



September 16, 2024

Submitted via Email

TSX

c/o Anne Child, Managing Director, TSX Listings

Toronto Stock Exchange

100 Adelaide Street West, Suite 300

Toronto, ON, M5H 1S3

tsxrequestforcomments@tmx.com

Dear Ms. Child:

RE: PROPOSED AMENDMENTS TO ORIGINAL LISTING REQUIREMENTS (THE “AMENDMENTS”)

The Investment Industry Association of Canada (“IIAC”) is the national association representing investment firms that provide products and services to Canadian retail and institutional investors. Our member firms trade in debt and equity on all marketplaces.

We appreciate the opportunity to comment on the proposed Amendments.

Executive Summary

To the extent that the Amendments remove impediments to new listings on the TSX, they are well founded. We have set out our agreement with several of them in this correspondence.

We have also made the following recommendations:

Industrial Issuers

The best financing structure should be left to the market.

The goal should be for the TSX to avoid artificially constraining the ways companies can qualify under the Market Support requirement. We recommend alternative approaches to this calculation.

Statistics provided regarding the percentage of TSX-listed issuers with market caps greater than \$50 million and \$100 million, exclude ETFs but should also exclude Closed End Funds, SPACs, and REITs, as these are similarly not considered operating companies.

Oil & Gas Issuers

To the extent possible, the TSX should make it easy for companies to meet operational and funding requirements. We recommend:

- Removing a market support qualification for senior oil & gas issuers.
- Either removing or lowering the market cap requirement to \$50 million.
- Reference solely to 2P (proved plus provable) reserves.
- Consultation with reserve engineering firms for draft guidance on discount rates in reserve calculations, price forecasting methodology and reserve reporting .

Governance

Greater consideration be provided to changes in governance related matters with particular regard to the flexibility provided by the US stock exchanges and the London Stock Exchange.

Background

The TSX, like most stock exchanges in the developed world, is seeing a secular decline in the number of companies choosing to list. According to research published by Professors Pandes and Tingle in 2021, the number of operating companies on the TSX has declined from 1,206 companies in 2008 to a recent low of 712 as of December 31st, 2023.¹ This decline of 41% comes at the same time that Canada's economy and population have grown significantly.

Canada depends on the TSX being an attractive place for Canadian and international companies to list and build their businesses. While the causes of the decline in listed issuers around the developed world are not well understood, it is clear the problem arises from a growing reluctance of new companies to go public. Instead, companies obtain exits for their early investors by selling themselves in private markets to larger companies. In many industries, such as tech and pharma, these acquiring companies are predominantly non-Canadian.

To the extent that the Amendments remove impediments to new listings on the TSX, they are well founded. Our comments below generally focus on where frictions in the listing process may arise. The primary goal for the proposed Amendments should be making a public listing more compelling for managers of appropriate private businesses. Market participants are best equipped to price opportunities and risks, such as those related to governance matters, the future prospects of businesses including the viability of their products and services, and the value of their tangible and intangible assets.²

¹ Bryce Tingle & Ari Pandes, "Reversing the Decline of Canadian Public Markets" (2021) 14:3 *School of Public Policy Publications*. The total for 2023 is found in hand-collected data in the possession of Ari Pandes.

² This notion relates to the efficient market hypothesis formalized by Eugene Fama in his seminal work: at any point in time the market price of a security will be a good estimate of its intrinsic value and reflect all available information. See Eugene Fama, "The Behavior of Stock Market Prices" (1965) 38(1) *Journal of Business* and Eugene Fama, "Efficient Capital Markets: A Review of Theory and Empirical Work" (1970) 25(2) *Journal of Finance*, and the large body of supporting work that has followed.

A. Comments and Recommendations

We have several suggestions in relation to the proposed Amendments that we feel would provide further improvements to this initiative. (The headings are drawn from the TSX' Request for Comments.)

