29. Please summarise when a prospectus (or other main offering document) is required and its main publication/delivery requirements.

Prospectus requirements are similar to those for the offering of equity securities (see *Question 8*).

30. Are there any exemptions from the requirements for publication/delivery of a prospectus (or other main offering document)?

Similar exemptions from the prospectus requirements apply to both equity and debt issuances (*see Question 9*). However, offerings of non-convertible debt securities with an approved credit rating and a term to maturity of less than one year are exempt from the prospectus requirements.

31. What are the main content/disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The requirements for content and disclosure in a prospectus are effectively the same as those for equity offerings (*see Question 10*).

32. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The prospectus is prepared in a similar way to that of a prospectus for equity securities. Liability for misrepresentation or omission is generally the same as that in an offering of equity securities (*see Question 11*). However, a credit supporter who guarantees the obligations of the issuer of debt securities is required to make certain disclosures in the prospectus and sign the prospectus, and is liable for misrepresentations contained in the prospectus.

TIMETABLE: DEBT ISSUE

33. Please provide a summary of the timetable for issuing and listing debt securities.

The timetable for an offering of debt securities is generally shorter than that of an IPO but is similar to that of follow-on equity securities, especially where the short form or base shelf prospectus is used (*see Question 8*). As is the case with equity securities, a variety of factors will ultimately determine the timeline of the offering.

TAX: DEBT ISSUES

34. What are the main tax issues when issuing and listing debt securities?

The principal Canadian tax issues that may arise in connection with an issue and listing of debt securities include the following.

Withholding tax

Interest paid on a "plain vanilla" debt security held by an arm's-length non-resident is not subject to Canadian withholding tax. However, interest with unusual factors (such as interest that is contingent or dependent on the use of or production from property in Canada) may be subject to Canadian withholding tax. In general, no other Canadian taxes are payable by non-resident holders who do not carry on business in Canada in relation to the acquisition, holding or disposition (including sale or redemption) of plain vanilla Canadian debt securities, or the receipt of interest, principal or premium on them.

Interest deductibility

Generally, interest paid or payable on debt securities is deductible only if the borrowed money is used for the purpose of earning income from a business or property (with specific exceptions). Accordingly, the borrower must ensure the appropriate use of the borrowed funds.

Financing expenses

As is the case for the expenses of an IPO (*see Question 18, Financing expenses*), most expenses incurred in the issuance of debt securities are deductible over a five-year period, with certain exceptions that are deductible in the year incurred. This amortisation is accelerated if the debt securities are repaid within this five-year period, provided such repayment is not part of a series of borrowings and repayments.

CURRENCY OF ISSUE

35. What currency are debt securities typically issued in?

The majority of debt securities are issued in Canadian dollars, but a small proportion are issued in US dollars.

CONTINUING OBLIGATIONS: DEBT SECURITIES

36. Please outline the main areas of continuing obligations applicable to companies with listed debt securities and the legislation that applies. Consider:

- **Periodic financial reporting.**
- **Other disclosure obligations.**

The same continuing obligations described in *Question 19* apply to issuers with listed debt securities.

37. Do the continuing obligations apply to foreign companies with listed debt securities?

The same exemptions from continuous disclosure for certain foreign issuers described in *Question 20* apply to issuers with listed debt securities.

38. What are the penalties for breaching the continuing obligations?

The same penalties described in *Question 21* apply to issuers with listed debt securities.

REFORM

39. Please summarise any proposals for reform of both equity and debt capital markets/exchanges. Please state whether these proposals are likely to come into force and, if so, when.

Critics argue that the current system of separate provincial and territorial securities regulation fosters inefficiencies and can compromise the effective development, administration and enforcement of securities laws in Canada. Despite the substantial harmonisation of many securities law requirements, companies

must comply with potentially differing rules and regulatory interpretations, a situation that can be exacerbated by regulatory competition among jurisdictions. Many observers believe that the current system has also been a disincentive to foreign issuers accessing the Canadian capital markets, and to foreign investment generally. In response, the Canadian government has begun to lay the groundwork for the establishment of a single national securities regulator. On 22 June 2009, the government announced the launch of the Canadian Securities Transition Office (CSTO) to lead Canada's effort to establish a national securities regulator. To date, the CSTO and the government have drafted a proposed Canadian Securities Act, which was released on 26 May 2010, and is modelled on existing provincial securities regulations. Concurrently, the government referred the proposed Act to the Supreme Court of Canada to determine whether it is within the constitutional authority of the Parliament of Canada. Should a favourable opinion be received, the government plans to introduce the proposed legislation in Parliament. The Supreme Court is scheduled to hear the reference in April 2011.

In the interim, the current system continues to operate on a co-operative, generally harmonised basis, with the passport system as a key feature. The fact that Canada has a multilateral system, with many regulators, generally has minimal impact on a public company's day-to-day operations. As a practical matter, a company will generally have to deal with only one regulator in the jurisdiction where the principal office is located.

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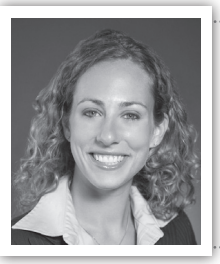
Recent transactions

- Representing the underwriting syndicate in the GMP Capital Can$115 million of preferred shares.
- Representing Northgate Minerals Corporation in a US$170 million convertible senior notes offering and a Can$100 million cross-border offering of common shares.
- Representing Sherritt International in its Can$1.416 million acquisition of Royal Utilities Income Fund, its related Can$400 million bought deal offering of shares and its Can$275 million and Can$225 million public offerings of debentures.



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Recent transactions

- Representing BAM Split Corp. in a Can$125 million offering of preferred shares.
- Representing Northgate Minerals Corporation in a US$170 million convertible senior notes offering and a Can$100 million cross-border offering of common shares.
- Representing the underwriting syndicate in Gamehost Income Fund's offering of Can$55 million in convertible notes.
- Representing Village Farms International, Inc. in its conversion from income fund to corporation.