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U.S.–Canadian Cross-Border Capital Raising and Dual Listings

Thursday, August 10

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Dani Lipkin, Managing Director, Global Innovation Sector, TSX and TSXV

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U.S.-Canadian Dual Listings

Listing on U.S. National Securities Exchange

- NYSE or NASDAQ (or NYSE American)
- Unsurpassed trading volume, liquidity and exposure
- Mandatory '34 Act registration/reporting
- Additional corporate governance requirements
 - But major accommodations made for foreign issuers

SEC Reporting

- Entering the SEC Reporting System
 - Mandatory Registration for Exchange-Listed Securities under U.S. '34 Act Section 12(b)
- U.S. Reporting Obligations Triggered
 - MJDS may be available
- Internal Control Assessment/Auditor Attestation
- Sarbanes-Oxley/Dodd-Frank Compliance Requirements

SEC Reporting

- Special Rules for Foreign Private Issuers
 - A “foreign private issuer” is an entity organized under the law of a foreign country *unless*:
 - More than 50% of its outstanding voting securities are held directly or indirectly “of record” by residents of the United States (looking through brokers, dealers and other nominees holding securities); and
 - Any of the following applies:
 - The majority of its executive officers or directors are U.S. citizens or residents;
 - More than 50% of its assets are located in the United States; or
 - Its business is administered principally in the United States.
 - Form 20-F for annual reports and '34 Act registration
 - 6-Ks for reporting other information
 - Proxy rules and Section 16 (reporting/short-swing trading liability provisions) do not apply
 - Special forms (e.g., Form F-3) for offerings of securities

SEC Reporting

- MJDS (Canada–U.S. Multijurisdictional Disclosure System)
 - Available for Companies that are:
 - Organized in Canada
 - Qualify as a “Foreign Private Issuer”
 - Reporting issuer in Canada for at least 12 months
 - Aggregate worldwide “public float” of at least US\$75 million
 - Not an “investment company”
 - Form 40-F for annual reports and '34 Act registration
 - Consists primarily of Canadian disclosure documents
 - Form F-10 – Greatly streamlined registration statement
 - Single form U.S./Canadian prospectus
 - Canadian disclosure standards
 - Automatic effectiveness in U.S.
 - U.S. IPOs and Subsequent Offerings, including shelf registration
 - IFRS as adopted by the IASB – no U.S. GAAP reconciliation

Other Legal Issues

- Tax Issues
 - Passive Foreign Investment Companies (PFICs)
 - QEF Elections
- Investment Company Act of 1940
- New Cybersecurity Disclosure Requirements
- SEC Review
- T-1 Settlement
- Anti-fraud provisions of U.S. securities laws

U.S. Securities Law Liability Provisions

- Section 10(b) of the '34 Act and Rule 10b-5
 - General anti-fraud provisions of U.S. securities laws
 - Apply to both buyers and sellers and secondary market transactions
 - Apply generally to corporate fraud
 - Registration statements, private placement memoranda (U.S. wraps), '34 Act reports, websites, oral statements, etc.
 - Require proof of scienter and reliance
 - But “Fraud on the Market”—Securities Class Actions
 - Prohibit “insider trading”
- Section 18 of the '34 Act
 - Liability for false or misleading '34 Act filings
- Sections 5 and 12 of the '33 Act also impose liability in connection with public offerings of securities

U.S. Securities Law Liability Provisions

The U.S. Supreme Court's Decision in *Morrison v. National Australia Bank* (2010):

- Section 10(b) only covers deceptive conduct involving “transactions in securities listed on domestic exchanges” and “domestic transactions in other securities”
- Transaction Test:
 - Is the purchase or sale made in the U.S. or does it involve a security listed on a U.S. domestic exchange?
- Courts have applied *Morrison* strictly and expansively
 - Have had no problem turning away foreign investors making Exchange Act claims against foreign issuers
- Second Circuit held that transactions are domestic if title to the securities is transferred within the U.S. or one party incurs irrevocable liability within the U.S. to purchase or deliver the securities

D&O Insurance Matters

Common D&O Insurance Questions

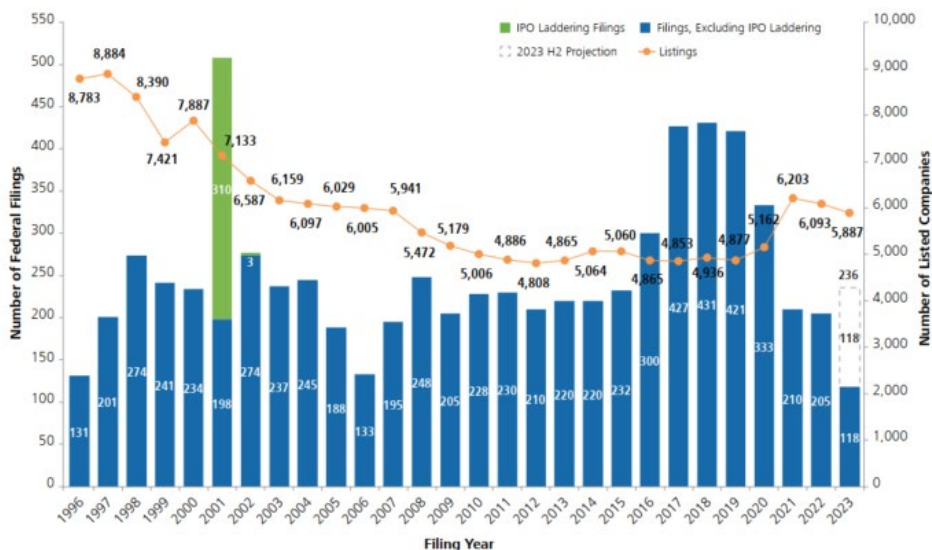
1. What changes can be expected to the D&O program premium?
2. What are the insurance underwriter flags?
3. How much D&O limit is needed?
4. What are best practices for managing a D&O program during this transaction?

What changes can be expected to the D&O program premium?

Number of securities class action filings

US

Figure 1. Federal Filings and Number of Companies Listed in the United States
January 1996–June 2023

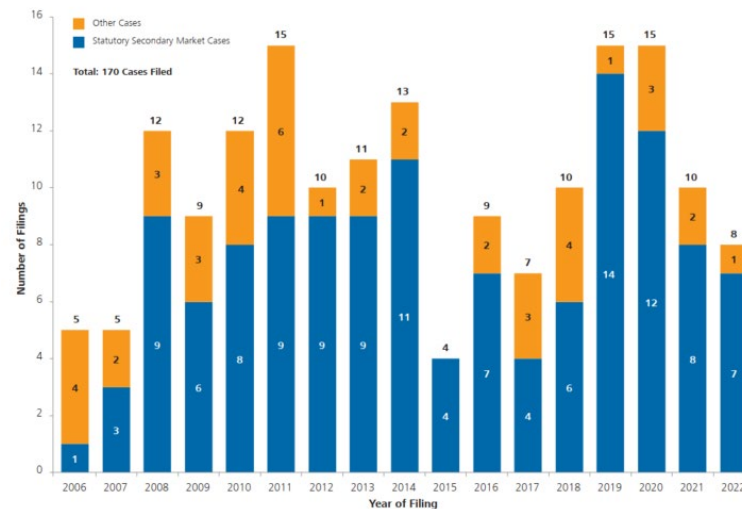


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2023 listings data is as of June 2023.

