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The Bermuda Stock Exchange

Foreword

This Memorandum has been prepared for the assistance of anyone who requires information about the Bermuda Stock Exchange. It deals in broad terms with the Bermuda Stock Exchange's requirements for listing and other rules. It is not intended to be exhaustive but merely to provide general information to our clients and their professional advisers.

We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking any steps to implement them.

This Memorandum has been prepared on the basis of the law and practice as at the date referred to below.

Conyers Dill & Pearman

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1. INTRODUCTION

1.1 About Bermuda

Modern company, trust, banking, insurance and other related laws have made Bermuda a leading offshore financial centre. The government's attitude towards and open communication with the private sector encourages the promotion and maintenance of Bermuda's offshore business. The island enjoys a sophisticated telecommunications system, an abundance of professional service providers, as well as economic and political stability.

1.2 About the Bermuda Stock Exchange

The Bermuda Stock Exchange (the "BSX") was established in 1971. The BSX is a full member of the World Federation of Exchanges and enjoys recognition by the following regulatory bodies:

- the U.S. Securities and Exchange Commission ("SEC"), as a Designated Offshore Securities Market (DOSM);
- the Bermuda Monetary Authority, as a Recognised Investment Exchange and an Approved Stock Exchange;
- the London Stock Exchange, as a Registered Organisation;
- IOSCO, as an Affiliate Member; and
- the Financial Services Authority in the UK, as a Designated Investment Exchange.

In addition, the BSX is recognised under Australia's Foreign Investment Funds (FIF) taxation rules.

The BSX is the world's largest offshore, fully electronic securities market offering a full range of listing and trading opportunities for international and domestic issuers of equity, debt, depository receipts, insurance securitization and derivative warrants. The BSX is internationally recognised as a particularly attractive venue for the listing of hedge funds, fixed income structures and investment fund structures. A significant factor in the BSX's growth and success is its focus on providing unique products for the offshore market, such as its Mezzanine Market, information about which is provided below.

The BSX has a comprehensive regulatory regime (the "Regulations") which provides clear guidance on the listing process and ongoing requirements of the exchange. In addition, the BSX retains considerable discretion to waive certain of their requirements or to take a more flexible or innovative approach to any particular matter as may be appropriate.

1.3 Benefits

There are a number of benefits to listing on the BSX. The BSX employs a fully automated electronic trading system (Bermuda Electronic Securities Trading or BEST) based on a central limit order book which allows trading members to trade both equity and fixed income securities on an equal, real-time 'first come, first served' basis, making trading efficient, time sensitive and cost effective. Through the Bermuda Securities Depository (the "BSD"), shares can be dematerialised, eliminating the need for physical settlement. Once a trade is executed, trade information is disseminated electronically to key financial information providers, including Bloomberg and Reuters, for worldwide distribution. Another benefit is the BSX's commercially sensible regulatory environment which makes it conducive to new and innovative product listings, especially 'institutional only' securities. The BSX is bound by the European Union Listings Directive, nor United States Securities Exchange Commission (SEC) regulations. As a full member of the World Federation of Exchanges, however, the BSX has been acknowledged by its peers to meet the highest regulatory and operational standards. The BSX is located in an OECD 'white listed' Member State, meaning the OECD Global Forum on Transparency and Exchange of

Information for Tax Purposes considers that Bermuda has substantially implemented OECD internationally agreed standards which is a point of particular interest to a number of jurisdictions in Asia, particularly Japan.

2. LISTING

2.1 The BSX Listing Regulations

Section 1 of the BSX Listing Regulations (a brief overview of which follows) applies to all proposed issuers. In addition to the Regulations of general applicability, domestic and international issuers of equity securities and debt securities are regulated under additional listing regulations, as are collective investment vehicles, international issuers of depository receipts, insurance related securities and derivative warrants. It is beyond the scope of this memorandum to provide a detailed analysis of all of the various listing regulations applicable to each of the different types of issuers mentioned above. What follows, however, is a brief summary of the listing regulations that apply to all issuers and those that are of most interest for collective investment vehicles and specialist debt listings.

2.1.1 Section 1 of the BSX Listing Regulations: All Issuers

(a) Sponsorship

New applicants must be sponsored by a Trading Member or Listing Sponsor which is on the approved list of sponsors maintained by the BSX. The Listing Sponsor must ensure that the relevant applicant for listing has been provided with fair and impartial advice and guidance as to the application of the applicable listing regulations, that all of the necessary documents required in support of the listing application are duly lodged with the BSX, and must be responsible for communicating with the BSX during the listing application process. The Listing Sponsor must submit a declaration to the BSX before any trading of the relevant issuer's securities occurs.

(b) Authorised Representatives or Ongoing Sponsorship

Every listed issuer must appoint an authorised representative or a sponsor to act as the issuer's primary channel of communication with the BSX at all times.

(c) Prospectus

Issuers who wish to list their securities on the BSX must prepare and issue a prospectus, the contents of which will vary depending on the type of issue involved. This prospectus will be reviewed by the BSX to ensure compliance with the Regulations prior to listing.

