

# COUNTRY GUIDE –

## The Province of Alberta, Canada

(20 December 2013, last updated in January 2022)

**Important notes:** *This guide does not override the Rules and is not a substitute for legal, regulatory, tax, financial or any other advice from qualified professional advisers. If there is any conflict or inconsistency between this guide and the Rules, the Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Rules, or this guide. The information contained in this guide on foreign laws, regulations and market practices is based on that provided to us by potential listing applicants, listing applicants, listed issuers, their respective advisers or officials from the relevant jurisdiction. We have not separately verified this information nor have we updated this information since its receipt.*

### **Subsequent Development (Updated in January 2022)**

*In November 2021, the Exchange introduced a new listing regime for overseas issuers which covers, among other things, that all issuers are required to comply with the core shareholder protection standards under the revised Appendix 3 of the Main Board and GEM Listing Rules (where applicable) (the “**Core Shareholder Protection Standards**”). The amended Listing Rules are effective as from 1 January 2022. Information in this country guide may be outdated upon the introduction of such listing regime. Issuers and their advisers are advised to exercise caution when reading the guidance in this country guide.*

*A new applicant that is incorporated in the jurisdiction of this country guide should refer to the revised Appendix 3 of the Main Board and GEM Listing Rules (where applicable) for the expected Core Shareholder Protection Standards required by the Exchange.<sup>1</sup> Should there be any changes in the laws, regulations and market practices described in this country guide which might or would adversely affect a new applicant’s compliance with the expected Core Shareholder Protection Standards or any applicable Listing Rules, such new applicant should inform the Exchange of any such changes. A new applicant is also encouraged to consult the Exchange at the earliest opportunity if there is any enquiry on the guidance or requirements in this country guide.*

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<sup>1</sup> Including codification with modification of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, which was superseded and no longer effective as from 1 January 2022.

## Purpose of this Guide

This guide is one of a series that gives guidance on our treatment of listing applications from overseas issuers incorporated in a particular jurisdiction. The aim of this guide is to enhance applicants' understanding of our expectations, practices, procedures and the criteria we consider when applying the Rules for overseas issuers.

**This guide should be read in conjunction with the Listing Rules, in particular, the Core Shareholder Protection Standards, Chapter 19 of the Main Board Rules (Chapter 24 of the GEM Rules) (for primary listing applicants) and Chapter 19C of the Main Board Rules (for secondary listing applicants). All issuers incorporated in Alberta can apply for one or more “common waivers”<sup>2</sup> and those with, or seeking, a secondary listing do not need to apply for waivers of certain Rules which are automatically waived for them<sup>3</sup>.(Updated in January 2022)**

### Summary of our Approach

Alberta incorporated companies must demonstrate how the Alberta laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards (*Updated in January 2022*).

The statutory securities regulator in Alberta, namely, Alberta Securities Commission, is a full signatory to the IOSCO MMOU<sup>4</sup> and Alberta meets our international regulatory co-operation requirements because it already has adequate measures in place with Hong Kong's Securities and Futures Commission (*Updated in January 2022*).

We are prepared to accept financial statements that conform to Generally Accepted Accounting Principles of Canada from issuers with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual primary or secondary listing on the Exchange. This is on the condition that the issuer includes a reconciliation statement setting out the financial effect of the material differences (if any) from either Hong Kong Financial Reporting Standards or International Financial Reporting Standards, in its accountants' reports and financial statements (*Updated in January 2022*).

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<sup>2</sup> Primary Listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary Listing: Main Board Rule 19C.11B

<sup>3</sup> Main Board Rule 19C.11

<sup>4</sup> IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

## Table of Contents

1. Background .....	1
2. Application of this Country Guide .....	1
3. International Regulatory Co-operation Measures .....	1
4. Core Shareholder Protection Standards .....	1
5. Practical and Operational Matters .....	4
6. Constitutional Documents .....	4
7. Accounting and Auditing Related Requirements.....	4

Appendix	Our Approach to Differences between Our Constitutional Document Requirements and Alberta Laws, Rules and Practices
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## **1. Background**

- 1.1 Alberta's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Business Corporations Act (Alberta), which sets requirements for Alberta incorporated companies. Public companies in Alberta must also comply with the Securities Act (Alberta) and issuers listed on the Toronto Stock Exchange must additionally comply with the rules of this exchange (*Updated in April 2014*).