Source: NERA Recent Trends in Securities Class Action Litigation: H1 2023 Update

Canada

Figure 1. Canadian Securities Class Actions Filed by Year
2006–2022



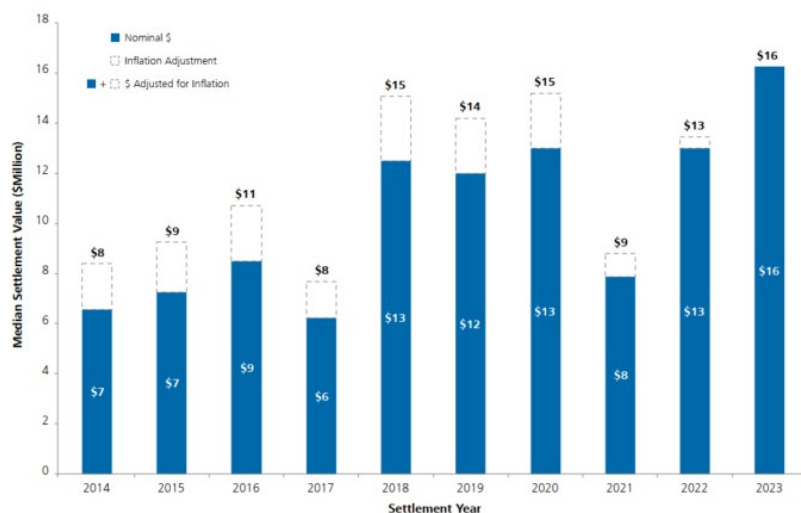
Source: NERA Trends in Canadian Securities Class Actions: 2022 Update

Median settlements

US (USD)

Figure 8. Median Settlement Value

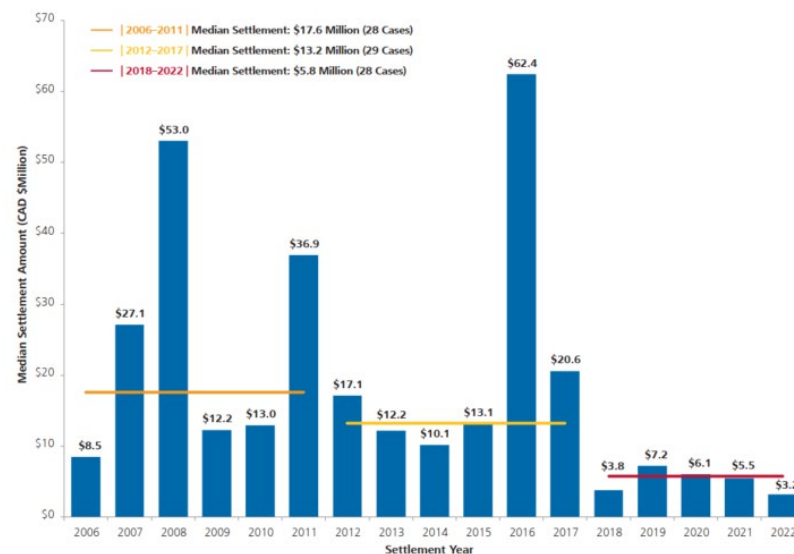
Excludes Settlements over \$1 Billion, Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class January 2014–June 2023



Source: NERA Recent Trends in Securities Class Action Litigation: H1 2023 Update

Canada (CAD)

Figure 7. Median Settlement Amounts
2006–2022



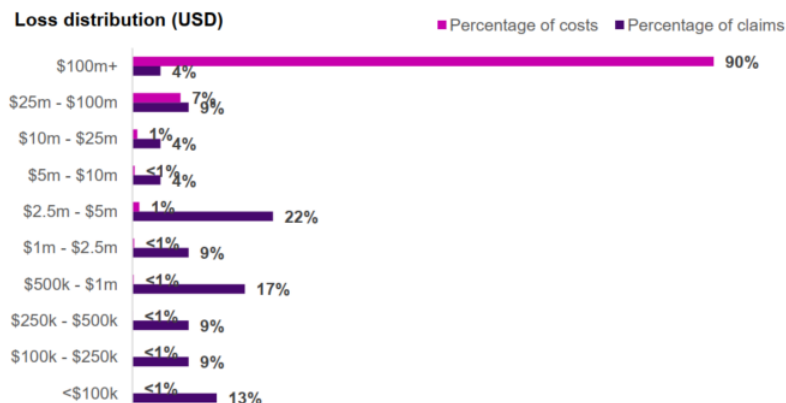
Notes: Based on 83 out of 84 cases settled during the period from 2006 to 2022 for which we have information regarding the settlement amount. Settlement amounts have been adjusted for inflation to 2022 dollars. This figure also includes the cumulative partial settlement amounts for the cases involving Sino-Forest Corporation in 2016 and CannTrust Holdings Inc. in 2021.

Source: NERA Trends in Canadian Securities Class Actions: 2022 Update

POSI & IPO cost of claims

Cost of claims

The graphic below shows the distribution of claims in terms of their total costs. It shows that for 52% of claims the total loss (including defence costs and other expenses) exceeded \$1m.



The graphic below highlights the different types of costs, as an average for settled claims. An important consideration when measuring the impact and costs of claims and disputes is that the settlement and defence costs of the claims are only a portion of the event cost. Other legal fees, lost time, distraction of key personnel and impact on business relationships represent additional 'hidden' costs that may be much larger and unquantifiable.

Cost type breakdown



Cost type breakdown (excl largest loss)



Average settlement
(excluding largest loss):
\$13.3m

Median settlement
(excluding largest loss):
\$3m

Average defence cost
(excluding largest loss):
\$1.9m

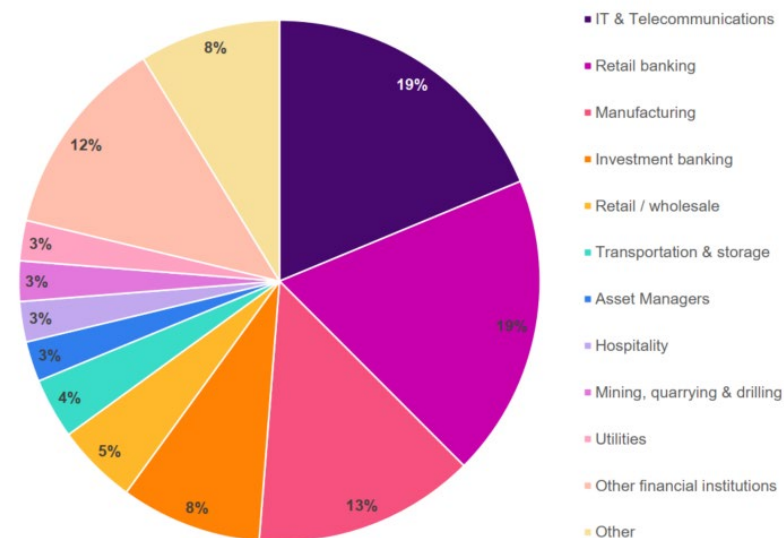
Median defence cost
(excluding largest loss):
\$655k

Source: WTW Claims analysis report 2023: Public Offering of Securities Insurance (POSI) & Initial Public Offering (IPO) related claims (over 75 claims analyzed)

What are the insurance underwriter flags?

