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Dear Sirs/Madames:

Re: Consultation Paper on Emerging Market Issuers (December 2012)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Consultation Paper on Emerging Market Issuers (the “Consultation Paper”) released by the Toronto Stock Exchange (“TSX”) and the TSX Venture Exchange (“TSXV”).

As a general matter, the CAC strongly supports the efforts of TSX and TSXV to strengthen the requirements for listing for emerging market issuers as an important investor protection initiative. All issuers should be tested vigorously prior to listing and monitored closely by any exchange on which they are listed to help ensure the integrity of the Canadian capital markets. Stringent listing criteria should be applied equally to all issuers, whether those issuers are located in Canada

¹ The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 113,000 members in 140 countries and territories, including 102,000 CFA charterholders, and 137 member societies. For more information, visit www.cfainstitute.org.

or abroad and whether or not an issuer can be identified as an emerging market issuer (by any definition). In particular, given the importance of accurate information about an issuer's financial position, we believe that the exchanges should ensure that an emerging market issuer meets the same accounting and auditing standards expected to be met by companies operating in Canada. Canada's exchanges must continue to maintain their rigorous review process, and should not be used by issuers with few connections to Canada to gain a foothold into Canada's capital markets. The TSX and TSXV should continually monitor their listing criteria with a view to raising standards, even if such actions could, in the short term, reduce listing volumes.

The CAC wishes to comment on following specific TSX consultation questions. Our responses are equally applicable to the consultation questions posed by TSXV.

TSX Questions for Public Consultation

5.1. Potential Risks Associated with Listing Emerging Market Issuers

(a) Part 3 of this Consultation Paper provides a summary of the potential risks associated with listing Emerging Market Issuers identified by the Exchanges. Are there any additional potential risks that TSX should take into consideration?

There is a risk related to financial reporting that the auditor, and potentially Canadian regulators, will have difficulty accessing records and reports from foreign issuers.

There is an additional legal risk because local governments can often change the laws or the interpretation thereof quickly, and as a result legal rights to title and to carry on business that existed prior to listing might cease to exist once listing is complete.

As noted in our introductory comments, we believe the TSX should consider whether its listing criteria requires fine-tuning for all foreign and domestic issuers, and not just those considered to have emerging market assets or operations.

5.2. Definition of Emerging Market Issuer

(a) Should TSX consider other factors when determining if an issuer should be considered an Emerging Market Issuer? If so, what are they?

For each of the enumerated factors, TSX should consider the connection (or lack thereof) to Canada. For example, the proportion of a company's assets and operations that are overseas and in Canada should be considered, as well as the number of years "mind and management" of a company has lived and/or worked in Canada. TSX should examine the Canadian experience of the Chief Executive Officer, Chief Financial Officer, all directors (independent and otherwise), audit committee members and the external auditors.

TSX could also consider the ease of repatriation to Canada from the jurisdiction under review, as well as any currency movement restrictions.

The history of the sponsor's previous sponsorships of emerging market issuers and companies in related industries to the applicant, including the length of time such companies maintained a listing, could also be reviewed.

(b) Should any specific factor or factors be determinative in deeming an issuer an Emerging Market Issuer? If yes, please identify such factor(s).

We think the factor that should be determinative is the location of the significant shareholders and Chief Executive Officer of the issuer.

(c) Should TSX's focus exclude jurisdictions other than Canada, the United States, the United Kingdom, Western Europe, Australia and New Zealand?

An additional jurisdiction that could be excluded would be Israel, which is included as part of the developed markets indices of MSCI World Index. The FTSE Group considers some emerging markets to be more developed than others, including Brazil, Mexico, Poland, South Africa and Turkey.

(d) Should resource issuers that have independent technical reports be automatically exempted from the definition, provided that the only factor that would otherwise cause them to be an Emerging Market Issuer is the jurisdiction of their principal business operations and assets?

Prior to being exempted, TSX should confirm that the provider of the technical report is in fact independent, particularly if they are being paid by the issuer. The author of the technical report should be located in Canada, as well as senior management (CEO and CFO) and significant shareholders.

5.3. Management and Corporate Governance

(a) What, if any, specific attributes and experience do independent directors require in order to properly oversee management of an Emerging Market Issuer? For example, TSX seeks at least one independent director with both public company experience and significant knowledge and experience in the principal business jurisdiction of the issuer.