Section 309: Industrial Issuers

1. We agree that in assessing whether a new issuer has adequate funding, it should not make a difference whether that funding occurred by way of public offering or private placement. The best financing structure should be left to the market.
2. We are unclear how the "Market Support" market capitalization calculations are to be calculated before a private company lists on the TSX. We suggest that it should be possible to show this calculation in a variety of ways: (i) valuation implied by a significant arms-length financing within the past year; (ii) valuation implied by a concurrent private or public financing at the time of the IPO; and (iii) valuation clearly implied by standard valuation metrics based on the company's historical operating performance.

The goal should be for the TSX to avoid artificially constraining the ways companies can qualify under the Market Support requirement.

Please note that in support of the market support requirement in Note 3 on Page 5, the Request for Comment provides statistics about the percentage of TSX-listed issuers with market caps greater than \$50 million and \$100 million. These percentages exclude ETFs to reflect the percentage of operating companies; they should also exclude Closed End Funds, SPACs, and REITs, as these are not considered operating companies either. The TSX should consider whether this more accurate appraisal of the percentage of TSX-listed operating companies changes its analysis of the proposed market support requirements. For example, it has been well established that in most developed markets the decline of initial public offerings has been most pronounced among small firms.³ The proposed market cap thresholds informed by the percentages in Note 3 should thus accurately and thoughtfully consider the potential impact on small-cap listings and operating company listings at various stages of their lifecycle, more generally. We also touch on this point in our Comment 5 below regarding the possible gaps in market cap requirements between the TSX-V and the TSX, which is an important laddering ecosystem in the Canadian public markets.

Section 314: Mining Issuers

3. We support replacing the TSX' current reserve measure for mining issuers with the "resource" or "reserve" estimate provided by reports prepared in connection with NI 43-101. This clarifies the requirement for new issuers and removes potentially duplicative work.

Section 319: Oil & Gas Issuers

4. We are unclear why the proposed "Senior Oil & Gas" category of issuers requires a Market Support qualification. It is hard to imagine any real-world example of a company with 10,000 boepd that has ever had a market capitalization below \$100 million outside of an insolvency situation (which is not a likely moment for the company to decide to go public). While it can be argued that the Market Support

³ Xiaohui Gao, Jay R. Ritter, and Zhongyan Zhu, "Where Have All the IPOs Gone?" (2013) Vol. 48, No. 6, *Journal of Financial and Quantitative Analysis*. See also statistics at Jay Ritter's website: <https://site.warrington.ufl.edu/ritter/ipo-data/>.

requirement in the proposed Amendments is simply irrelevant, in the spirit of simplifying the OLR, the Amendments should eliminate this requirement.

5. In relation to the proposed basic “Oil & Gas” category of issuers, we are concerned that there is a gap (or a “laddering issue”) between the TSX-V and the TSX arising from the proposed \$100 million market cap requirement. Only about 0.15% of the issuers on the TSX-V currently have a market cap in excess of \$50 million. The median market cap of TSX-V companies is \$8.86 million.⁴

The \$100 million market cap requirement to listing on the TSX may mean, therefore, that some reasonably large oil and gas companies are stranded on the TSX-V, which lacks the liquidity and institutional attention that comes from a TSX listing. To the greatest extent possible, the TSX should make it easy for companies that meet the relevant operational and funding metrics to list on the TSX. To put it in another way, an otherwise suitable \$75 million oil and gas company should not find itself stranded on an exchange – which cannot meet its capital or trading needs – with peer companies that cluster around market caps below \$10 million.

We suggest either removing the market cap requirement or lowering it to the same level as “Pre-Income-Producing” industrial issuers (ie. \$50 million). We note that there does not appear from the proposed Amendments to be any changes to the very low \$4 million minimum for mining issuers. If, as the proposed Amendments suggest, the current rules are working satisfactorily for mining issuers, we don’t see why they wouldn’t work for other natural resource extraction companies such as those in the oil and gas industry.

6. The focus of the proposed Amendments on “1P” reserves is mistaken. In addition to proven reserves, probable reserves are taken seriously by the market as a meaningful indicator of an issuer’s asset size. The probable reserve number in engineering reports is already significantly discounted for the risk of recovery.

We would therefore suggest, that in relation to both the “Senior Oil & Gas” and “Oil & Gas” category of issuers, the Amendments should be revised to refer only to 2P (proved plus probable) reserves. If it is deemed necessary, the TSX could increase the required 2P reserve number for Senior Oil & Gas issuers.