POSI & IPO notifications by industry

POSI & IPO notifications by industry

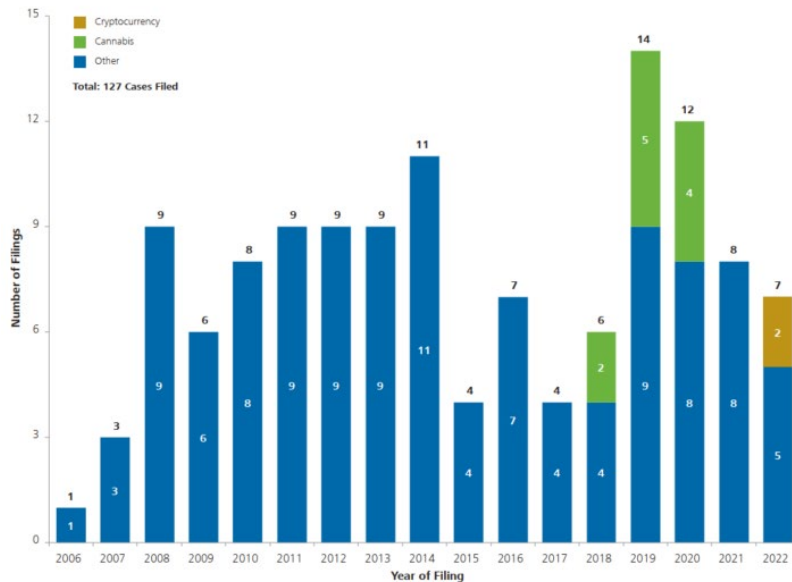


Source: WTW Claims analysis report 2023: Public Offering of Securities Insurance (POSI) & Initial Public Offering (IPO) related claims (over 75 claims analyzed)

Example of emerging industries driving claims

Canada

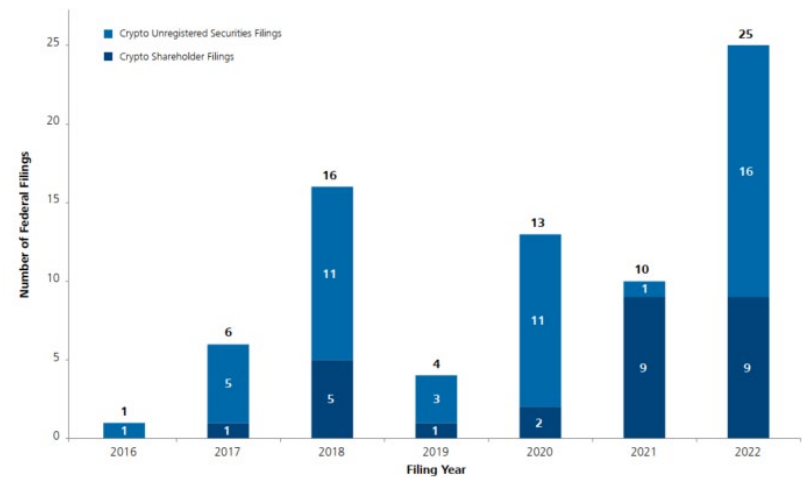
Figure 2. Filings Involving Statutory Secondary Market Claims
2006–2022



Source: NERA Trends in Canadian Securities Class Actions: 2022 Update

US

Figure 6. Number of Crypto Federal Filings
January 2016–December 2022



Cannabis

In 2019 and 2020, there were seven and six securities class action cases filed against defendants in the cannabis industry, respectively. Since then, there has only been one suit filed against these defendants each year.

Source: NERA Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review

How much D&O limit is needed?

D&O Quantified

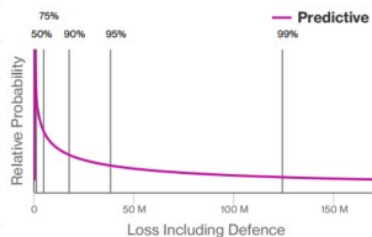
- Limits adequacy analysis

D&O Quantified predictive model evaluates public company directors and officers liability loss potential and provides decision support to help optimize a firm's chosen risk management strategy.

Severity

Severity is the expected size of a D&O claim (inclusive of both defense only claims and defense + indemnity claims). The model predicts and simulates outcomes for various claims types. The table below shows outcomes at select risk levels, and the chart below represents the full range of loss outcomes.

Percentile	Base	Predictive
Mean	8,482,974	8,482,974
50%	1,104,533	1,104,533
75%	4,648,876	4,648,876
90%	17,704,522	17,704,522
95%	38,141,853	38,141,853
99%	124,017,995	124,017,995



Summary of Risk Strategy

1. Annual Limit Adequacy is the likelihood that the strategy's limit will be adequate to cover all claims in a given year.
2. Severity Limit Adequacy is the likelihood that the strategy's limit will be adequate to cover a single claim.
3. Premium ROI (Return on Investment) is the Value from Insurance relative to premium.

	No Insurance	Strategy 1	Strategy 2	Strategy 3
Side A Limits	-	40,000,000	20,000,000	20,000,000
Side ABC Limits	-	60,000,000	40,000,000	25,000,000
Annual Limit Adequacy	-	99.81%	99.66%	99.71%
Severity Limit Adequacy	-	97.61%	95.66%	96.27%

Sample of WTW's global predictive modelling tool, D&O Quantified

What are best practices for managing a D&O program during this transaction?

Best practices

- Lead time
- Comprehensive prospectus
- Reason for listing; clear use of proceeds
- Underwriting call (like an investor/analyst call)

Cross-Border Capital Raising

The Organization Of Canadian Securities Regulation

- Securities law is within provincial jurisdiction, and each province and territory has its own legislation and independent regulator
- Under the auspices of the CSA, regulation has been largely unified across Canada in the form of National Instruments (“NIs”) and Multilateral Instruments (“MIs”)
- But interprovincial unification is voluntary, and areas of difference remain, including provincial approaches to distributions outside their jurisdictions
- These differences are expressed in e.g. OSC Rule 72-503 & Companion Policy in Ontario vs BCI 72-503 & BCIN 72-702 in British Columbia

Links to Instruments

LIFE Exemption

<https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-106/csa-notice-amendments-national-instrument-45-106-prospectus-exemptions-introduce-listed-issuer>

Ontario Rule 72-503, Companion Policy and Notice

<https://www.osc.ca/en/securities-law/instruments-rules-policies/7/72-503/unofficial-consolidation-osc-rule-72-503-distributions-outside-canada>

