



Guide to listings on the Cayman Islands Stock Exchange

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PREFACE

The Cayman Islands is a world-class offshore centre, with particular strengths in the investment funds and the sophisticated structured finance sectors. The Cayman Islands Stock Exchange has been able to capitalise on this and functions as a specialist exchange for listing a variety of products.

Appleby's experienced investment funds team provides a highly responsive, competitively priced service and as recognised Listing Agents for the Cayman Islands Stock Exchange, we can arrange for the listing of offshore funds, equity securities, specialist debt securities, depositary receipts and Eurobonds.

It is recognised that this Guide will not completely answer the detailed questions that clients and their advisors may have. It is intended to provide a summary of Cayman's regulatory environment in relation to listings on the Cayman Islands Stock Exchange. The Guide is, therefore, designed as a starting point for a more detailed and comprehensive discussion of issues.

Appleby
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1. The Cayman Islands Stock Exchange

The Cayman Islands Stock Exchange (“CSX”) was established under The Cayman Islands Stock Exchange Company Law, 1996 (the “Law”) as a private limited company, and commenced operations in July 1997. The Law accords the CSX the sole and exclusive right to operate one or more securities markets in the Cayman Islands. The Stock Exchange Authority has ultimate statutory responsibility for the policy, regulation and supervision of the CSX, though it is recognised that the Law has conferred self-regulatory powers on the CSX.

The CSX has been granted approved organization status by the London Stock Exchange (“LSE”). This means that securities listed on the CSX are eligible for trading in the LSE’s international equity markets and for quotation on the Stock Exchange Automatic Quotation (“SEAQ”) International trading system.

In addition, the CSX is an affiliate member of the International Organisation of Securities Commissions (“IOSCO”), indicating that the exchange meets the highest internationally accepted standards of securities regulation.

Most recently, the UK Inland Revenue has granted the CSX “recognised stock exchange” status, which means that:

- (a) interest on securities listed on the CSX can be paid without deduction of UK withholding tax;
- (b) securities listed on the CSX fall under the definition of “qualifying investments” which is a requirement for most Personal Equity Plans (“PEPS”) and Individual Savings Accounts (“ISA’s”); and
- (c) personal pension schemes restricted to investing with recognised stock exchanges can invest in CSX listed securities.

The CSX is also the only offshore exchange that is an affiliate member of the Intermarket Surveillance Group (“ISG”), a surveillance focused group of over 30 exchanges from around the world, including all US equity and derivatives exchanges and exchange regulatory bodies.

The CSX functions as a specialist exchange for listing specialist debt, offshore funds, depositary receipts and, most recently, Eurobonds. It is the leading offshore exchange in a North American time zone for the listing of mutual funds and hedge funds with approximately 2,000 fund listings at the date of this Memorandum. It is also the leading offshore exchange in a North American time zone for the listing of specialist debt securities, Eurobonds and insurance and risk-related securities, with approximately 1,000 such listings at the date of this Memorandum.

A growing area for the CSX is the listing of specialist equity securities to meet the demands of certain institutional investors who may be restricted from investing in securities unless they are listed on a recognised exchange.

The CSX also provides a secondary listing and trading facility in the North American time zone for companies listed and trading on another recognised exchange. To a lesser extent, the CSX also provides a trading facility for issuers with a primary listing on the Exchange. However, only CSX broker members may access the trading facilities of the CSX. Trades by the Exchange’s broker members in equities with a primary listing on the Exchange are required to be conducted through the Exchange’s trading system. The Exchange’s trading and settlement system is electronic and web-based and offers the Exchange’s broker members an easily accessible and transparent means of posting quotations and conducting and settling trades in listed securities.

The CSX has grown steadily since its inception in 1997, reaching 1000+ listings in 2005 and a landmark 3000+ listings in 2009. The world's leading financial institutions have listed their products on the CSX, including Goldman Sachs, J.P. Morgan Chase, Morgan Stanley, Credit Suisse, Deutsche Bank and BNP Paribas, to name a few.

The success of the Cayman Islands as a world-class offshore centre, with its particular strengths in the investment funds and the sophisticated structured finance sectors, has contributed to the success of the CSX. The Cayman Islands' progressive, client-centered approach in a politically and economically stable, tax-neutral jurisdiction has allowed business to flourish and the CSX has been in a position to capitalize on this. In addition, the Cayman Islands benefits from a readily available cadre of experienced professionals, dedicated to providing a first-class service. Moreover, the Government of the Cayman Islands works closely with the private sector in a strategic partnership committed to producing a business environment that is responsive to the needs of the financial industry and legislation that enhances the business environment in the Islands.