(d) Undertakings

Issuers seeking a listing on the BSX must enter into an Issuer's Undertaking with the BSX to comply with any continuing obligations imposed by the BSX.

(e) Fees

Issuers whose securities are granted a listing on the BSX are required to pay listing fees (and in certain limited circumstances, a new issue levy and/or a subsequent issue fee). The initial fee for issue of units in a unit trust, shares in a mutual/investment fund company or interests in a limited partnership is \$2,000 per class payable on or in advance of application. Discounts are granted for applications for multiple listings. There is also an annual fee of \$2,500 for single class listings and significant bulk discounts are applicable where the same vehicle or fund family issues and lists multiple vehicles or classes of securities. The Listing Sponsor's fee is negotiated directly with the Sponsor and there is no advertising or publication fee.

2.1.2 Collective Investment Vehicles

Collective investment vehicles wishing to apply to list securities on the BSX must be duly incorporated or otherwise established in conformity with the applicable laws in

Bermuda or another recognised jurisdiction. The term “collective investment vehicle” is defined as any collective investment scheme whether structured as a company, a unit trust, limited partnership or other legal entity which engages in the investment of capital (a "fund"). The fund must either be incorporated or otherwise established in Bermuda or another recognised jurisdiction and have at least 25% of its listed securities in public hands at all times; or restrict its securities to qualified investors (as defined in the Regulations); or have a primary listing on another stock exchange which is recognised for this purpose by the BSX. The fund must have appointed a trustee, custodian or prime broker that is acceptable to the BSX, directors, a manager, investment adviser or administrator which has adequate experience and expertise in the management of collective investment vehicles and an independent auditor acceptable to the BSX.

2.1.3 Specialist Debt Listings

Debt issuance programs (such as medium term notes or credit-linked notes), asset-backed securities, convertible bonds, insurance securitisation bonds and other bonds which are generally purchased by very knowledgeable and sophisticated investors, can be listed on the BSX. Given the level of sophistication that is reasonably expected of investors in these areas, the listing regulations applicable to such instruments are more streamlined. Debt securities are eligible for listing provided they are fully negotiable and freely transferable. In addition, the issuer of debt securities must:

- (a) be a supranational body recognised by the BSX; or
- (b) be a government (or a government agency whose obligations are guaranteed by a government); or
- (c) be an exempted company incorporated in Bermuda with consolidated net tangible assets of at least \$10 million; or
- (d) have a primary listing for its share capital on a recognised stock exchange; or
- (e) restrict investment in its listed debt securities to qualified investors in accordance with terms acceptable to the BSX.

Such issuers must maintain a paying agent in Bermuda or another location agreed by the BSX for the duration of the listing. The debt securities must also be eligible for deposit in a recognised clearing and settlement system.

2.2 Listing Application

Each listing application must include the following:

- a formal letter of application in the form set out in the Regulations applicable to the relevant issuer, which must be signed by an authorised officer of the applicant and by the relevant Listing Sponsor;
- supporting documentation which includes (but is not limited to) a certified copy of the applicant company's certificate of incorporation (or equivalent document), a certified copy of the applicant company's constitution, audited annual reports and accounts (in the case of some issuers, the collective investment vehicles for the previous 3 years or since inception), certified copies of any resolutions required to have been approved by the applicant company in order to be listed, certified copy of a signed Issuer's Undertaking (as mentioned in 2.1.1(d) above), a copy of any temporary document of title and any definitive document of title to be used in respect of the securities to be listed, certified copies of any documents referred to in the relevant prospectus and any further documentation as may be requested by the BSX;
- a conforming prospectus; and
- the appropriate fees payable to the BSX.

The Regulations pertaining to listing applications are not exhaustive and the BSX is able to waive certain requirements or seek additional information as it deems necessary on a case by case basis. The BSX emphasises a flexible approach to ensure that only the necessary information is submitted and considered in a timely fashion.

2.3 Prospectus Requirements

Generally, the prospectus must contain information that enables an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the relevant issuer. The Regulations provide guidance on the following prospectus related matters:

- the standard form of disclaimer;
- general required information about the relevant issuer, its advisors and the prospectus;
- information required about the relevant securities as well as the terms and conditions of their issue and distribution;
- information required about the relevant issuer's capital;
- information required about the relevant issuer's investments;
- information required about any investment managers or advisors;
- financial information required about the group and its prospects (where appropriate);
- details required about the relevant issuer's management;
- particulars about the use of the proceeds of the issue and its distribution;
- information required about any material contracts; and
- details about the provision of relevant documents for inspection.

2.4 Timing

The BSX undertakes to provide a response from its Listing Committee within seven business days from the date of submission of the complete listing application. The BSX seeks to respond within two business days with comments on each draft of the prospectus. In most cases the entire approval process can be completed within three weeks from the date of submission of the complete listing application.