## **2. Application of this Country Guide**

- 2.1 This Country Guide applies to primary and secondary Main Board listing applicants and primary GEM listing applicants incorporated in Alberta. We do not accept applications for secondary listing on GEM.

## **3. International Regulatory Co-operation Measures**

- 3.1 Main Board Rule 8.02A states that each of the statutory securities regulator of an issuer's jurisdiction of incorporation and the statutory securities regulator of the place of central management and control must be a full signatory to the IOSCO MMOU. This is to enable the Securities and Futures Commission (the "SFC") to seek regulatory assistance and information from overseas statutory securities regulators to facilitate the SFC's investigations and enforcement actions where an issuer has its records, business operations, assets and management outside Hong Kong. This requirement is met for issuers incorporated in Alberta as the Alberta Securities Commission, the statutory securities regulator in Alberta, is a full signatory to the IOSCO MMOU (*Updated in January 2022*).
- 3.2 If a listing applicant is incorporated in Alberta but its place of central management and control<sup>5</sup> is elsewhere, the statutory securities regulator of that jurisdiction must also be a full signatory to the IOSCO MMOU (*Updated in January 2022*).

## **4. Core Shareholder Protection Standards**

- 4.1 Alberta incorporated issuers must demonstrate how the domestic laws, rules and regulations to which they are subject and their constitutional documents, in combination, provide the Core Shareholder Protection Standards. (*Updated in January 2022*)

Based on submissions by a potential applicant, we have set out below details of the differences between practices in Alberta and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies ("JPS") (repealed as of 1 January 2022). Where we have in the past accepted a practice

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<sup>5</sup> Main Board Rule 8.02A

and it is still relevant for assessment under the new listing regime for overseas issuers, we have stated this below. Alberta incorporated applicants should amend their constitutional documents to address the shortfall in compliance with the Core Shareholder Protection Standards. (*Updated in January 2022*)

The information contained in this guide on Alberta laws, regulations and market practices is based on submissions by a potential applicant. We have neither separately verified this information nor have we updated this information since its receipt. Issuers and their advisers are advised to exercise caution when reading the guidance in this country guide. Should there be any changes in the laws, regulations and market practices described in this country guide which might or would adversely affect a new applicant's compliance with the expected Core Shareholder Protection Standards or any applicable Listing Rules, such new applicant should inform the Exchange of any such changes. (*Added in January 2022*)

#### ***Matters requiring a super-majority vote***

- 4.2 A super-majority vote of members required for a material change to constitutional document: Under the then JPS, material changes to an overseas company's constitutive documents, however framed must be approved by a super-majority vote of members, or by a simple majority vote of members plus a significantly higher quorum. Alberta law requires a two-third majority vote of member for passing amendments to the articles of associations, a company's primary constitutive document, but only a simple majority without a significantly higher quorum for amendments to the by-laws, the secondary constitutive document.

#### ***Subsequent Development since 1 January 2022***

The requirement comparable to the then JPS requirement was codified with modification in paragraph 16 of the revised Appendix 3 of the Listing Rules. Alberta incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*).

#### ***Individual members to approve an increase in members' liability (repealed as of 1 January 2022)***

- 4.3 Under the then JPS, there should not be any alteration in an overseas company's constitutional documents to increase an existing member's liability to the company unless such increase is agreed by such member in writing. A limited company incorporated in Alberta can convert to an unlimited liability company through obtaining at least a two-third majority vote of shareholders who voted at a meeting. Upon conversion, the shareholders of the unlimited liability company are liable for the debts and liabilities of the company whether those debts and liabilities arose before or after the conversion.