<https://www.osc.ca/en/securities-law/instruments-rules-policies/7/72-503/unofficial-consolidation-companion-policy-72-503-distributions-outside-canada>

<https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-330/csa-staff-notice-45-330-frequently-asked-questions-about-listed-issuer-financing-exemption>

Broad Overview

Listed Issuer Financing Exemption

- Allows a Canadian Reporting Issuer with sufficient reporting history to obtain between \$5-10 million of financing without a prospectus
- Unlike a private placement, there is no standard Canadian securities law 4-month hold period and no requirement that all purchasers purchase under a prospectus exemption
- Unlike a short-form prospectus offering, there is no requirement for a current AIF and no preparation of a lengthy and costly prospectus filing
- Recognizes the reality that purchases made on the secondary market are made based on the existing disclosure record

Eligibility

- The Issuer must have at least 12 months of continuous reporting issuer history in at least one jurisdiction of Canada before the news release announcing the offering
- Does not include time as a SPAC, CPC or other type of entity whose principal asset is cash, cash equivalents, or its exchange listing
- The Issuer is not, and has not been during the previous 12 months, an Issuer whose operations have ceased
- All periodic and timely disclosure must be filed and current
- The Issuer must have equity securities listed on a recognized Canadian stock exchange
- Cannot use if under MCTO, CTO, listed on the NEX, etc.
- The Issuer is not an investment fund

Limitations

- Only listed equity securities or units consisting of a listed equity security and a warrant for same are eligible to be distributed
 - Subscription receipts, special warrants, and convertible debentures are not eligible
 - Flow-through shares and charity flow-through shares are eligible
 - Broker warrants/agent's options cannot be distributed under this exemption, and will require a separate private placement exemption with an imposed 4-month hold
- Cannot use funds for significant acquisition, restructuring, or other transactions which require shareholder approval
 - This requirement ensures that for these transactions, the Issuer will prepare a prospectus that discloses all relevant information about the transaction in question
- Cannot use exemption to issue securities for debt
- Bought-deal offerings raise some concerns in the view of the regulators and may require additional care
- Total funds within a 12-month period limited to the CAD \$5-10 million benchmark
 - \$5 mil minimum + 10% of the aggregate market cap on the date of the news release, to a maximum of \$10 mil
- Total dilution within the 12-month period preceding the news release announcing LIFE offering cannot exceed 50%
- The Issuer must have the reasonable expectation that funds raised + current funds are sufficient to meet liquidity requirements and meet business objectives for the next 12 months following the distribution

- File prescribed news release announcing the offering, and close within 45 days of said news release (consistent with TSXV timelines for private placement)
- The issuer must prepare and file an offering document in prescribed form
 - This document contains a summary of the offering terms, brief summary of the Issuer's business, the use of available funds, finder/dealer info, and certain statutory rights available to purchasers
 - The document is in the form of Q&A, approximately 5 pages in length
 - “What are we offering”, “How will the funds be used?”, etc.
 - The document is filed on SEDAR+ (Canadian equivalent of EDGAR) and on the Issuer's website
- The process is otherwise largely the same as for a private placement, and many Issuers choose to combine the LIFE offering with an orthodox private placement, which affords further flexibility
- For the subscription portion, the common practice is a “subscriber questionnaire” which requests key info from the purchaser, such as info required by TSXV policies, registration instructions, verification that the purchaser is not a US resident, etc.
 - An Issuer may choose to proceed with a full subscription agreement for additional protection, especially if one is already being prepared for the non-LIFE portion
- Offerings in Quebec may require translation services and additional steps

Risks and Liability

- Mandates disclosure of all material facts about the securities being offered
- The offering document does not require full, true and plain disclosure, but does require no misrepresentations – which under Canadian law includes omissions and half-truths
- The seasoning period restrictions under Canadian law apply, meaning that a trade by an insider or a control block may require additional steps and special care
- Offering document will not be reviewed in detail by regulators
- Forbids incorporation of materials by reference – but references to prior disclosure record may be allowed
- Liability extends to misrepresentations in offering document such as a prospectus (rescission, damages), and secondary market purchases (the offering document is a “core” document)
- “Backdoor underwriting” will be reviewed – sale to small group of investors, and immediate resale is not intent of exemption, and may be subject to special scrutiny

Sample Investor Questionnaire

Listed Issuer Financing Exemption - Subscriber Questionnaire

*By completing this investor questionnaire (“**questionnaire**”), you are (i) deemed to be certifying the truth and accuracy of the information you have provided herein to XXX Gold Inc. (the “**Company**” or the “**Issuer**”); (ii) making certain acknowledgements, covenants, representations and warranties to the Issuer and ● Securities Limited and ● Capital Inc. as co-lead agents and bookrunners, on behalf of a syndicate of agents, as of ●, 2023 and the date of closing of the Offering (as defined below) and (iii) consenting to the collection, use and disclosure of the Subscriber’s (as defined below) personal information.*

*Please refer to Appendix “A” – “Acknowledgements, Covenants, Representations and Warranties of the Investor” in the offering document of the Company dated May [8], 2023 (the “**Offering Document**”) for the acknowledgements, covenants, representations and warranties that you are deemed to make by the completion of this questionnaire.*

Please refer to Appendix “B” – “Indirect Collection of Personal Information” in the Offering Document for important information regarding the collection and use of your personal information.

The Offering Document related to this Offering that can be accessed on the Company’s SEDAR profile at www.sedar.com and the company’s website at www.revival-gold.com. You are urged to carefully read the full text of the Offering Document.

Issuer:	XXX Gold Inc.
Offered Security:	Units of the Company.
Securities:	Up to [●] Units of the Company. Each Unit will be composed comprised of one common share of the Corporation and one-half of one common share purchase warrant (each whole common share purchase warrant, a “Warrant”). Each Warrant shall entitle the holder to purchase one common share at a price of \$[●] at any time on or before that date which is 24 months after the Closing Date.
Offering Price:	\$[●] per Unit.
Offering Amount:	There is no minimum amount. Maximum of up to [●] Units, for gross proceeds of up to \$5,000,000 (the “Marketed Offering”). The Agents will have an option, exercisable in full or in part, up to 48 hours prior to the closing of the Marketed Offering, to sell up to an additional [●] Units at the Offering Price, for additional gross proceeds of \$[●] (the “Agents’ Option”, and together with the Marketed Offering, the “Offering”).
Closing Date:	The Offering is expected to close on or about May [●], 2023.
Exchange:	The Common Shares are listed on the TSX Venture Exchange (the “TSXV”) under the symbol “RVG” and the OTCQX trading platform in the United States under the trading symbol “RVLGF”. The Company will use its best efforts to list the Warrants underlying the Units on the TSX Venture Exchange. Listing will be subject to fulfilling all the listing requirements of the TSX Venture Exchange.
<p>PLEASE COMPLETE THE BELOW TABLE BY <u>MAY [●], 2023 AT 12:00PM EDT</u> AND RETURN BY REPLY EMAIL TO:</p> <p style="text-align: center;">[●]</p> <p style="text-align: center;">*See defined terms below</p> <p style="text-align: center;">Check appropriate blue box with “X”</p>	