3. CONTINUING OBLIGATIONS

The exact nature and extent of the continuing obligations applicable to each issuer will depend on the type of issuer and the type of security involved. As a general rule,

however, an issuer must keep the BSX and holders of its listed securities informed of anything relating to the issuer (or the group) (i) that is necessary to enable appraisalment of the financial position of the issuer, (ii) that is necessary to avoid the establishment of a false market in the issuer's securities and (iii) that might reasonably be expected to materially affect market activity in and the value of the issuer's securities.

In addition, where applicable, an issuer must:

- notify the BSX of its net asset value calculations and of issue and redemption prices whenever they are calculated and of any percentage change in the net asset value of a fund;
- provide notice of annual general meetings to the BSX (concurrent with notice being sent to the members/shareholders);
- send audited annual accounts to all members/shareholders including a report by the directors on its operations and provide ten copies of the accounts and the directors' report to the BSX within six months of its financial year end;
- deliver to the BSX any interim financial accounts and preliminary announcements or results;
- advise the BSX if its securities cease to be listed on another stock exchange or if it is the subject of disciplinary action by another stock exchange and/or regulatory body;
- send to the BSX for review any drafts of proposed amendments to the relevant prospectus and any relevant announcements or advertisements;
- report any decision to declare, recommend or pay any dividend or make any other distribution to investors to the BSX for dissemination at least five business days prior to the record date for the payment of such distribution;
- make arrangements acceptable to the BSX to facilitate the efficient settlement of all trades and registrations of transfers of securities;
- keep and maintain a complete file of all relevant advertising and other marketing materials which must be produced to the BSX at any time on demand;

- adopt by board resolution and enforce an internal code of dealing for directors and executive officers which proscribes their ability to trade on the basis of unpublished price sensitive information; and
- notify the BSX of the happening of any of the specified events listed in the Regulations pertaining to the relevant type of issuer.

There are no diversification requirements imposed by the BSX, nor are there any borrowing restrictions. Independent directors and paying agents are not required and it is not a requirement of the BSX that significant shareholders be disclosed. Independent auditors are required.

For collective investment vehicles, the fund manager and custodian must be acceptable to the BSX. Sub-custodians are permitted. Such vehicles are also required to advise the BSX of their net asset value calculations and to provide copies of all shareholder notices or circulars.

Debt securities issuers must notify the BSX of changes in the terms of debt securities, decisions to pass interest payments, any purchase, redemption or cancellation of debt securities, important changes, proposed drawings, the closure of books, winding up or liquidation. If the issue carries conversion rights for, or a guarantee by, another company, adequate particulars must be available for that company. Once a debt issuance program has been approved by the BSX, subsequent issues can be accomplished immediately by filing a simple term sheet containing the basic necessary information.

4. SECONDARY LISTINGS

Securities that have a primary listing on a recognised exchange may obtain a secondary listing on the BSX. In such cases, initial fees are reduced by 50%. To be eligible, the issuer must be suitable for listing in the opinion of the BSX and the issuer will generally be required to meet the BSX's ongoing disclosure obligations (which are usually met by providing the BSX with copies of all filings made with the primary regulatory exchange).

5. THE MEZZANINE MARKET

The BSX Mezzanine Market is intended to offer growing e-commerce, high tech and development stage companies the opportunity to list at a much earlier stage than might otherwise be possible. Those seeking to list on the Mezzanine Market are not required to have a track record, market capitalisation, free float or profitability in order to qualify. The Mezzanine Market, however, is restricted to “Qualified Investors”. A Qualified Investor is an investor who has signed the necessary declaration and is either one whose investment is not less than \$100,000 or who is otherwise demonstrated to be a suitably sophisticated and knowledgeable investor in accordance with the requirements of the Regulations. The Qualified Investor requirements may be waived at the discretion of the BSX for Bermuda domiciled exempted companies.

This market provides a form of ‘listed private equity’ that has the visibility and marketability of a publicly traded security without the need for a full blown IPO. Issuers on the Mezzanine Market have full exposure on Bloomberg and Reuters. Securities on the Mezzanine Market qualify as “listed”, and are therefore usually more attractive to institutional investors outside of the U.S. (who may be limited in the amount they can invest in non-listed securities).

The Mezzanine Market is not intended to function as a highly liquid market, but the listing does create the mechanism for trading. This may be important to certain institutional investors who will want to have the means in place to facilitate any ‘exit strategy’ they may devise.

The listing fees for the Mezzanine Market are based on market capitalisation and are available on the BSX’s web site, www.bsx.com, or from Conyers Dill & Pearman upon request.

6. CONCLUSION

A number of factors make the BSX an attractive offshore securities market. Its recognition by the SEC and the UK Financial Services Authority, together with its own commercially sensible regulatory environment, create a highly respectable institution that is unique in its ability to meet the needs of the offshore market. The BSX's electronic trading system and securities depository make the BSX the world's first fully electronic offshore securities market, a factor which is particularly attractive to those in e-commerce and high-tech fields. The BSX is internationally recognised as an attractive venue for the listing of hedge funds, investment fund structures, equities, fixed income structures and derivative warrants. Anyone considering a possible listing on the BSX should contact Conyers Dill & Pearman for more information.

This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

About Conyers Dill & Pearman

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

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