### *Subsequent Development since 1 January 2022*

The then JPS requirement was repealed as of 1 January 2022 (*Added in January 2022*).

### ***Proceedings at general meetings***

- 4.4 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of general meeting. Under Alberta law, any annual general meeting shall be convened not less than 21 days and not more than 50 days before such meeting, unless notice of the meeting is waived by all persons entitled to attend the meeting.

### *Our approach prior to 1 January 2022*

The Exchange has previously accepted the notice requirement for convening general meetings under Alberta law.

### *Subsequent Development since 1 January 2022*

The requirement comparable to the then JPS requirement was codified with modification in paragraph 14(2) of the revised Appendix 3 of the Listing Rules. Alberta incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*)

- 4.5 Right to speak and vote at general meetings: The then JPS requires that all members must have the right to speak and vote at a general meeting, except in cases where members having a material interest in a transaction or arrangement are required, by the Rules, to abstain from voting to approve the transaction or arrangement. Alberta incorporated applicants must address whether they are able to comply with this requirement, which may necessitate an amendment to their constitutional documents.

### *Subsequent Development since 1 January 2022*

The requirement comparable to the then JPS requirement was codified with modification in paragraphs 14(3) and 14(4) of the revised Appendix 3 of the Listing Rules. Alberta incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*)

### ***Other Core Shareholder Protection Standards***

- 4.6 Compared to the then JPS and the previous Appendix 3<sup>6</sup> to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives<sup>7</sup> and inspect Hong Kong Branch

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<sup>6</sup> The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

<sup>7</sup> Appendix 3, paragraph 18

Register<sup>8</sup> are added to require the applicants to demonstrate conformity. Applicants incorporated in Alberta might not meet these two new Core Shareholder Protection Standards and may have to amend their constitutional documents accordingly. Issuers and their advisors should refer to the revised Appendix 3 of the Main Board and GEM Listing Rules for the complete set of Core Shareholder Protection Standards (*Added in January 2022*).

## 5. Practical and Operational Matters

- 5.1 Reference is made to Guidance for Overseas Issuers (HKEX-GL111-22) which contains guidance on an overseas issuer's ability to comply with Hong Kong's rules and regulations; the eligibility of securities; cross-border clearing and settlement; Hong Kong depositary receipts; taxation; and stock name identifications. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable. (*Updated in January 2022*).

## 6. Constitutional Documents

- 6.1 Alberta laws and regulations do not have equivalent provisions to comply with all Listing Rules relating to the relevant shareholder protection. We set out in the Appendix our approach on each of the items required to be included in an Alberta incorporated issuer's constitutional documents in order for it to meet the Listing Rule requirements (*Updated in January 2022*).

## 7. Accounting and Auditing Related Requirements

- 7.1 We normally require the accountants' reports and financial statements of overseas issuers seeking a primary or a secondary listing on the Exchange to conform to the Hong Kong Financial Reporting Standards ("HKFRS") or the International Financial Reporting Standards ("IFRS")<sup>9</sup> (*Updated in January 2022*).

### Our Approach

- 7.2 We are prepared to accept financial statements that conform to Generally Accepted Accounting Principles of Canada ("Canadian GAAP")<sup>10</sup> and Canadian Generally Accepted Auditing Standards ("Canadian GAAS")<sup>11</sup>. We

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<sup>8</sup> Appendix 3, paragraph 20

<sup>9</sup> Main Board Rules 4.11 to 4.13, 19.13, 19.25A, 19C.10D, 19C.23 and Note 2.1 to paragraph 2 of Appendix 16 (GEM Rules 7.12, 18.04 and 24.18A)

<sup>10</sup> A list of alternative overseas financial reporting standards that are considered comparable to HKFRS and IFRS is published on the Exchange's website, as amended from time to time.