	Instructions	Subscriber Details
Name of Individual Completing this Form	Insert the name of the individual completing this form on behalf of beneficial subscriber and date	Name of Individual Completing this Form: Date:
Subscriber Name	Insert name of beneficial subscriber (including full legal name if not an individual)	
Address	Insert full legal address of subscriber (city, province/state, postal/zip code, country)	
Telephone Number	Insert telephone number of subscriber	
Email	Insert email address of subscriber	
Number of Offered Securities	Insert number of Offered Securities subscribed for	

Subscription Amount		Insert dollar amount subscribed for		
Insider*	Including any person who will become an Insider as a result of purchasing Offered Securities	YES	NO	
Registrant*		YES	NO	
Current Holdings in the Issuer	Include all securities (number or principal amount) of the Issuer beneficially held or controlled or directed			
US Purchaser*	US Purchasers require additional certifications	YES	NO	
TSX Venture Exchange Matters				
Director/Officer/Promoter*	Exchange Hold Period will apply	YES	NO	
Consultant*	Exchange Hold Period will apply	YES	NO	
Holder of 10% of the Issuer's voting rights before AND after Offering	Exchange Hold Period will apply	YES	NO	
Pro Group*		YES	NO	
TSXV Form 4C	See below for details	Previously filed and no change to any of the information in the TSXV Form 4C	Required to be completed	Not applicable

Additional Information

TSX Venture Exchange Form 4C Instructions

If the Subscriber is not an individual and (i) will hold upon completion of the Offering, 5% or more of the issued and outstanding common shares of the Issuer on a Diluted or Undiluted basis (as defined in the policies of the TSX Venture Exchange); (ii) is, or will upon completion of the Offering be, an Insider (as defined in the policies of the TSX Venture Exchange); or (iii) is an Aggregate Pro Group placee, and a TSXV Corporate Placee Registration Form has not previously been filed with the TSX Venture Exchange or there has been a change to any of the information in the TSXV Corporate Placee Registration Form, the Subscriber must complete, sign and deliver TSXV Form 4C Corporate Placee Registration Form, which may be obtained on request to [●/●].

Defined Terms

- “Consultant” means, in relation to the Issuer, an individual (other than a director, officer or employee of the Issuer or of any of its subsidiaries) or company that: (a) is engaged to provide on an ongoing *bona fide* basis, consulting, technical, management or other services to the Issuer or to any of its subsidiaries, other than services provided in relation to a Distribution (as defined in the TSX Venture Exchange policies); (b) provides the services under a written contract between the Issuer or any of its subsidiaries and the individual or the company, as the case may be; and (c) in the reasonable opinion of the Issuer, spends or will spend a significant amount of time and attention on the affairs and business of the Issuer or of any of its subsidiaries.
- “Director” means a director of a corporation or an individual occupying or performing, with respect to a corporation or any other person, a similar position or similar functions.
- “Insider” means (a) a director or senior officer of the Issuer (or a subsidiary of the Issuer), (b) any person who beneficially owns, directly or indirectly, voting securities of the Issuer or who exercises control or direction over voting securities of the Issuer or a combination of both carrying more than 10% of the voting rights attached to all voting securities of the Issuer for the time being outstanding, or (c) a director or senior officer of an Insider of the Issuer
- “Officer” means the chair or a vice chair of the board of directors, the president, a vice president, the secretary, an assistant secretary, the treasurer, an assistant treasurer, the general manager and any other individual appointed an officer of a corporation or acting in a capacity similar to those specified offices on behalf of an issuer or a registrant.

Additional Information (cont'd)

- **“Pro Group”** means a member (brokerage firm) of the TSX Venture Exchange, an employee, partner, officer, director or an ‘affiliate’ (a company controlling or under common control) of a member or an ‘associate’ (a company of which more than 10% of the voting shares are owned or controlled by such person, a partner of such person, a trust or estate of which a substantial beneficial interest is owned or of which such person is a trustee, a spouse or child of such person, or a relative of such person or their spouse living in the same home as such person) of any of the foregoing, and **“Aggregate Pro Group”** means all persons who are members of any Pro Group whether or not the member is involved in a contractual relationship with the Issuer to provide financing, sponsorship and other advisory services.
- **“Promoter”** means, if used in relation to an issuer, a person who (a) acting alone or in concert with one or more other persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or (b) in connection with the founding, organization or substantial reorganization of the business of the issuer, directly or indirectly receives, in consideration of services or property or both, 10% or more of a class of the issuer’s own securities or 10% or more of the proceeds from the sale of a class of the issuer’s own securities of a particular issue, but does not include a person who (c) receives securities or proceeds referred to in paragraph (b) solely (i) as underwriting commissions, or (ii) in consideration for property, and (d) does not otherwise take part in founding, organizing or substantially reorganizing the business.
- **“Registrant”** means a dealer, adviser, investment fund manager, or mutual fund manager, or a registered representative, advising representative, dealing representative, ultimate designated person or chief compliance officer of a dealer, adviser, investment fund manager, or mutual fund manager, as those terms are used in Canadian securities laws, or a person registered or otherwise required to be registered under Canadian securities laws.
- **“Subscriber”** means a purchaser of Units under the Offering.
- **“Subscription Amount”** the purchase price of the Offered Securities being purchased by the Subscriber.
- **“U.S. Person”** means a “U.S. person” as such term is defined in Rule 902(k) of Regulation S as promulgated under the U.S. Securities Act.
- **“U.S. Purchaser”** means (a) any Subscriber in the United States, (b) any person purchasing securities for the account or benefit of any person in the United States, (c) any person that receives or received an offer of the offered securities while in the United States (except persons excluded from the definition of U.S. Person pursuant to Rule 902(k)(2) of Regulation S under the U.S. Securities Act), and (d) any person that is in the United States at the time the Subscriber’s buy order was made (except persons excluded from the definition of U.S. Person pursuant to Rule 902(k)(2) of Regulation S).
- **“U.S. Securities Act”** means United States Securities Act of 1933, as amended.