2. Advantages of a Listing on the CSX for International Issuers:

- (a) *Increasing a product's potential investor base:* Both institutional and non-institutional investors may be prohibited or restricted from investing in unlisted securities or securities which are not listed on a recognised stock exchange. Listing a product on the CSX will therefore increase the potential investor base by providing enhanced access to such investors and will enhance the marketability of the product by differentiating it from an unlisted product. Early in 2001, the CSX and Euroclear established a cooperative link that enables CSX listed funds to participate in "FundSettle" at no additional cost, allowing them access to a larger investor base. FundSettle is a dedicated platform specifically designed for high-volume, cross-border fund transactions. It provides a single access point to help streamline communications between distributors, fund managers and transfer agents worldwide.
- (b) *Increasing the visibility of a product:* The CSX has an automated electronic NAV reporting system which enables listed funds to publish their NAV's electronically. Publication of all listed issuers' price and other information on the CSX's dedicated Bloomberg and Telekurs pages allows a listed fund's NAV and investment profiles to be accessed worldwide, guaranteeing visibility for the issuer and transparency for the investor at all times. This also provides investors with the ability to mark their investment to market.
- (c) *User-Friendly Rules:* The CSX is committed to adapting its rules to meet the needs of issuers and to accommodate the latest sophisticated structures and products. Generally, the CSX adopts a flexible approach and will avoid the need to impose a regulatory requirement that may increase an issuer's costs. Unlike some other competing exchanges, the CSX regime is generally disclosure based rather than prohibitive, and is therefore well suited to hedge funds and other sophisticated market users.

As far as the listing of specialist debt and Eurobonds are concerned, the CSX is not bound by the European Union Listing Directives and as a result can be considerably more flexible in its approach. As far as investment funds are concerned:

- (i) there is no requirement for locally resident directors;
- (ii) there are no restrictions on investment policies or a requirement for the spread of investment risk;

- (iii) there are no limits on redemptions, provided shareholders are treated equally. Gates, lock-ins and compulsory redemptions are permitted;
 - (iv) the investment manager may be based in any jurisdiction. Further, there is no minimum AUM requirement provided that the investment manager can prove to the CSX that it has adequate experience and expertise to manage the fund in question; and
 - (v) while a listing agent is required at the point of listing, there is otherwise no ongoing requirement to maintain a listing agent or a sponsor.
- (d) *Third Party Oversight:* As far as investment funds are concerned, the listing staff of the CSX will review and comment on the listing documents and review the suitability of the fund's directors as well as its investment manager and administrator. The CSX will also carry out due diligence checks on the fund's directors and on the investment manager. On an ongoing basis, the CSX will electronically monitor and review NAV filings and monitor an issuer for timely filing of audited financial statements. This third party due diligence reduces the risk of the investment to investors and provides the comfort of regulation for investors and promoters alike, in an environment that is increasingly more aware of corporate governance issues.
- (e) *Responsive Service:* The CSX's professional staff ensures a responsive service from an experienced and highly qualified team who understands the complexities of the specialist products listed on the Exchange. Guaranteed 3-5 day turnaround times for comments on listing documents ensure a fast and efficient service. The CSX staff are available at short notice to assist in the resolution of outstanding issues. In addition, the CSX listing fees are extremely competitive.

3. Key Listing Requirements

The nature of the financial instrument (equity, funds, debt etc.), and whether the listing is to be a primary or a secondary listing will impact the applicable requirements and the conduct of the listing.

As far as funds are concerned, every potential issuer is required to satisfy the following basic eligibility requirements:-

- (a) The directors of the fund and its investment manager or their controlling entities must have adequate expertise and experience in the management of funds.
- (b) The securities of the fund must be freely transferable, but may be subject to certain transfer restrictions if they are adequately disclosed and approved by the CSX. Generally, restrictions necessary to prevent securities being transferred in breach of securities laws or requiring the issuer to be registered under the laws of any jurisdiction are acceptable.
- (c) The fund is required to appoint a custodian that is acceptable to the CSX to safeguard its assets. The custodian must be a separate legal entity from the fund, its directors, the investor manager, the investment advisor and the administrator, but may be an associate of any of them.
- (d) The fund must appoint an independent auditor to carry out annual audits of its financial statements.

- (e) The net asset value of the fund must be calculated at least quarterly or semi-annually in the case of a property fund, and the method of valuation of the assets should be in accordance with the applicable accounting standards for the fund.
- (f) The fund must appoint a registrar and transfer agent in the Cayman Islands or other financial centre acceptable to the CSX.
- (g) A closed-ended fund is required to have at least 25% of its listed securities in the hands of the public (defined as unconnected shareholders each holding less than 10% of all securities) at all times.

