

TMX Group Exchanges Provide Guidance to Crypto and Blockchain Issuers

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The TMX Group recently posted a series of short online webinars consisting of informal conversations between TMX staff (Staff) about a variety of topics related to blockchain and cryptocurrencies. The discussions provided a number of tips and insights for listed issuers and for issuers that might seek to list on TSX or the TSX Venture Exchange (the TSXV). Some of the highlights are set out below.

New Listings

For issuers seeking a listing on TSX or TSXV, Staff emphasized that neither exchange has any specific blockchain or cryptocurrency listing criteria. As there are no special listing categories, the exchanges will not typically treat new applicants any differently and will work to understand the issuer and its business. Accordingly, they will assess the industry, the company and management and the legal and regulatory environment of the issuer and how they comply. At present, neither TSX nor TSXV is listing cryptocurrencies, though TSX suggested it might be open to this. Issuers coming to TSX or TSXV in the sector would typically be listing traditional securities in a traditional category of listing.

TSX

Blockchain or cryptocurrency issuers are expected to list in the technology category or as an “investment fund” (an exchange traded fund, a closed end fund or a structured product). In the technology category, TSX identified differences between blockchain as a technology - which they believe are easy to assess and approve - and cryptocurrencies. For technology issuers, they noted that listing rules require that an issuer have a minimum of \$10 million in the bank, with most raised under a prospectus, funds for at least 1 year of operations, a \$50 million market capitalization and have a technology that is at an advanced stage of development or commercialization. The last requirement typically requires that there be commercial revenue – typically, several million dollars supported by audited financial statements, and in limited circumstances firm sales contracts for several million dollars. Cryptocurrencies are different, with longer horizons expected before one is listed. At a minimum, TSX will want to be comfortable with the business and that it complies with relevant laws where the issuer operates. For investment fund issuers, Staff focused on ETFs, due to the recent publicity surrounding proposed crypto ETFs. TSX pointed to the SEC staff letter from January 18, 2018, as applicable guidance for ETFs seeking to launch in this space and be listed on TSX. The SEC staff letter identifies a number of issues that crypto ETFs would need to address, such as how funds would develop and implement policies and procedures to fairly value cryptocurrency-related products, and what

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steps funds investing in cryptocurrencies or cryptocurrency-related products would take to ensure that they would have sufficiently liquid assets to meet daily redemptions daily. For TSX, many of their concerns would be addressed by the fact that the ETF will have its prospectus reviewed and receipted by a securities commission.

TSXV

Issuers would be expected to fall under either the technology category or the investment issuer category. For the technology category, the issuer would be required to have a history of operations or a validation of the business. Guidance for this listing requirement was provided by the TSXV in a notice released on January 29, 2014. Issuers that meet a set of three criteria, including the ownership of a product or service that has been at the commercialization stage for at least 12 months and has generated at least \$500,000 in revenue, would qualify for listing. Issuers that can meet 3 out of 6 alternative criteria, including having a product/service which has been in development for at least 12 months or having spent at least an aggregate of \$250,000 on such development, having a working prototype or beta version that reasonably demonstrates final product and functionality, and principals or founders with a successful track record in the same or similar industry, would qualify for a Tier 2 listing. Evaluating a cryptocurrency exchange or other platform is more challenging than a traditional technology company and the TSXV encouraged early discussions and clear regulatory analysis. For issuers seeking a listing in the investment issuer category, there are requirements for minimum net tangible assets and a disclosed investment policy. As well, if listing on Tier 2, 50% of the asset of the issuer must be allocated to one or more investments. The challenge, Staff emphasized, was not the listing requirements per se, but more so that assessing the value of the issuer's net tangible assets, not being traditional assets, was more difficult.

Existing Listed Issuers

The webinars were focussed mostly on issues for TSXV listed issuers, addressing both initial coin offerings (ICOs) and listed issuers moving into blockchain or cryptocurrency related activities.

Conducting an ICO

Staff provided guidance for issuers that might conduct an ICO. Any ICO requires prior acceptance, either as a private placement or as a reviewable disposition. Staff identified the announcement of an ICO without a robust analysis of whether the coin was a security or not as a red flag. Even if the coin or token was not a security, Staff would consider it subject to prior acceptance as a reviewable transaction. In addition to prior acceptance, the TSXV stated that, due to the novel nature of the ICO structure, it will look for detailed disclosure in any ICO related press release, including:

- the features of the coin or token;
- whether the coin or token being distributed is a security;

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- whether the coin or token is asset backed or not (and if asset backed, what will happen if the assets cannot be delivered);
- whether the coin or token will be listed on or tradable on any exchange or platform;
- the logistics of the distribution of the coin or token; and
- relevant risks. For TSX issuers, if a coin or token proposed to be issued is not “participating” (entitled to participate in earnings or in assets on liquidation) and does not carry voting rights, it would appear that prior acceptance would not be required.

Investing in an ICO

For listed issuers investing in ICOs, the TSXV noted that it has specific requirements applicable to investment issuers and that these requirements remain the same regardless of what is being invested in. These include a minimum amount of net tangible assets and a disclosed investment policy (which would presumably need to include the ability or discretion to invest in ICOs).

New Blockchain or Crypto Business Initiatives

TSXV-listed issuers that are moving into a blockchain or cryptocurrency business should consider whether they are effecting a change of business (or some other reviewable transaction) that would require prior exchange acceptance and shareholder approval. TSX issuers that materially change the nature of their business are required to notify TSX and will normally be required to show they meet original listing requirements. Failure of the listed issuer to meet applicable original listing requirements may result in the delisting of its securities. The TSXV provided some useful tips for announcing a blockchain or cryptocurrency business initiative, such as avoiding the use of buzzwords without any additional detail describing the new business, including disclaimers of exchange acceptance and disclosing factors and conditions that could delay or impact the success of the initiative. Issuers should consider the proposed development and whether they have the capability to carry it out before they announce, whether it could be a change of business, and contact the TSXV prior to announcing in appropriate cases.

We Can Help

For more information, please contact Greg Hogan or another member of our firm’s cross-disciplinary Emerging Companies or Securities Groups.

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