

FINRA Provides Informal Guidance for Canadian Issuers

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The Financial Industry Regulatory, Inc. (“FINRA”) has recently provided our firm with informal guidance that, in accordance with the principles of the multijurisdictional disclosure system (“MJDS”), a Canadian issuer that is undertaking a U.S. registered public offering may count its reporting history in Canada (along with any reporting history in the United States) toward the 36 month requirement in FINRA Rule 5110. This has the effect of providing an exemption from filing with FINRA for Canadian issuers with a combined Canadian and U.S. reporting history of at least 36 months, even if they have a shorter reporting history in the United States. This guidance will save qualifying Canadian issuers the time and financial cost of submitting materials to FINRA and obtaining FINRA clearance prior to offering securities in the United States.

In September 2020, FINRA amended Rule 5110, which deals with registered corporate financing transactions. FINRA added an exemption from the requirement to file offerings with FINRA (and pay FINRA filing fees) for an “experienced issuer.” An experienced issuer is defined as an issuer that has:

- a reporting history of 36 calendar months immediately preceding the filing of the registration statement, and
- at least US\$150 million aggregate market value of voting stock held by non-affiliates; or alternatively, the aggregate market value of the voting stock held by non-affiliates of the issuer is US\$100 million or more and the issuer has had an annual trading volume of such stock of three million shares or more.

Many Canadian issuers satisfy the market cap prong of the test but do not have a 36 month reporting history in the United States. The new guidance will significantly increase the number of Canadian issuers that are eligible for the FINRA filing exemption.

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