The Basic Jurisdictional Analysis

Ontario Rule 72-503

- **A province's jurisdiction may extend outside its borders:** can capture distributions by issuers and to purchasers outside the province where the transaction has a “sufficient,” “meaningful,” or “real and substantial” connection to the province, and/or engages the province's capital markets
 - Caught directly where e.g. issuer is located in the province
 - Can be caught indirectly where e.g. an issuer located outside the province sells to Purchaser A outside the province who resells to Purchaser B inside the province “in a manner that indicates the securities did not come to rest outside” the province
 - 72-503CP further explains “coming to rest” as meaning that the securities are unlikely to be “redistributed back into Canada by an original purchaser outside Canada that has acquired the securities with a view to distribution, rather than with investment intent.”
 - such reselling into the jurisdiction of securities originally distributed outside the jurisdiction is often referred to as “flow-back”
 - Depending on circumstances of the distribution and connection to a province, the issuer must take sufficient “reasonable steps” to ensure no flow-back occurs.
- **Jurisdiction is not exclusive:** one transaction may be caught by the regulations of multiple jurisdictions, both internationally and/or interprovincially

The Ontario Regime before 72-503

- Prior to OSC Rule 72-503 coming into force on March 31, 2018, this aspect of Ontario securities regulation had been informed by OSC Interpretation Note 1 since 1983:
- Ontario securities law requirements may apply to distributions by non-Ontario issuers to purchasers outside Ontario
- No prospectus or exemption required where “reasonable steps are taken by the issuer, underwriter and other participants ... to ensure that such securities come to rest outside of Ontario”
- Number and nature of the restrictions to be implemented will vary with the circumstances, and onus is on the issuer, underwriters and other participants to determine the same

The Transition to 72-503

- Over time, market participants and OSC staff found the Interpretation Note difficult to administer because of its uncertainty: no bright line tests, and was not securities legislation or regulation so it provided no exemptions *per se*, only interpretation
- Unclear whether and when sufficient steps had been taken to reasonably conclude that securities had “come to rest” and would not “flow back” into Canada
- Many comments re: 72-503 wanted such uncertain language to be abandoned entirely, but the OSC emphasized that the principles of jurisdiction are determined by the courts
- BUT: Rule 72-503 provides exemptions as ‘safe harbours’ in navigating these questions
- “participants do not need to rely on the exemptions in [72-503] if they conclude that the Ontario prospectus requirement does not apply” based on the jurisdictional analysis
- “participants who have difficulty in applying the Statement of Principle or choose not to conduct an analysis may instead rely on the [...] exemptions”

The Significance of 72-503 for Ontario Private Placements with Offshore Investors

- S 2.3 of Rule 72-503 provides an exemption from prospectus requirements where a distribution is made to a person outside Canada if the issuer has materially complied with the applicable disclosure requirements of the outside jurisdiction and is a reporting issuer in a jurisdiction in Canada
- 72-503CP provides that securities distributed thereunder are free trading
- THUS: so long as not attempting to avoid the prospectus requirement in connection with a distribution to a person in Canada, reporting issuers in Canada can distribute free-trading shares (pursuant to Ontario securities law) to offshore investors
- No need for an uncertain jurisdictional analysis
- Applies even where Canadian investors receive restricted shares

The 72-503 Companion Policy

- Contains a 'Statement of Principle' laying out the OSC's approach to the jurisdictional analysis, which differs from the basic jurisdictional analysis heretofore given in holding that the distribution requirement does not apply to distributions outside Canada (i.e. even if the issuer is in Ontario – this is unique to Ontario)
- Presents reason behind 72-503's exemptions: "facilitate cross-border offerings by removing the potentially duplicative application of Ontario prospectus requirements"
- Provides standard for determining whether a person is 'outside Canada': "if the issuer or selling security holder has no knowledge, and no reason to believe" that the purchaser is a person in Canada
- Addresses abuse of these exemptions: "intended only for distributions being made in good faith outside Canada, and not as part of a plan or scheme to conduct an indirect distribution [...] in Canada"

Applying 72-503 and Best Practices: Bringing it Together

- Issuer must have no knowledge or reason to believe the purchaser is in Canada
- Although s 2.3 exemption is quite bright-line, must still be used in good faith and not to avoid the prospectus requirement/perform indirect distributions in Canada:
 - Best practice developing of a) obtaining a warrant and representation by purchaser that they have investment intent (i.e. not purchasing with intent to resell into Canada) and b) issuer doing some basic level of due diligence re: its investors (short-term traders, hedge funds, etc., may signal abuse)
- OSC allows the use of multiple exemptions, so 72-503 may be used to maximize the use of LIFE with domestic investors
 - 72-503 may be used whether the deal is cross-border or not, and whether brokered or non-brokered
- Could be abusive where offshore investors receive free-trading shares and Canadians restricted shares
 - May have a hold imposed by domestic law or the exchange in any case, but if not, might consider a contractual hold

Comparables and the Current Provincial Patchwork

British Columbia	Alberta	Saskatchewan	Québec	New Brunswick
<ul style="list-style-type: none"> • s 3 of BCI 72-503 provides an analogous exemption, <u>but four-month hold applies</u> • BC Interpretation Note 72-702 follows basic jurisdictional analysis (i.e. may claim jurisdiction even where both issuer and purchaser are outside B.C.) 	<ul style="list-style-type: none"> • s 4 of ASC Rule 72-501 provides analogous exemption, and <u>[securities are free-trading]</u> • ASC Rule 72-501CP follows basic jurisdictional analysis and BC Interpretation Note 72-702, with some elaboration 	<ul style="list-style-type: none"> • Part 3 of Exemption Order 72-901 provides analogous exemption, with some additional required representations, warrants, and acknowledgements from purchaser, <u>but four-month hold applies</u> • No provincial guidance on jurisdiction question 	<ul style="list-style-type: none"> • Section 12 of Québec's <i>Securities Act</i> provides that the <u>prospectus requirement applies to distributions made from Québec to purchasers outside Québec</u> • Pursuant to the same, there is a formalized application process for an exemption—if the regulator does not object within 15 days, the prospectus requirement does not apply, <u>[but four-month hold applies]</u> • No provincial guidance on jurisdiction question 	<ul style="list-style-type: none"> • Section 2.2 of Local Rule 72-501 provides analogous exemption, with some additional required representations, warrants, and acknowledgements from purchaser, <u>but four-month hold applies</u> • Local Rule 72-501CP follows basic jurisdictional analysis, and BC Interpretation Note 72-702 very closely

What about everywhere else?

- Exemptions: No other provinces have analogous local exemptions for distributing to outside purchasers
- Jurisdiction: Several regulators of such other provinces have confirmed orally that they agree with the basic jurisdictional analysis outlined in BC Interpretation Note 72-702
 - i.e., only in Ontario can the basic jurisdictional question rest solely on the location of the purchaser, even where the issuer is in Ontario (as per OSC Rule 72-503CP)
- **NOTE:** In Manitoba, first trades of securities purchased under exemption are not restricted at all

Sample Investor Representation, Legal Opinion Assumption and Legal Opinion

Investor Representation:

Such Purchaser understands that the Securities are “restricted securities” and have not been registered under the Securities Act or any applicable state securities law and have not been qualified for distribution by prospectus in Canada and is acquiring the Securities as principal for its own account with investment intent and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities. Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

Sample Investor Representation, Legal Opinion Assumption and Legal Opinion (cont'd)

Opinion Assumption:

The offering, issue, sale and delivery of the Offered Securities by the Corporation to Purchasers in accordance with the Purchase Agreements and the issue and delivery of the Broker Warrants by the Corporation to the Broker in accordance with the terms of the Engagement Letter are, in accordance with OSC Rule 72-503 – Distributions Outside Canada (“OSC Rule 72-503”), exempt from the prospectus and registration requirements of Ontario Securities Laws and no prospectus is required nor are any other documents required to be filed, proceedings taken or approvals, permits, consents or authorizations of any regulatory authorities obtained under Ontario Securities Laws to permit the offering, issue, sale and delivery of the Offered Securities to the Purchasers and the issue and delivery of the Broker Warrants to the Broker. We note however that within 10 days after the date the trades are made, the Corporation is required to file with the OSC in respect of the trades made to Purchasers in reliance on OSC Rule 72-503, a report on Form 72-503F prepared and executed in accordance with this rule.