It is important to have a balance between qualified directors with knowledge of the local jurisdiction and qualified directors with Canadian experience. Care must be taken to ensure that independent directors in the local jurisdiction are truly independent, and a strict definition and guidance regarding independence would be useful. TSX should require at least one independent director with knowledge in the local jurisdiction and one independent director with knowledge of Canadian standards and legal requirements.

Independent directors should be fluent in English or French as well as the language in which the issuer conducts its main business operations, or be provided with independent translation services. All board members should be provided with access to independent translation services as needed.

(b) How many directors (or what percentage of the board) should be independent directors with public company and local business experience?

Independence is key to the proper functioning of a board and its ability to be objective and effectively represent the interests of the company's shareholders. A board should have a majority of directors that are independent. Please see our response to #5.3(a) above.

(d) If an independent chair is not required or present, is an independent lead director sufficient?

If an independent chair is not present, issuers should have as an alternative an independent lead director to hold separate meetings, if necessary, to deal with issues that may raise a conflict with management.

(e) Are there additional corporate governance measures TSX should consider for Emerging Market Issuers?

The listing application should require the company to submit an educational manual for directors that includes a detailed review of issues specific to the applicable emerging market(s), including an explanation of cultural differences in business practices, banking and currency restrictions in the jurisdiction, and any industry or financial regulations that differ significantly from those in Canada. The manual should be provided to each director.

In circumstances where management is located in a country other than Canada, TSX should require recordkeeping of the board's communications with management, with predetermined frequency.

If the issuer's securities are only listed in Canada, TSX should require a higher number of independent directors with Canadian public company experience than if the issuer's securities are also listed on other exchanges. To the extent the requirements of any other exchange on which an issuer's securities are listed are more onerous than that of the TSX, listed issuers should be explicitly required to satisfy the more onerous of the standards.

5.4. Financial Reporting

(a) CFO

(i) Are there additional factors that are relevant to an individual's suitability as CFO for an Emerging Market Issuer?

The size of the company where the CFO acquired his or her experience should be comparable to the emerging market issuer's size. Fluency in the language spoken in the principal business jurisdiction by the CFO or someone on the CFO's team is essential.

(ii) How important is demonstrated local business knowledge and experience for the CFO?

Demonstrated local business knowledge and experience is very important, especially as it pertains to financial and industry regulations and how they differ from Canada. If the CFO does not understand the nuances of financial reporting in the emerging market country, he or she may not make the necessary inquiries to ensure the accuracy of the issuer's financial statements.

(b) Audit Committee

(i) Are there additional factors that are relevant to the suitability of audit committee members for an Emerging Market Issuer?

Additional factors that should be considered are proficiency in the language in which the issuer conducts its main business operations and/or seamless access to independent translation services.

(ii) How important is demonstrated local business knowledge and experience for the audit committee?

Demonstrated local business knowledge and experience is very important. While the audit is performed by a third party, the audit committee is still accountable and responsible for the audit and must understand the process behind the audit in order to perform its functions appropriately. If the members of the committee do not understand the unique aspects of financial reporting in the emerging market country, they cannot oversee the auditors and the auditor process effectively or ask the relevant questions of management and the auditors.

(c) Auditors

(i) Are there additional factors that are relevant in assessing the appropriateness of an auditor for an Emerging Market Issuer?

It is very important that Canadian audit firms and the regulators have access to the reports and working papers of the auditors in an emerging market jurisdiction. The issue is particularly acute in China. The SEC is currently taking action against China-based affiliates of large multinational auditing firms because Chinese securities regulators do not allow local auditors to share audit

work documents, which hampers the SEC's ability to investigate potential fraud by US-listed issuers based in China [see SEC press release [here](#).]

For as long as Chinese law prohibits sharing of detailed audit information with foreign regulators, Canadian auditors who rely on local Chinese auditing firms for a substantial portion of the audit would not be able to produce these audits for regulatory review in Canada. Ideally, TSX could work with the SEC and CSA to obtain mutual agreements with Chinese authorities for access to audits produced in China. In the meanwhile, TSX should encourage Chinese issuers wanting to list in Canada to provide audits by Canadian based firms and/or require auditing firms that rely on Chinese auditing affiliates to provide a detailed plan on how they will verify audits performed in China. Canadian investors deserve the protection from potential fraud that can only be provided by audit reports that are fully accessible for review by Canadian regulators.