4. The Listing Process

- a.** The proposed issuer must appoint one of the Cayman Islands law firms which have been approved by the CSX to act as approved listing agent. Appleby is an approved listing agent and can be appointed for this purpose. In fulfilling this role, Appleby will generally guide and advise the issuer and its principals on the application of the Listing Rules, complete and review all forms and documents for compliance with the Listing Rules, act as a liaison between the issuer and the CSX, and seek the CSX's approval of the listing documents.
- b.** A listing document will then need to be prepared and provided to the CSX by e-mail for their preliminary approval and comments together with the "non-applicability letter" defined below. In the case of a fund, the listing document will usually take the form of the fund's offering document modified to include additional disclosures required by the listing rules. Generally, the listing document will need to include all information which, according to the particular nature of the issuer and the offered product, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer, its profits and losses, and of the obligations, rights, powers and privileges associated with the product.

Appleby will work with the issuer to ensure that the document meets regulatory requirements. If there is an unusual aspect related to the issuer or the proposed offering, we will liaise with the CSX prior to submitting the application to ensure that they have no issues that need to be addressed. This voids unnecessary delays with the Listing Committee when the application is put before them.

The CSX will review the listing document, consider the suitability of the issuer and will provide a checklist with comments (usually within 5 working days, with an additional 3 working days to provide additional comments on re-submitted documents).

- c.** Ancillary documents in connection with the listing will also need to be prepared. Generally, these will include:
 - (i) an application for admission to listing (executed on behalf of the issuer);
 - (ii) a declaration by the issuer (executed on behalf of the issuer);
 - (iii) a declaration by each director of the issuer (executed by each director);
 - (iv) a declaration by the listing agent (executed by a registered representative of the listing agent registered as such with the CSX);

- (v) a letter from the issuer or the listing agent confirming which of the listing requirements do not apply (the “non-applicability letter”); and, where applicable,
- (vi) a shareholders’ statement.

The issuer may also need to supply such other documents as requested by the CSX.

d. Appleby will also collate all required supplementary documentation for the application. Generally, these will include:

- (i) a copy of the issuer’s constitutional documentation and all amendments to date;
- (ii) the audited financial statements of the issuer and of any guarantor for each of the periods which form part of the issuer’s or guarantor’s financial record contained in the listing document;
- (iii) any interim financial statements made up since the date to which the last audited annual financial statements were made up and prior to admission;
- (iv) in the case of specialist debt securities, a copy of the executed trust deed of the issuer, paying agency agreement, swap agreement, derivatives contract, repurchase agreement, security lending agreement, guarantee, surety, financial policy or any other material contracts pertaining to the issue;
- (v) in the case of depositary receipts, a copy of the executed deposit agreement and paying agency agreement (if any) and any other material contracts pertaining to the issue; and in the case of derivative warrants, a copy of the executed warrant agreement, warrant instrument, guarantee and any other material contracts pertaining to the issue;
- (vi) in the case of Eurobonds, a copy of the executed trust deed of the issuer, paying agency agreement, guarantee and any other material contracts pertaining to the issue;
- (vii) a copy of any reports, letters, valuations, statements by experts, contracts or other documents referred to in the listing document; and
- (viii) a copy of any temporary and definitive document of title.

The issuer is required to retain copies of such documents for a period of seven years so that it can comply with any request from the CSX.

e. Once all the above documents have been completed and collated, the complete application package is submitted to the Listing Committee of the CSX. The CSX will generally notify the listing agent within five working days as to whether the application for listing is approved or rejected or whether conditions have been imposed.

Listing fees will vary depending on the type of entity being listed. For example, in the case of a mutual fund, the CSX will charge an initial listing fee of US\$2,500 per issuer (including all share classes and sub-

funds). The first annual fee is also US\$2,500 per issuer (including all share classes and sub-funds). However, subsequent annual fees will be charged on a sliding scale according to the number of share classes, sub-funds or series of securities listed. A discount is offered for umbrella funds with nine and more sub-funds.

Appleby charges a fee of US\$1,500 per annum to act as Listing Agent.

For more specific advice relating to listings on the Cayman Islands Stock Exchange, we invite you to contact the following:

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Appleby is the leading provider of offshore legal, fiduciary and administration services. With an unparalleled presence in the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Isle of Man, Jersey, Mauritius and the Seychelles, the group offers advice on offshore law. We also have offices in the international financial centres of London, Hong Kong, and Zurich.

Over 800 lawyers and professional specialists deliver sophisticated, specialised services, primarily in the areas of Corporate and Commercial; Litigation and Insolvency; Private Client and Trusts; and Property. We advise global public and private companies, financial institutions, and high net worth individuals, working with them and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions.

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

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