<sup>11</sup> A list of alternative overseas auditing standards that are considered comparable to the standards required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants is published on the Exchange's website, as amended from time to time.

are prepared to consider allowing an Alberta incorporated issuer with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual primary or secondary listing on the Exchange to use Canadian GAAP for its accountants' reports and all subsequent financial statements, and for these to be audited to Canadian GAAS. However, this is on the condition that the issuer includes a reconciliation statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS, in its accountants' reports and subsequent financial statements<sup>12</sup> (*Updated in January 2022*).

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<sup>12</sup> Primary Listing: Main Board Rule 19.14 and GEM Rule 7.14 (accountants' reports) and Main Board Rule 19.25A and GEM Rule 24.18A (annual/ interim/ quarterly financial statements). Secondary Listing: Main Board Rules 19C.10D (accountants' reports) and 19C.23 (annual/ interim financial statements).

## APPENDIX

*Please note the important notes on the front page of this country guide regarding the Alberta laws, regulations and practices.*

### **Our Approach to Differences between Our Constitutional Document Requirements <sup>(note)</sup> and Alberta Laws, Rules and Practices**

**Note:** Some of the Constitutional Document Requirements stated herein were either (i) repealed on 1 January 2022 because they were not considered to be fundamental to shareholder protection or they overlapped with the requirements in the Listing Rules or; (ii) codified with modification as Core Shareholder Protection Standards in the Listing Rules. For details, please see the column headed “Subsequent Development since 1 January 2022”. New applicants shall assess whether it can comply with the relevant Listing Rules or seek waiver from compliance. *(Added in January 2022)*

Rule Paragraph	Rule Requirement	Alberta Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
Appendix 3, 2(1)	All certificates for capital shall be under seal, which shall only be affixed with the authority of the directors.	The compulsory affixing of seals on shares certificates is not required by Alberta law and is inconsistent with Canadian practice. In practice, as the corporate seal may be kept in the company’s registered office in Canada it would be practically difficult for a seal to be applied on share certificates issued in the principal and branch share registrars.	<p>In a previous case, we accepted an Alberta incorporated applicant’s undertaking and including in its articles of associations and by-laws that all share certificates must bear the signature of at least one director or duly authorized officer of the Company. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>This articles provision was repealed on 1 January 2022. Paragraphs 4, 11 and 28 of Appendix 2B of the Listing Rules contain the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>

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Rule Paragraph	Rule Requirement	Alberta Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
Appendix 3, 4(1)	A director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.	Alberta law allows directors to be counted towards the quorum, even when they are prohibited from voting on a resolution.	<p>In a previous case, we did not require any change to the constitutional documents on the conditions that:</p> <p>(i) the disclosure requirement under the articles of associations and by-laws and the Alberta law will provide information about the extent of the interest of each director in a transaction or contract;</p> <p>(ii) the general overriding duty that directors are required to act honestly and in good faith with a view to the best interests of the company; and</p> <p>(iii) a transaction or contract where a director has a material interest may be void or voidable if it is not fair and reasonable to the company at the time it was entered into.</p> <p>A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>This articles provision was repealed on 1 January 2022. Rule 13.44, contains the comparable requirement.</p> <p>Main Board Rule 19C.11 provides an automatic waiver for secondary listing applicants for compliance with the relevant Listing Rule.</p>

