

# Benefits for Mining Companies Trading Publicly on United States Markets

**DORSEY & WHITNEY LLP**

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# Presenter

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- Mr. Brenkert is an experienced international corporate finance attorney. His practice focuses on securities regulation, mergers and acquisitions, corporate finance and general corporate law. He represents companies, underwriters, agents and investors.
- Counsels both domestic and foreign public companies with respect to U.S. securities laws, corporate governance matters, including with respect to the *Sarbanes-Oxley Act of 2002* and the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, periodic reporting obligations, mergers and acquisitions, public and private financings, takeover defense and access to foreign capital markets.
- Mr. Brenkert has extensive experience in counseling foreign companies and institutions engaging in cross-border mergers and acquisitions or seeking to access public and private financial markets in the United States, including listing on U.S. stock exchanges and conducting securities offerings under the Multijurisdictional Disclosure System (MJDS), Rule 144A, Regulation S and Regulation D.

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# Why go public?

## Advantages of Public Capital Markets

- **Access to Capital**
  - **Usually, the most important advantage**
  - **Easier – Increased options**
  - **Quicker – Shelf Registration Statements**
  - **More Favorable Terms – Typically better valuations than private companies**

# Why go public?

## Advantages of Public Capital Markets

- **Access to Capital (con't)**
  - **Expanded Sources for Capital**
    - **Common equity a more viable source of capital**
    - **More investment funds can invest in companies listed on a national securities exchange**
    - **Increased investor confidence**

# Why go public?

## Advantages of Public Capital Markets

- **Liquidity Event**
  - **Exit strategy**
  - **Public marketplace**
  - **Increased trading**
  
- **Branding Event**
  - **Media coverage**
  - **Analyst coverage**

# Why go public?

## Advantages of Public Capital Markets

- **Mergers and Acquisitions**
  - **Publicly traded equity can be used in acquisitions, including tender offers**
  
- **Employee Retention**
  - **Easier to attract and retain qualified personnel**
  - **Incentive plans can result in free trading securities**

# Disadvantages?

- **Cost**
- **Public Disclosure/Loss of Privacy**
- **Loss of Control**
- **Public Pressure**
- **Increased Litigation**



# Why do mining companies list in the United States?

- **Large Capital Markets**
  - US markets are the largest capital markets in the world
  - NYSE Euronext (US) – Largest stock exchange in the world in value of share trading; approximately US\$12.3 billion to date\*
  - NASDAQ – Second with approximately US\$8.7 billion to date\*
- **Mining Investment Community**
  - US markets understand the mining industry
  - Well-developed mining investment communities
- **Banks**
  - 3 of the top 5 banks in the world are in the United States\*\*
  - One of the world's largest and best investment banking systems

\* - According to World Federation of Exchanges, December 2011

\*\* - According to Forbes Magazine, February 2010

# Why do mining companies list in the United States?

## ■ Shareholders

- Large US shareholder base
- Growth in US shareholders
- Easier and cheaper for US shareholders to trade

## ■ Investors

- United States has large and diverse investment funds
- Wealthy individuals

## ■ Government

- Stable government
- Good regulation of the securities market

# Why do mining companies list in the United States?

- **Liquidity**
  - High trading volumes and efficient trading mechanisms
  - Increased trading volume in both United States and home country
- **Peer Group**
  - World's largest mining companies are listed in the United States
    - Barrick Gold, Goldcorp, Newmont Mining, Kinross Gold
  - NYSE Amex – recent, popular destination for mid-level and junior mining companies
  - OTCQX – recent hot spot for Canadian junior mining companies

# Why do mining companies list in the United States?

## ■ Prestige

- **Respect of world-wide investment community for US exchanges**
- **Excellent media coverage for US traded securities**
- **Increased analyst coverage in the United States**

## ■ M&A

- **Securities traded on a US exchange are more valuable consideration**

# Why do mining companies list in the United States?

- **US Employee Retention**
  - Register incentive plans
  - Easy access to free trading securities
  - Better valuation of the company
- **Blue-Sky Laws**
  - Securities listed on national securities exchange are exempt from state securities laws
  - Makes both private and public offerings of securities easier

# Why don't companies list in the United States?

- **Cost of Listing**
- **Listing Standards**
- **Ongoing Disclosure and Regulatory Requirements**
  - **Exchange Act Reports**
  - **Sarbanes-Oxley Act (recent relief for smaller companies)**
  - **Dodd-Frank Act**
  - **Foreign Corrupt Practices Act**
  - **More to come?**
- **Potential loss of foreign private issuer status**
- **No nexus to the United States**

# Canadian Juniors

- **Canadian juniors are listing in the United States at a high rate**
- **United States juniors face more obstacles in obtaining a US listing**
- **Foreign companies have some significant advantages in the listing process**

# Foreign Advantage

- **Foreign private issuers**
  - Only file Annual Reports and furnish public filings on Form 6-K
  - Not subject to Regulation FD, Section 16 or Regulation 14A
  - Follow home country governance requirements
- **12g3-2b exemption**
  - Available for foreign private issuers listed on foreign exchange that is the primary trading market
  - Permits foreign companies to be quoted on OTCQX or Pink Sheets



# Foreign Advantage

## ■ MJDS

- Available to certain Canadian issuers
- Permits reporting pursuant to Canadian regulations
- Permits registration of securities pursuant to Canadian prospectus filings
- Limited review by the Securities and Exchange Commission

## ■ IFRS

- No reconciliation to US GAAP required
- Canadian public issuers switching to IFRS
- Internationally recognized accounting principles

# Foreign Advantage

- **NI 43-101 and Guide 7**
  - **Permitted to report inferred, indicated and measured resources**
  - **Different standard for reporting reserves**
  - **More aligned to international standards**
  - **Foreign issuers receive an exemption from the limitations of Guide 7 reporting requirements**
- **Canadian public market for juniors**
  - **TSX-V exchange**
  - **More appetite in public markets for juniors**

# Obstacles for US Juniors

- **High listing standards in the US**
- **Different investment environment for US juniors**
  - **Few small cap public markets**
  - **Mostly private equity and debt**
- **Higher compliance costs than foreign peers**
- **US properties – strict environmental and permitting regulations**

# Obstacles for US Juniors

- **Difficult public market valuation – Guide 7**
  - **Proven and probable reserves only in reports and registration statements**
  - **Limited disclosure on in-place tonnage and grade**
  - **No “resources”**
  - **No exemptions – even for companies listed on foreign exchanges**

# Current “Solutions”

- **List on TSX-V or TSX**
  - Lower listing standards
  - Better access to Canadian markets
  - Permits two going public events
  - Several paths to listing
- **File S-1**
  - Shares free trading
  - Financing in relation to listing can be conducted in both US and Canada
  - Costly

# Current “Solutions”

- **Reincorporate outside the US**
  - Early stage only
  - Possible FIRPTA (Foreign Investment in Real Property Tax Act) issues
  - Maintaining FPI status difficult
- **.S Listing**
  - Shares restricted in the United States
  - Less popular recently
  - Possible administrative burden in the future

# Current “Solutions”

- **Report “resources” in press releases, website, foreign filings**
- **Furnish technical reports on Form 8-K under Regulation FD**
- **Reference technical reports in SEC filings**
- **Only partial solution**
  - **No resources in SEC reports**
  - **No resources in prospectus for public financings**

# Future Solutions

- **Update Guide 7**
- **Development of Small Cap Public Markets**
- **Ease Access to Markets for Smaller Companies**