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Managing Conflicts of Interest at the TSX – FAIR Canada Releases Expert Report

Background

FAIR Canada has released an [expert report](#) with options for improving the management of conflicts of interest at the Toronto Stock Exchange (the TSX), in connection with the TSX's regulation of listed companies. FAIR Canada has expressed concerns since its establishment about the inherent conflict at the TSX between the TSX's listings business and listing regulation functions, and has pushed for regulators to address this conflict of interest in a way that is consistent with international standards.

Earlier this year, the Ontario Legislative Assembly's Standing Committee on Government Agencies issued a [report on the OSC](#). The report addressed the TSX's listings regulation functions, based in part on representations from FAIR Canada. The Committee's report states that, "Our concern is with the perception that the TSX falls below international standards with respect to the separation of its regulatory and commercial activities". The report concluded as follows:

The Committee recommends that the [Ontario Securities] Commission review the potential for the conflict of interest between the regulatory and commercial functions of the Toronto Stock Exchange and that it take the steps necessary to address any problems identified.

Expert Report – "Managing Conflicts of Interest in TSX Listed Company Regulation"

"The purpose of the Report is not to make specific recommendations, but to stimulate debate with a view to encouraging the TSX and its supervising regulators to address the issue in a timely and constructive way," said Ermanno Pascutto, Executive Director at FAIR Canada. "We wish to thank the TSX for its cooperation in providing information for purposes of this Report. We also wish to thank John Carson, author of the Report, whose extensive knowledge and expertise were crucial to this initiative."

Mr. Pascutto continued, "This Report outlines how these types of conflicts have been addressed in several important developed markets, including the US (both NYSE and NASDAQ), the UK, Scandinavia, Australia, Japan and Hong Kong. Like the TSX, the exchanges reviewed are all self-listed, commercial enterprises with strong listing businesses."

Main Conclusions

The Report finds that the seven major exchanges reviewed for the Report have addressed the conflicts of interest that arise between their business and regulatory responsibilities by implementing specific and sound conflict management mechanisms, including the following:

- 1) The exchange establishes a regulation subsidiary with independent governance to perform listings regulation;
- 2) The exchange establishes a listings regulation department that is separate from the business operations of the exchange (including listings business development) to perform listings regulation; or
- 3) The statutory regulator performs listings regulation.

The TSX is the **only** exchange among this group that has not implemented specific measures to manage its conflicts of interest in regulating listed companies. The TSX carries out listings regulation as part of a unified Listings Department that is responsible for both listings regulation and the listings business.

The Report released today by FAIR Canada encourages the TSX to implement measures to better manage those conflicts, and sets out three approaches for the Exchange to consider:

- 1) transfer listings regulation responsibilities to another regulator,
- 2) establish an independent regulation subsidiary, or
- 3) establish a separate listings regulation department.

Implications for Alpha Entering into Listings Business

The Report is particularly timely since Canadian securities regulators are currently considering Alpha's application for exchange recognition so that it can list companies in competition with the TSX. The same conflicts of interest between the commercial and regulatory responsibilities of an exchange arise in the context of Alpha's application for exchange recognition and its proposed business model (with both a listing business and listings regulation function). In fact, the potential for the lowering of listing standards is even greater, given the potential competition between Alpha and the TSX for listings.

Mr. Pascutto said: "If Alpha introduces listing requirements that do not match those of the TSX, this may lead to lower standards in the name of a "level playing field", with the result that Canada could face a "race to the bottom" in exchange listed company regulation."

Mr. Pascutto added: "Given the timeliness of the Report, FAIR Canada views it as offering an independent, detailed and comprehensive overview of how conflicts have been handled in other developed jurisdictions. We believe that the results largely speak for themselves, and are highly instructive for the TSX and Canadian securities regulators. The Report has been provided to Canadian regulators, the TSX and Alpha. FAIR Canada looks forward to continuing to discuss these issues with the TSX, the regulators and other interested parties, with a view to ultimately strengthening investor protection in the Canadian capital markets."

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About FAIR Canada

FAIR Canada is a non-profit, independent national organization dedicated to representing the interests of Canadian investors and shareholders. The mission of FAIR Canada is to be a voice for investors in securities regulation and a catalyst for enhancing the rights of Canadian shareholders and retail investors. Visit www.faircanada.ca for more information.

About John Carson

John Carson, author of the Report, is Managing Director of Compliax Consulting, a specialized consultancy that provides strategic and technical advice on the regulation of capital markets. The firm's services focus on compliance with securities regulations, development of regulatory organizations and programs, and development of capital markets and securities exchanges. See www.compliax.com for more information.