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Rule Paragraph	Rule Requirement	Alberta Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
Appendix 3, 4(4)	The minimum length of the period, during which notice to the issuer of the intention to propose a person for election as a director and during which notice to the issuer by such person of his willingness to be elected may be given, will be at least seven days.	Under Alberta law, the company or the shareholder must prepare and deliver to the shareholders an information circular providing full disclosure of all director nominees not less than 21 calendar days before any meeting of shareholders where such instruments of proxy are to be used.	In a previous case, we considered that Alberta law provides an acceptable level of investor protection. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This articles provision was repealed on 1 January 2022.
Appendix 3, 4(5)	The period for lodgment of the notices referred to in sub-paragraph 4(4) will commence no earlier than the day after the despatch of the notice of the meeting appointed for such election and end no later than seven days prior to the date of such meeting.	Under Alberta law, the company or the shareholder must prepare and deliver to the shareholders an information circular providing full disclosure of all director nominees not less than 21 calendar days before any meeting of shareholders where such instruments of proxy are to be used.	In a previous case, we considered that Alberta law provides an acceptable level of investor protection. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This articles provision was repealed on 1 January 2022. The note to Rule 13.70 contains the comparable requirement.  Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.
Appendix 3, 5	A copy of either (i) the directors’ report,	Under Alberta law, annual meeting notices of an Alberta-	In a previous case, we considered that Alberta law provides an	This articles provision was repealed on 1 January 2022. Rules 13.46(1)

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Rule Paragraph	Rule Requirement	Alberta Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
	<p>accompanied by the balance sheet (including every document required by law to be annexed thereto) and profit and loss account or income and expenditure account, or (ii) the summary financial report shall, at least 21 days before the date of the general meeting, be delivered or sent by post to the registered address of every member.</p>	<p>incorporated company (including business report and financial results) must be sent at least 21 days and no more than 50 days before the date of the annual general meeting.</p>	<p>acceptable level of investor protection. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>and 13.46(2) contain the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>
<p>Appendix 3, 6(2)</p>	<p>The quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of at least one-third of the issued shares of the class.</p>	<p>Alberta law does not contain specific quorum requirements in the event of meetings for holders of separate classes of shares. It was submitted that the quorum requirement is uncommon in Canada.</p>	<p>Alberta law provides (1) shareholders who would be entitled to a separate class vote with the right to dissent for certain fundamental amendments to the constitutional documents which would enable the dissenting shareholders to require the company to purchase their shares and pay them the fair value; and (2) persons including shareholders with</p>	<p>This articles provision was repealed on 1 January 2022 and was relocated to note 1 to paragraph 15 of Appendix 3 of the Listing Rules.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>

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Rule Paragraph	Rule Requirement	Alberta Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
			<p>the right to apply to the court for a rectification order for oppressive actions of the company. In a previous case, the Exchange considered that Alberta law generally provides an acceptable level of investor protection. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	
Appendix 3, 10(1)	Where the capital of the issuer includes shares which do not carry voting rights, the words “ <i>non-voting</i> ” must appear in the designation of such shares.	Alberta law does not have these designation requirements.	<p>In a previous case, we accepted an undertaking to designate shares which do not carry voting rights with the words “<i>non-voting</i>”. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>This articles provision was repealed on 1 January 2022. Paragraph 5(2) in Part B in Appendix 2 of the Listing Rules contains the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>

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Rule Paragraph	Rule Requirement	Alberta Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
Appendix 3, 10(2)	Where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words “ <i>restricted voting</i> ” or “ <i>limited voting</i> ”.	Alberta law does not have these designation requirements.	<p>In a previous case, we accepted an undertaking to designate shares, other than those with the most favourable voting rights, with the words “<i>restricted voting</i>” or “<i>limited voting</i>”. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	This articles provision was repealed on 1 January 2022.
Appendix 3, 11(1)	Where provision is made in the articles as to the form of proxy, this must be so worded as not to preclude the use of the two-way form.	Under Alberta law, proxy statements relating to the appointment of auditors or the election of directors will only provide an option for a shareholder to vote for the resolution or withhold from voting. Amending the articles of incorporation and by-laws to allow the use of two-way proxy forms would violate Alberta law and Canadian securities law.	<p>In a previous case, we did not require any change to the constitutional documents on the condition that the applicant only uses two-way proxy forms for resolutions other than appointment of an auditor and the election of directors. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>This articles provision was repealed on 1 January 2022. Rule 13.38 contains the comparable requirement.</p> <p>Main Board Rule 19C.11 provides an automatic waiver for secondary listing applicants for compliance with the relevant Listing Rule.</p>