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ATTORNEYS-AT-LAW

Client Memorandum

Listing Loan Notes and PIK Notes on the Cayman Islands Stock Exchange

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Over recent years we have seen increasing numbers of listings of corporate and sovereign debt securities on the Cayman Islands Stock Exchange (the "**CSX**"), in particular loan notes and payment in kind (PIK) notes issued in connection with private equity and venture capital ("**PE and VC**") investments. Over the last 18 months Travers Thorp Alberga have acted for the issuer on a number of new PE and VC note listings.

CSX listed loan notes can benefit from the UK HMRC's statutory exemption for withholding tax purposes, commonly referred to as the "Quoted Eurobond Exemption". This, together with the CSX's flexible rules, highly responsive and pragmatic approach to debt listing applications, rapid turnaround time and competitive fees have established it as a more attractive option when compared to other traditional listing venues both onshore and offshore. This is particularly so for investment vehicles operated by UK based private equity and venture capital houses seeking to take advantage of the tax relief.

Background to the CSX and the Listing Rules

The CSX has tailor-made listing rules for specialist products, including Eurobonds and other corporate and sovereign debt securities, asset-backed and credit-linked securities, equity securities, offshore funds, derivative warrants and depositary receipts. At the end of 2015, there were approximately 750 specialist debt and Eurobond listings on the CSX with an aggregate market value of approximately US$179 billion, including 564 specialist debt securities accounting for approximately US$83.9 billion of this total and 186 Eurobonds accounting for approximately US$95.2 billion of this total.

The listing of debt securities on the CSX is regulated by the CSX Listing Rules (the "**Listing Rules**"), which also set out the continuing obligations of issuers and rules on enforcement of those obligations and the suspension and cancellation of listing. The Listing Rules are based on IOSCO principles (the CSX being an affiliate member of IOSCO). With extensive private sector input the Listing Rules are constantly being reviewed and improved to accommodate latest market developments .They were last updated in June 2014 and are scheduled to be updated again in the third quarter of 2016.[1]

Why list loan and PIK notes on the CSX?

Unlike many other exchanges, the CSX is not within the scope of EU directives and regulations, such as the EU Prospectus Directive and Market Abuse Regulation. This allows the listing committees of the CSX to be more flexible in their approach to listing loan notes and similar debt securities than EU based exchanges.

[1] The proposed amendments primarily introduce a new listing regime for "Specialist Companies" and do not have any negative implications for the debt securities listing regime.

The CSX understands the commercial reality surrounding the issue of loan notes and PIK notes in the context of PE and VC investments and adopts a flexible and pragmatic approach to the documentation required for a listing.

Disclosure requirements have been set at a level that is intended to provide investors with sufficient information without imposing unnecessarily onerous demands on issuers. Where the investors holding the relevant loan and PIK notes are sophisticated (as in the case of PE and VC transactions), the CSX is often able to show considerable flexiblity in applying the Listing Rules.

The CSX has "recognised stock exchange" status with the UK HMRC under Section 841 of the UK Income and Corporation Taxes Act 1988. As a result, qualifying loan and PIK notes listed on the CSX are eligible for the Quoted Eurobond Exemption allowing an issuer liable to pay UK tax to make payments of interest on the notes without deduction for withholding tax.

There is no requirement for a Cayman Islands based listing agent or sponsor in connection with listing debt securities on the CSX, which means the issuer’s legal advisers can deal direct with the CSX.

The listing process is rapid and efficient, with the CSX making every effort to accommodate an issuer’s timetable. The CSX fees are highly competitive when compared to other exchanges and are regularly reviewed to ensure that remains the case.

The Listing Process

Step 1: Satisfy CSX conditions for listing

Subject to any specific waivers granted by the CSX, the issuer must satisfy all the conditions for listing which include such matters as:

- Issuer Suitability: The issuer must be carrying on as its main activity, either by itself or through subsidiaries, an independent revenue earning business and the directors of the issuer must collectively have appropriate expertise and experience for the management of its business;

- Financial Information: The issuer must have audited financial statements, prepared in accordance with IFRS or acceptable GAAP, covering a minimum of two financial years before the application for listing. However the CSX is willing to apply this requirement to the underlying target / portfolio company rather than the issuer in the context of PE and VC investment related loan notes;

- Nature of the Securities: Debt securities must be freely transferable. In the context of closely held loan notes in the hands of sophisticated PE and VC investors, the CSX generally grants a derogation from this requirement and permits standard PE and VC restrictions on transferability. The debt securities must be eligible for deposit in an acceptable electronic clearing and settlement system. Again in the context of closely held PE and VC loan notes the CSX will not insist on actual deposit in a clearing system or appointment of a paying agent.

We have found that the CSX takes a pragmatic approach and will waive or grant derogations in respect of a number of Listing Rules where they are inappropriate or not applicable to the notes being listed.

Step 2: Prepare draft listing documents

The CSX expects a listing document to disclose all such information as may be necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of profits and losses of the issuer and of the rights, powers and privileges attached to the loan notes. In general in respect of PE and VC loan notes, the listing document can be a short and concise document which incorporates much of the required disclosure through reference to the loan note instrument terms and issuer constitutional doucments. The CSX does not publish the listing document (or any documents incorporated by reference) on its website or otherwise make such documents available in electronic form to investors or members of the public. Members of the public wishing to review such documents must attend the offices of the CSX in the Cayman Islands. The documents cannot be copied or removed from the CSX offices.

Step 3: Approval

All applications for listing are first dealt with by the CSX's Head of Listing and the staff of the listing department. Once the CSX staff are satisfied with an application, they submit the application to the listing committee for approval. Once the document has been approved, a limited number of non-complex supporting documents must be filed before admission to listing. The timing of comments on documents by the CSX is guaranteed and the listing committee meets as often as necessary to approve applications.

Step 4: Listing

Loan notes will be admitted to listing once the final application, listing and supporting documents have been filed and approved and listing fees paid. Details of the listing is posted on the CSX's dedicated pages on the Bloomberg system and the CSX's website.

Continuing Obligations

It is a prerequisite of listing that an issuer executes an issuer's declaration, undertaking to comply with the Listing Rules and, in particular, with all relevant continuing obligations.

Generally speaking, an issuer must keep the CSX, the members of the issuer and other holders of its listed securities informed as soon as reasonably practicable, by way of public announcements or circulars, of any information relating to the group that:

- is necessary to enable them and the public to appraise the financial position of the issuer;
- is necessary to avoid the establishment of a false market in its listed securities; or
- might reasonably be expected materially to affect market activity in, and the price of, its listed securities.

The latter two requirements are unlikely to be of significant relevance in the context of closely held loan notes which are not traded.

Audited accounts for the issuer are required to be filed annually with the CSX.

Timing and Costs

The listing process can be undertaken in conjunction with the issuance of the notes or at any time post issuance. In order to minimize the time required for listing:

- the CSX guarantees a turnaround time on all documents submitted for review, and will comment on the first draft of the listing document within five business days and on subsequent drafts within three business days (and often performs to shorter time lines); and
- the Listing Committee convenes as often as is necessary, and on short notice, to consider listing applications.

It is possible therefore to obtain a listing of loan notes within a matter of weeks of the submission of the initial draft listing document. The overall timing will vary depending on the documents and information submitted and to the extent that any Listing Rule waivers or derogations are sought.

For a one-off issuance there is a US$2,500 initial application fee and a US$2,500 annual listing fee charged by the CSX.

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