Proposal for new TSX listing requirements for ETFs, closed-end funds and structured products: codification of existing practices

April 15, 2015

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On January 15, the Toronto Stock Exchange (the "Exchange") published proposed amendments to the *Toronto Stock Exchange Company Manual* (the "Manual"). More specifically, a completely new section will be added to the Manual (Part XI) for determining the minimum listing requirements to be met by non-corporate issuers, i.e. exchange traded products (ETPs), closed-end funds and structured products.

ENTITIES COVERED BY THIS PROPOSAL

In their current version, the rules proposed by the Exchange provide definitions for the non-corporate issuers covered by these rules. However, the Exchange has given itself some level of discretion to decide that issuers not covered by this definition may still be subject to the obligations of non-corporate issuers. The three groups of issuers covered by these new rules are as follows:

1. Exchange traded products, i.e. redeemable equity securities ("**Exchange Traded Funds**" or "**ETFs**") and redeemable debt securities ("**Exchange Traded Notes**" or "**ETNs**") offered on a continuous basis under a prospectus which give an investor exposure to the performance of specific index, sectors, managed portfolios or commodities through a single type of securities
2. Closed-end funds, i.e. investment funds, mutual funds, split share corporations, capital trusts or other similar entities that are managed in accordance with specific investment goals and strategies
3. Structured products, i.e. securities generally issued by a financial institution (or similar entity) under a base shelf prospectus and pricing supplement where an investor's return is contingent on, or highly sensitive to, changes in the value of underlying assets, index, interest rates or cash flows. Structured products include securities such as non-convertible notes, principal or capital protected notes, index or equity linked notes, tracker certificates and barrier certificates

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RATIONALE FOR THIS PROPOSAL

The Manual sets out the requirements enforced by the Exchange to all issuers as part of its mission to ensure a transparent, fair and orderly market for listed securities. These requirements were designed to recognize the specific features of various classes of issuers. However, the current version of the Manual does not take into account the specific features of ETFs and closed-end funds, which have become much more common in the Canadian market over the past 10 years.

Indeed, according to the data provided by the Exchange, while there were only three ETF providers offering 84 products listed on the Exchange at the end of 2008, by October 31, 2014, there were nine providers offering 335 ETFs. In addition, every year over the past five years, an average of 35 closed-end investment funds have been listed on the Exchange, representing a market value of more than $26B.

In the course of the elaboration of these proposed rules, the Exchange reviewed the listing requirements used by various recognized stock markets, including the New York Stock Exchange, NASDAQ, London Stock Exchange and, closer to home, the brand new Aequitas NEO Exchange. According to the Exchange's analysis, the products listed on NASDAQ and NYSE are the most comparable to those listed on the TSX.

PROPOSED MINIMUM LISTING REQUIREMENTS

In the proposed amendments, the Exchange intends to set the minimum market capitalization to be met by non-corporate issuers wishing to be listed on the TSX, as follows:

1) Exchange traded products must have a minimum market capitalization of $1 million
2) Closed-end funds must have a minimum market capitalization of $20 million
3) Structured products must have a minimum market capitalization of $1 million

In addition to the minimum market capitalization requirement, closed-end funds must also have issued a minimum of one million (1,000,000) freely tradeable securities held by at least 300 board lot holders.

The Exchange also provides for certain requirements for calculating net asset value, as well as for governance. The net asset value must be calculated daily for exchange traded products and weekly for closed-end funds and structured products. In all cases, the net asset value must be posted on the issuer's website.

With respect to governance, as the Exchange does for issuers of other classes, it will assess the integrity of the directors and officers of non-corporate issuers. Issuers or managers of exchange traded products, closed-end funds and structured products must have a CEO, CFO, secretary, as well as an independent review committee (for exchange traded products and closed-end funds) or two independent directors (for structured products). However, this obligation does not apply to exchange traded products and structured products issued by financial institutions.

REQUIREMENTS FOR MAINTAINING A LISTING

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Securities of a closed-end fund may be suspended or delisted if the market value of the securities listed on the Exchange is less than $3 million ($3,000,000) for 30 consecutive trading days, the fund has less than 500,000 freely-tradeable securities, or the number of security holders is less than 150. As for the securities of exchange traded products and closed-end funds, they will be delisted if maintaining their listing affects market efficiency. To do so, the Exchange will, among other things, consider the degree of liquidity and market value of the securities.

CONCLUSION

The proposed amendments were subject to a period of comments extending from last January 15 to March 16. The coming into force of these rules also remains subject to approval by the Ontario Securities Commission.

As usual, if you are considering applying for a listing of your products on the Exchange, it is always preferable to obtain a preliminary opinion on eligibility for listing by filing an application to this effect with the Exchange.

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