

New guidance for referring to a TSX listing application in a prospectus or other document

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When is an issuer allowed to say it has applied to list its securities on the Toronto Stock Exchange (TSX)?

Many market participants may not be aware that the ability to refer to a stock exchange listing application or to say that a security will be listed on an exchange (sometimes referred to as a “listing representation”) is regulated by securities laws and TSX rules. In particular, an issuer undertaking an initial public offering (IPO), where its securities are not already listed on the TSX, is technically prohibited by securities laws and TSX rules from making any written or oral representation that its securities will be listed on the TSX, or that an application has been made or will be made to list its securities on the TSX, unless it satisfies certain requirements. These requirements historically have been interpreted in different ways, leading to inconsistent practice with respect to how an application to list securities on the TSX is described in an IPO prospectus or term sheet.

The TSX has issued new guidance explaining when and how issuers can refer to an application to list securities on the TSX in a prospectus or other document. This guidance should eliminate uncertainty in interpretation of the TSX rules and facilitate more consistent disclosure, particularly for IPO-related documents. The guidance is summarized in the table below, and includes the prescribed language that the TSX will require issuers to use in the prospectus, term sheet or other document, which varies depending on the status of the issuer’s TSX listing application. Note that the TSX’s guidance does not override applicable Canadian securities laws with respect to the making of a listing representation, although we believe that following the new TSX guidance will satisfy Canadian securities law requirements in most circumstances.

This guidance is in effect as of March 22, 2018, and applies to all prospectuses and other documents filed after that date. For more details, please see [TSX Staff Notice 2018-0001](#).

Offering type	Document type	Status of TSX listing application	Form of disclosure
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<p>IPO</p>	<p>Preliminary prospectus (initial filed version or any amended and restated version)</p>	<p>The issuer has applied to list its securities on the TSX, but has not yet obtained conditional approval from the TSX for its listing. An issuer is considered to have applied to list if it has submitted to the TSX a draft preliminary prospectus and the TSX's application fee.</p>	<p>Cover page and plan of distribution section "The issuer has applied to have its securities listed on Toronto Stock Exchange. Listing is subject to the approval of the Exchange in accordance with its original listing requirements. Toronto Stock Exchange has not conditionally approved the issuer's listing application and there is no assurance that the Exchange will approve the listing application." Note: The issuer is also allowed to refer to its proposed stock symbol if it has obtained a stock symbol reservation in accordance with the TSX's procedures and the stock symbol remains valid. Risk factors in prospectus The risk factors in the prospectus must include disclosure that the Toronto Stock Exchange has not conditionally approved the listing application and there is no assurance that it will do so.</p>
	<p>Other document (including term sheet or road show presentation)</p>	<p>Same as above.</p>	<p>Language for term sheet or other document "The issuer has applied to have its securities listed on Toronto Stock Exchange. Listing is subject to the approval of the Exchange in accordance with its original listing requirements. Toronto Stock Exchange has not conditionally approved the issuer's listing application and there is no assurance that the Exchange will approve the listing application." Note: The issuer is also allowed to refer to its proposed stock symbol if it has obtained a stock symbol reservation in accordance with the TSX's procedures and the stock symbol remains valid.</p>
	<p>Final prospectus</p>	<p>The issuer has received conditional approval from the TSX for its listing. This is received in the form of a customary letter from the TSX to the issuer's counsel.</p>	<p>Cover page and plan of distribution section "Toronto Stock Exchange has conditionally approved the listing of these securities. Listing is subject to the issuer fulfilling all of the requirements of the Exchange on or before [insert date], including distribution of these securities to a minimum number of public shareholders." Note: The issuer is also allowed to refer to its proposed stock symbol if it has obtained a stock symbol reservation in accordance with the TSX's procedures and the stock symbol remains valid. Risk factors The risk factor disclosure in the prospectus regarding conditional listing approval not being obtained may be removed.</p>

	Other document (including final term sheet)	Same as above.	<p>Language for term sheet or other document</p> <p>"Toronto Stock Exchange has conditionally approved the listing of these securities. Listing is subject to the issuer fulfilling all of the requirements of the Exchange on or before [insert date], including distribution of these securities to a minimum number of public shareholders."</p> <p>Note: While the language referred to above is typically used in the prospectus, we understand the TSX is of the view that the same language should be used in its entirety even in the term sheet or other document, whereas many issuers use an abbreviated form of language, such as "The TSX has conditionally approved the listing of the [shares] under the symbol "[]". The issuer is allowed to refer to its proposed stock symbol if it has obtained a stock symbol reservation in accordance with the TSX's procedures and the stock symbol remains valid.</p>
New issue or secondary offering (issuer's securities are already listed on the TSX)	Preliminary short form prospectus Preliminary or final prospectus supplement	The issuer has applied to list its securities on the TSX, but has not yet obtained conditional approval from the TSX for its listing. An application is typically submitted by e-mail or letter to the TSX from the issuer's counsel.	<p>Cover page and plan of distribution section</p> <p>"The issuer has applied to have its securities listed on Toronto Stock Exchange. Listing is subject to the approval of the Exchange in accordance with its applicable listing requirements."</p> <p>No change to practice for referring to stock symbol and last trading price on the cover page.</p> <p>No risk factor disclosure required.</p>
	Other document (including term sheet or road show presentation)	Same as above.	<p>Language for term sheet or other document</p> <p>No change to current practice of using language to the effect that "The [common] shares of the issuer trade on the Toronto Stock Exchange under the symbol "[]". It is also permissible (but not typical practice) to use the following language in the term sheet or other document:</p> <p>"The issuer has applied to have its securities listed on Toronto Stock Exchange. Listing is subject to the approval of the Exchange in accordance with its applicable listing requirements."</p>
	Final short form prospectus Final prospectus supplement	The issuer has received conditional approval from the TSX for its listing. This is received in the form of a customary letter from the TSX to the issuer's counsel.	<p>Cover page and plan of distribution section</p> <p>Although no specific language is prescribed by the TSX, we recommend the following: "Toronto Stock Exchange has conditionally approved the listing of these securities. Listing is subject to the issuer fulfilling all of the requirements of the Exchange on or before [insert date]."</p> <p>No change to practice for referring to stock symbol and last trading price.</p>

	Other document	Same as above.	To the extent there is an updated version of the term sheet, roadshow presentation or other document, there is typically no change to the TSX listing language used in the initial version of that document, which uses language to the effect that "The [common] shares of the issuer trade on the Toronto Stock Exchange under the symbol "[]"."
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The TSX guidance does not deal with situations (whether on an IPO, new issue or secondary offering) where the issuer has not yet made an application to the TSX to list its securities as of the date of the prospectus, term sheet or other document. We recommend that the issuer makes every effort to apply to list its securities on the TSX on or prior to the date of the prospectus or other document in order to be in a position to include the disclosure referred to in the table above. If this is not feasible, it may be possible to make disclosure in the prospectus or other document to the effect that "It is a condition to completion of the offering that the securities have been listed on the TSX." Counsel should be consulted in these circumstances.