Legal Opinion

No prospectus or registration pursuant to Ontario Securities Laws is required nor are any other documents required to be filed, proceedings taken or approvals, permits, consents or authorizations of regulatory authorities obtained under Ontario Securities Laws to permit the issue and delivery by the Corporation of (i) the Warrant Shares, upon the exercise of Warrants in accordance with their terms to the Purchasers, and (ii) the Underlying Broker's Shares upon the exercise of Broker Warrants in accordance with their terms to the Broker, provided that, any market intermediary involved in any of such issuances in the Province of Ontario is duly registered under Ontario Securities Laws of the Province of Ontario.

Other Exemptions Provided by Ontario Rule 72-503

Ontario Rule 72-503 provides exemptions from the prospectus requirement in Ontario in a total of four situations of which cross border private placements is one:

- *Foreign Public Offering Document* – A distribution of securities is made to a person or company outside of Canada if:

- a) the issuer has filed a registration statement in accordance with US securities laws which is effective as of the distribution date; and/or
- b) the issuer has filed an offering document that qualifies, registers or permits the public offering of the securities in accordance with the securities laws of a 'specified foreign jurisdiction'* and received a receipt or acknowledgement of approval or clearance, as applicable in such jurisdiction;

- *Compliance with Foreign Disclosure Requirements and Concurrent Ontario Distribution* – A distribution to a person or company outside of Canada if:

- a) the issuer or selling securityholder, as applicable, has materially complied with the disclosure requirements applicable under the securities laws of the foreign jurisdiction, or if the distribution is exempt under such laws; and
- b) the issuer has filed with the OSC and obtained a receipt for a final prospectus qualifying a concurrent distribution of the same class or type of securities to purchasers in Ontario;

Other Exemptions Provided by Ontario Rule 72-503 (cont'd)

- *Reporting Issuer and Compliance with Foreign Disclosure Requirements* – A distribution to a person or company outside of Canada by a reporting issuer in a jurisdiction of Canada if the issuer has materially complied with the disclosure requirements of the foreign jurisdiction applicable to the distribution, or the distribution is exempt from such requirements^{**}; and
- *Non-Reporting Issuer and Compliance with Foreign Disclosure Requirements* – A distribution to a person or company outside of Canada by an issuer that is not a reporting issuer if the issuer has materially complied with the disclosure requirements of the foreign jurisdiction applicable to the distribution, or the distribution is exempt from such requirements.

* 'specified foreign jurisdictions' include, among others, Australia, Hong Kong, Japan, Mexico, South Africa, the U.K. and members of the European Union.

^{**} An issuer will have 'materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction' if the issuer has taken reasonable steps to ensure the distribution is effected in accordance with securities laws of the foreign jurisdiction. It is unclear whether this means obtaining a legal opinion by foreign counsel but once market practice develops, compliance will become easier.

Cross-Border Capital Raising

- Transaction Structures
 - U.S. Private Placements/Private Investments in Public Equity (PIPEs)
 - Securities are “restricted securities in U.S.
 - Can be combined with Canadian public offering or private placement
 - Public/Registered Offerings
 - Traditional Firm Commitment Underwritten Public Offerings (IPOs and Follow-ons)
 - Registered Directs (RDs)
 - Confidentially Marketed Public Offerings (CMPOs)
 - At-the-Market Offerings
 - Rights Offerings
 - Bought Deals
 - Equity Lines of Credit
- Types of Securities
 - Common equity
 - Warrants
 - Debt securities (including convertible debt)
 - Subscription receipts

Shelf Registration

- Universal Shelf Registration Facilitates Public Offerings
 - Can cover wide range of securities to provide flexibility in capital raising
 - Eliminates review risk/delays
 - Enables ATMs and CMPOs Form F-10 Shelf Registration Statement
 - Wrap around Canadian Prospectus
 - Goes effective following final receipt in Canada
 - Allows issuer to follow Canadian shelf prospectus offering procedures
 - Available for 25-month period that the Canadian shelf rules allow the base shelf prospectus to be used

Resales of Restricted Securities

- Rule 904 of Regulation S (Offshore Resales)
 - Resales on TSX/TSX Venture Exchange
 - Legend Removal Declaration
 - Warrant related issues
- Section 4(1) of the U.S. '33 Act--exempts from Section 5 transactions by any person other than an issuer, **underwriter** or dealer
 - Rule 144
 - Holding period requirement
 - Tacking
 - Cash exercise of warrants
 - Issues for former “shell companies” (e.g., following RTOs)
 - Rule 144A
 - Private Resales (“4(1 ½)”)
- Registered Resales
- Issuance of Shares in PIPE transactions without legend to QIBs

U.S.-Canadian Dual Listings and Cross-Border Capital Raising: *By The Numbers*

International Investors and Companies Attracted to Canada

628

INNOVATION IPOs
AND NEW LISTINGS

ON TSX/TSXV IN 2018-2022

*27 NEW LISTINGS ON
TSX/TSXV YTD 2023*

\$206B

IN EQUITY CAPITAL
RAISED

ON TSX/TSXV IN 2018-2022

*\$7.9 BILLION RAISED ON
TSX/TSXV YTD 2023*

123

INTERNATIONAL
NEW LISTINGS

ON TSX/TSXV IN 2018-2022

*10 NEW LISTINGS ON
TSX/TSXV YTD 2023*

Source: TSX/TSXV Market Intelligence Group; Innovation sector includes technology, clean technology, renewable energy and life sciences companies; as at June 30, 2023; new listings rankings exclude graduations, comedowns, and CPC/ETF listings.