(ii) How important is demonstrated local business knowledge and experience for the auditors?

Demonstrated local business knowledge and experience is very important for the auditors. The Canadian Public Accountability Board released a report in March 2012 which identified the failure to understand the business customs and practices of foreign jurisdictions as the primary cause of significant audit deficiencies of emerging market issuers in Canada.

In addition to local business knowledge and experience, the auditors should demonstrate proficiency in the language in which the issuer conducts its main operations by at least one auditing executive who is in direct contact with management.

5.5. Internal Controls

(a) Should TSX require comfort around internal controls in the form of a certification, management report or other similar report on internal control systems to be submitted by an auditor at the time of original listing for Emerging Market Issuers? If yes, should TSX require it for all Emerging Market Issuers or only on a discretionary basis? Should any particular category of issuer be exempt, such as exploration issuers for which internal control risks may be more limited?

All emerging market issuers should provide comfort on their internal control system, which should be devised by the Chief Executive Officer and the Chief Financial Officer. If the board or the executive officers lack experience in designing such a system, outside experts with knowledge of the markets of operation and experience with designing internal controls in those markets should be brought in to assist.

(b) Who is appropriate to provide a useful evaluation report on internal controls for Emerging Market Issuers? For example, the auditor, the sponsor or other third party?

An auditor that does not provide regular financial reporting audit services to the issuer would be appropriate to provide an evaluation report on internal controls. The auditor should either be

located in Canada or be located in a jurisdiction whose laws permit the auditor to provide all audit work to Canadian regulators upon request. The sponsor would not be the appropriate party, as they have a conflict of interest because they receive a fee for introducing the issuer to the Canadian market.

(c) What costs would be related to imposing such a requirement? Please note if you foresee any negative consequences of such a requirement.

We do not believe the costs should be a barrier to imposing a requirement for a report on internal controls. The goal of providing access to the Canadian market for issuers in other jurisdictions should be balanced with the goal of investor protection. Issuers should not view a listing on a Canadian exchange as being a simple and low cost process. Only quality companies with a high level of internal controls comparable to Canadian based issuers should gain access to the Canadian public markets.

5.6. Related Party Transactions

(b) Should TSX classify all Emerging Market Issuers that have a controlling security holder as non-exempt and therefore subject to Part V of the Manual regardless of their listing category? Alternatively, should all Emerging Market Issuers be classified as non-exempt?

TSX should not automatically classify all emerging market issuers, or those that have a controlling security holder, as non-exempt companies. If the issuer's Chief Executive Officer and other "mind and management" are located in Canada and have experience with Canadian public companies, the exemption criteria should apply. Conversely, where management is located in the emerging market, those issuers should be classified as non-exempt.

5.7. Non-Traditional Corporate/Capital Structure

(a) Should TSX refuse to list Emerging Market Issuers that have adopted non-conventional corporate structures? Are there certain corporate structures that should be refused, but others that may be acceptable? If yes, please explain and support your response.

All non-traditional structures should be supported by a plain language explanation from the issuer of their necessity. In addition, the issuer should be required to indicate how it intends to structure and monitor its controls such that they can provide the appropriate assurances above and beyond those required from issuers with simpler structures. The issuer must demonstrate how it will mitigate the risks of potential misuse of the structure to the detriment of Canadian shareholders.

TSX should specifically review proposed reverse takeovers that appear to have a listing in Canada as their main goal, and should require additional evidence of existing operations by the shell company. For example, the NYSE has additional requirements for reverse merger issuers in Section 103.01E of its Listed Company Manual [[link to requirements here](#)].

(b) Should sponsorship be required to comment on the necessity of a non-traditional corporate structure?

The sponsor should comment on the necessity of the structure. In addition, they should provide information on how many such structures they have sponsored in the past as a percentage of all companies they have sponsored, as well as information on the past history of the success and observed challenges of such structures.

5.8. Other Requirements

(a) Sponsorship

(i) Is it material information for an investor to know whether an applicant was sponsored, exempt from sponsorship or received a waiver from sponsorship? If you believe it is material information and a waiver from sponsorship is granted, should it be made public by the issuer or TSX?