7. We note that the final Amendments should, in consultation with reserve engineering firms, provide guidance to issuers about the discount rate to be used in calculating reserves, the appropriate method of generating a price forecast, along with whether the relevant reserve total is before or after taxes. Any draft guidance should be available for prior public comment.

Part V: Non-Exempt Issuers

8. We agree with the removal of Part V from the TSX Company Manual in the way suggested by the proposed Amendments. Doing this will significantly simplify the rules that new issuers must navigate in determining whether to go public and the consequences of doing so.

⁴ These statistics are based on the year ending December 31st, 2023.

Sponsorship

9. We agree with clarifying the circumstances in which sponsorship reports will be required. We are in agreement that sponsorship reports will almost never be required outside of the four circumstances referred to in the proposed Amendments:
- a. No prospectus has been filed within six months of listing.
 - b. The application is made in the context of emerging market issues.
 - c. There are governance and/or personal information form matters meriting additional review; or
 - d. additional commentary is required regarding the title and ownership of a resource property.

Definitions

10. The questions asked by the TSX in relation to the proposed Amendments often include concerns about the appropriateness of using undefined standards such as “management track record,” “proof of business concept,” “run rate,” and “appropriate capital structure.” We agree with the proposed Amendments that attempting to precisely define these concepts would run the dual risk of failing to capture unsatisfactory companies and deterring acceptable companies. The definitions would also unnecessarily complexify issuers’ evaluation of whether they meet the OLR. The TSX should support and defer to the professional judgement of market actors.

TSX Governance Rules

11. While the Request for Comment refers to “governance-related matters,” no changes in relation to these matters appear in the proposed Amendments. As you are aware, the U.S. stock exchanges permit considerably more heterogeneity in their listed issuers governance arrangements than the TSX. In addition, the London Stock Exchange has recently announced that it is liberalizing its rules around corporate governance for listed issuers in an effort to attract new companies.⁵

The best evidence we have is that those new companies that are induced to enter U.S. public markets desire flexibility in their governance arrangements. Specifically:

- a. 96% of new US public companies have plurality as opposed to majority voting; and
- b. 98% of IPO companies have classified boards.⁶

TSX rules prohibit both these governance structures, but they appear highly important to new public market entrants in the United States. The TSX should consider whether these – and other governance structures mandated by the Exchange – represent the current best thinking in corporate governance and whether they are making the TSX less competitive, which is not in Canada’s financial sector’s best interests.⁷

⁵ Financial Conduct Authority, “PS24/6: Primary Markets Effectiveness Review” (July 17, 2024) online (pdf): <https://www.fca.org.uk/publication/policy/ps24-6.pdf>.

⁶ Davis Polk, “IPO Governance Survey: Corporate Governance Practices in U.S. Initial Public Offerings” (December 2022), online (pdf): <https://www.davispolk.com/sites/default/files/2023-02/ipo-corporate-governance-survey-december-2022.pdf> at Page 4.

⁷ For e.g. Stephen J. Choi et al., “Does Majority Voting Improve Board Accountability” (2016) 83:3 *University of Chicago Law Review* 1119–1180 (finding majority voting policies result in a dramatic (19x) drop in the willingness of shareholders to vote against a director); Jay Cai, Jacqueline L. Garner and Ralph A. Walking, “A Paper Tiger? An Empirical Analysis of Majority Voting” (2013) 21 *Journal of Corporate Finance* 119–135 (finding shareholder voting declines in the presence of majority voting policies).

We appreciate your consideration of these responses.

Yours Sincerely,

INVESTMENT INDUSTRY ASSOCIATION OF CANADA

cc. Associate Dean Ari Pandes (Haskayne School of Business, University of Calgary)

cc. Prof. Bryce Tingle (Faculty of Law, University of Calgary)

and corporate performance declines after adoption of majority voting policies); Bryce C. Tingle, "Two Stories About Shareholders" (2021) 58:1 Osgoode Hall LJ 57 at 102-105 (summarizing considerable empirical research finding staggered boards improve average corporate performance).