Canada has a vibrant capital markets ecosystem in the innovation sector

#1

SECTOR FOR IPOs
AND NEW LISTINGS
ON TSX/TSXV IN 2018-2022

#1

SECTOR FOR NON-
CANADIAN IPOs
AND NEW LISTINGS
ON TSX/TSXV IN 2018-2022

258

IPOs AND NEW
LISTINGS
ON TSX/TSXV IN 2018-2022
*11 NEW INNOVATION
LISTINGS YTD 2023*

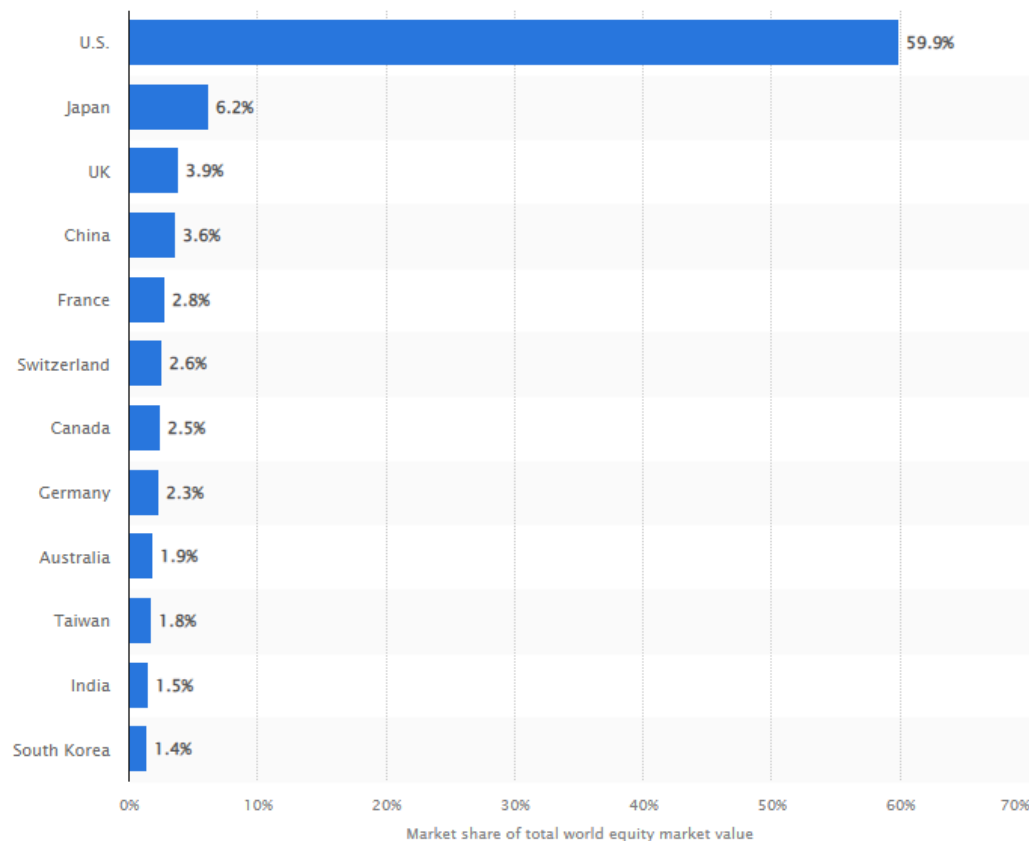
\$62B

IN EQUITY CAPITAL
RAISED
ON TSX/TSXV IN 2018-2022
*\$1.3 BILLION RAISED BY
THE INNOVATION SECTOR
YTD 2023*

Source: TSX/TSXV Market Intelligence Group; Innovation sector includes technology, clean technology, renewable energy and life sciences companies; as at June 30, 2023; new listings rankings exclude graduations, comedowns, and CPC/ETF listings.

Finance & Insurance > Financial Instruments & Investments

Distribution of countries with largest stock markets worldwide as of January 2022, by share of total world equity market value



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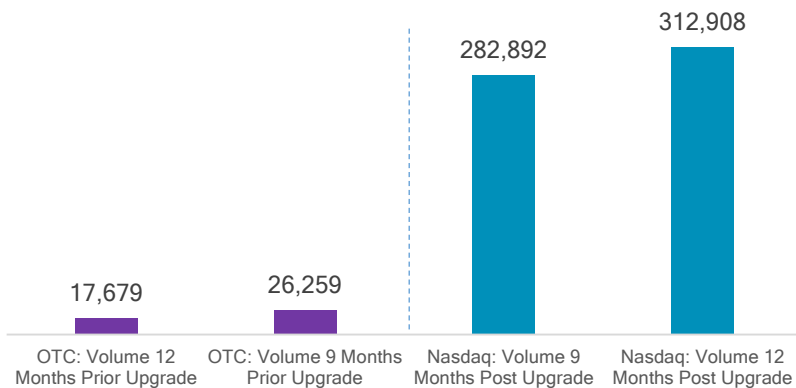
Worldwide

Survey time period

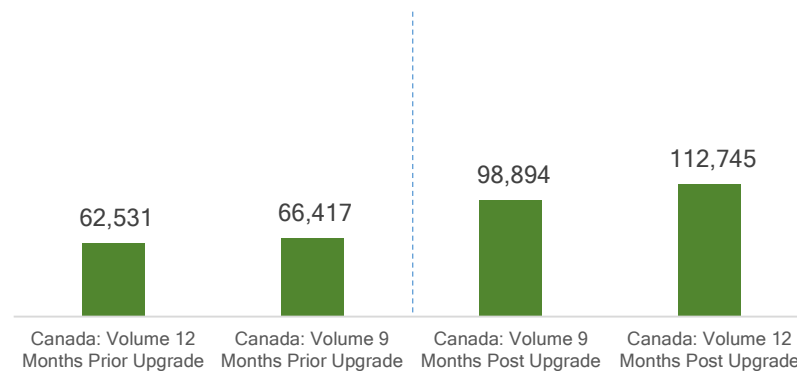
January 2022

Canadian Companies that Cross-Listed on Nasdaq

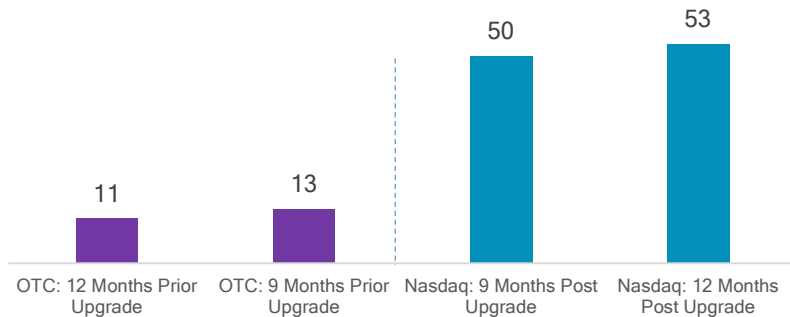
US Average Daily Volume



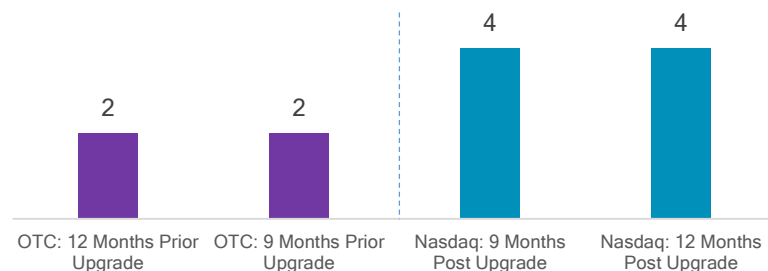
Canada Average Daily Volume



Average Number of Institutional Holders



Average Number of Analyst Recommendations



Source: Bloomberg and Factset, August 2023. The study covers active multi-listed companies on Nasdaq and Canada traded on the OTC US before changing listing to Nasdaq. Companies included in the universe listed on Nasdaq since 1995 and are currently trading.
Average Volume: period of 30 days. Outliers 10% (Top and Bottom) ADV removed to improve data accuracy.

Thank You



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