This information is material and should be made public by TSX (after the issuer is provided an opportunity to review the proposed disclosure). The specific criteria that TSX considered when granting an exemption or waiver from sponsorship should be made available to the public as well.

(ii) If TSX publishes the name of sponsors in its original listing bulletins (or indicates if there was no sponsor), do you foresee any impact, positive or negative?

We think that additional transparency will be of assistance to both issuers and sponsors considering a listing in future, and will also help investors gauge support for the issuer.

(iii) Should TSX require sponsorship for all Emerging Market Issuers? If not, are the current exemptions from sponsorship in the Manual adequate?

Yes, we think the risks relating to emerging market issuers as set out in the Consultation Paper warrant the added scrutiny of sponsorship. We note, however, that the TSX should explicitly acknowledge that in all cases, including those involving a sponsor and a detailed sponsorship report, the TSX remains responsible for listing decisions.

(iv) Should sponsorship reports be made public by Emerging Market Issuers?

Yes the reports should be made public. In addition, the form of the responses should be standardized, with transparent methodology and guidelines for due diligence.

(v) The sponsor must be a participating organization of TSX. Should there be other standards for sponsorship work? If so, what organization is suitable to adopt and enforce such standards? What should the standards be? If you think TSX is the appropriate body to adopt and enforce sponsorship procedures, should they be part of the Manual? In your response, please consider costs of enforcing standards and who will bear such costs.

Under the current rules, sponsors are in a similar situation to credit rating agencies, where concerns were expressed about the independence and reliability of work performed by credit rating agencies across the globe. Sponsors are paid by the issuer to provide an opinion on their suitability for listing on a Canadian exchange, and there is therefore an inherent conflict of interest. The sponsors' processes for decision making are not uniform and not transparent. The CSA was of the view that credit rating agencies required regulation for some of the same reasons [[see National Instrument 25-101](#)], and a similar approach should be considered by the TSX for sponsoring organizations in Canada.

(b) Ongoing Requirements

(i) Please comment on whether TSX should require the following additional items for Emerging Market Issuers in all cases, or in its discretion based on the presence of certain risk factors:

II. a review of internal control systems by an issuer's auditors on an annual basis; and

We are of the view that a review of internal control systems should be performed periodically but not necessarily as frequently as on an annual basis. The auditor performing this review should be different from the issuer's usual auditor.

III. an update of sponsorship on an annual basis.

If the initial due diligence completed by the sponsor was thorough, an update of the sponsorship on an annual basis should not be required, unless concerns about certain aspects of an issuer's operations were flagged in the initial review for future consideration.

(ii) Are there other supplemental ongoing requirements that TSX should consider?

In addition to our response in #5.3(e) with respect to reports on regular communication of the board with management, TSX should consider ongoing requirements with respect to: (a) material changes in equity participation by significant shareholders; (b) material changes in equity participation by the Chief Executive Officer and other senior management; and (c) receiving information about listing or delisting (or conditions of listing) of the issuer's securities in any other jurisdiction.

TSX could consider establishing maximum thresholds of size and frequency for related party transactions as conditions of maintaining a listing on TSX. Issuers should be required to report to the TSX specifically on these transactions, and the report should include information on the size and frequency of related party transactions. TSX would, however, need a mechanism to monitor

whether the related party transactions were being reported correctly and on a timely basis by those companies.

(c) **Costs**

(i) *Please comment on the additional costs that an applicant or issuer may incur as a result of the additional conditions TSX may impose.*

We do not believe that costs of an applicant or issuer resulting from additional conditions should be a factor under consideration. We do not believe it is beneficial to try to measure the intangible benefits of increased investor protection against potential increased costs to issuers, especially since many investors already rely on the TSX's rigorous listing conditions. To the extent an applicant/issuer, or the TSX itself, is required to spend additional time and resources on listing requirements, it should simply be considered another cost of doing business in Canada. If the cost of compliance with the additional conditions prove to be too burdensome, it may be appropriate for the applicant to consider other listing options. It will be important however, for any additional conditions to be transparent and easily understood by issuers and consistently applied by the TSX, so that applicants and existing listed issuers can make informed decisions about their listing status early on in the process.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Ada Litvinov*

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