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# TSX Launches Sandbox Initiative for Issuers That Do Not Satisfy Standard Listing Conditions

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In its April 12, 2019 Staff Notice (2019-0002), the Toronto Stock Exchange (TSX) announced a framework to govern the exercise of its discretion to accept listing applications that do not satisfy the TSX's listing conditions. The guidance in Staff Notice 2019-0002 covers both initial applications to list on the TSX and supplemental applications for changes in the capital structures of listed issuers, such as follow-on listings of existing or new securities.

TSX staff already have the ability to waive or grant exemptive relief from the listing rules pursuant to the Company Manual. The framework described in Staff Notice 2019-0002, which the TSX has dubbed the "TSX Sandbox," is intended to formalize the procedure by which such discretion is to be exercised and relief from listing requirements is to be granted. The TSX also intends the Sandbox to double as a testing ground for the development of new policy initiatives, which typically require a lengthy period of consideration before being formally implemented.

## Eligibility

Issuers across all industry sectors and all business stages, from early-stage to more seasoned operations, are invited to apply to the TSX Sandbox. Existing TSX-listed issuers may apply for the listing of any novel financing, including equity, debt, structured products and other securities via the TSX Sandbox. Eligibility for inclusion in the TSX Sandbox will be evaluated using a non-exhaustive range of factors. For initial listings and supplemental listings, important eligibility criteria include experienced board and management teams with a demonstrated track record in the public markets, the completion of a significant public raise resulting in a wide distribution of the applicant's securities, total market capitalization and significant pre-tax cash flow from operations. Also relevant to the TSX when considering eligibility are evidence of wide public support and investor interest in the issuer and established corporate governance practices.

Factors that preclude eligibility include ongoing or historical regulatory sanctions or investigations into insiders of the issuer, derogatory regulatory or media information concerning members of the issuer's board or management team and issuers that previously unsuccessfully applied through the TSX's standard listing procedures (unless specifically invited to apply to the Sandbox). As well, emerging market issuers are precluded from participating in the TSX Sandbox initiative.

## Applications

To ensure suitability for participation in the TSX Sandbox, Staff Notice 2019-0002 encourages potential Sandbox applicants to schedule a pre-filing meeting with the TSX prior to submitting a formal application. A formal application will consist of the documents required under the TSX's standard listing rules and a submission requesting that the application be reviewed through the Sandbox initiative. If the TSX accepts an applicant into the Sandbox, it will grant the applicable waivers or exemptions from the relevant TSX rules, including any continued listing requirements imposed by the TSX. Once such waivers or exemptions are no longer required and/or the issuer has met any additional conditions applicable to its Sandbox listing, the issuer will exit the Sandbox and be subject to the TSX's standard continued listing requirements.

## Special Conditions

In lieu of satisfying the TSX's standard listing requirements, the TSX may impose alternative listing conditions on Sandbox participants. These conditions may include a minimum public raise, a minimum market capitalization, enhanced sponsorship, enhanced escrow requirements and enhanced reporting requirements to the TSX and/or the public. As well, the TSX may choose to grant listing waivers on a time-limited basis only, which could require a Sandbox participant to delist if it is unable to satisfy the conditions of the TSX by the end of the waiver period. Sandbox participants should expect to disclose that their listing application was approved by way of the Sandbox and to include in offering and continuous disclosure documents the risks associated with a Sandbox listing and the details of any exemptions, waivers and additional conditions imposed on the issuer. The TSX expects to identify Sandbox participants on its website and in listing bulletins.

### Priority for First Movers

The TSX notes that all Sandbox applications will be considered on a case-by-case basis and that successful applications should not be viewed as precedent-setting for either future Sandbox applications or standard listing applications, absent a staff notice or formal amendment to the Company Manual.

Sandbox applications that are substantially similar to already-approved Sandbox listings may not be accepted until sufficient seasoning has occurred to allow the TSX to analyze the market impact of its Sandbox decisions. "First-mover applications" will therefore be the beneficiaries at the outset of the Sandbox initiative.

### Key Takeaways

We will be watching developments in the Sandbox to determine whether this business development initiative of the TSX will ultimately bring meaningful change to TSX rules for initial listings or the continued listing obligations imposed on issuers. For issuers looking to list on the TSX, the Sandbox represents a framework within which issuers may aspire to and complete a TSX listing where certain standard listing requirements cannot be met at the time of application.

The Sandbox is not a backdoor for issuers whose operations and compliance capabilities are best suited to junior exchanges, such as the TSX Venture Exchange. Consistent with the existing principles of the Company Manual, an experienced board and management team, established corporate governance practices and sufficiently wide distributions will be principal considerations for listing through the Sandbox, just as with any other TSX listing.

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