March 1, 2019

**VIA EMAIL**

Ontario Securities Commission
20 Queen Street West
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Toronto, ON M5H 3S8
comments@osc.gov.on.ca

Dear Sirs/Mesdames,

**Re: OSC Staff Notice 11-784 – Burden Reduction**

TMX Group Limited ("TMX Group" or "we") welcomes the opportunity to comment on the staff notice published by the Ontario Securities Commission ("OSC") entitled *OSC Staff Notice 11-784 – Burden Reduction* (the "Staff Notice").

TMX Group is an integrated, multi-asset class exchange group. TMX Group's key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV"), TSX Alpha Exchange ("Alpha"), The Canadian Depository for Securities ("CDS"), Montreal Exchange ("MX"), Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

It is vital to our clients and to all investors that the capital markets in Ontario remain fair, efficient and competitive. Our businesses rely on our customers' continued confidence and participation in Ontario's capital markets. We believe that achieving the right balance between investor protection and regulatory burden is essential to creating an environment where companies and the Ontario economy can grow and successfully and sustainably compete on an international level. We are pleased that the Staff Notice is informed by a focus on enhancing competitiveness for Ontario businesses by saving time and money for issuers, registrants, investors and other market participants. TMX Group is very supportive of regulatory initiatives to reduce the regulatory burden on all market participants without impeding the ability of the OSC to fulfill its regulatory responsibility to protect investors. We therefore applaud the OSC for continuing to consider options to reduce the regulatory burden for all market participants.

All of our recommendations are given bearing in mind the importance of balancing the need to reduce regulatory burden with the equally important mandate to safeguard the public interest and

protect investors. Our detailed comments follow, but for ease of reference this letter is divided into the following parts:

1. Ensure a level regulatory playing field between TMX Group entities and foreign-based competitors
    a. Do not recognize TMX Group as an exchange
    b. Eliminate unnecessary constraints on TMX Group's operations
    c. Adopt a principles-based approach to clearing agency regulation
    d. Facilitate access of Ontario-based capital market participants to foreign jurisdictions
2. Reduce the regulatory reporting burden on TSX and Alpha
    a. Eliminate duplicative and unduly burdensome reporting requirements
    b. Improve processes for submitting reports to the OSC
3. Ensure the consistency of the regulatory regime applicable to the Canadian derivatives market
4. Reduce the burden associated with raising capital in Ontario
    a. Reduce audited financial statement requirements in an initial public offering prospectus
    b. Streamline public offering requirements for reporting issuers
    c. Reduce the regulatory burden on the independent dealer community
5. Reduce the ongoing regulatory burden on reporting issuers
    a. Introduce 21st century technology for reporting and disclosure
    b. Eliminate overlap and duplication in regulatory requirements
    c. Reduce disclosure requirements in annual and interim filings
    d. Eliminate the requirement to file a business acquisition report
    e. Permit semi-annual reporting for certain issuers

## 1. Ensure a level regulatory playing field between TMX Group entities and foreign-based competitors

Competition among exchanges and clearing agencies operating in Ontario must be rooted in a level regulatory playing field to ensure the health and growth of the Ontario capital markets. All competitors, whether domestic or foreign, must play by the same rules in order to ensure a truly fair, open and competitive environment. Stakeholders in the Ontario capital markets expect that the Ontario, and Canadian, regulatory regime will foster the growth and competitiveness of domestic marketplaces and clearing agencies. Therefore, the Ontario regulatory regime must not provide foreign-based competitors with a regulatory advantage over domestic incumbents.

### *a. Do not recognize TMX Group as an exchange*

TMX Group is a holding company, which means it does not perform any business operations of any kind, including exchange functions. The exchange operations of TSX are performed entirely by TSX Inc., a wholly-owned subsidiary of TMX Group. However, the OSC has recognized both TMX Group and TSX Inc. as exchanges under the *Securities Act* (Ontario). As a result, TMX Group is required to provide detailed reports and information to the OSC regarding its activities and business developments, in addition to the extensive reporting TSX and Alpha are required to provide to the OSC on their exchange operations. The creation of the reports the OSC requires of TMX Group is time consuming and resource intensive. We note that TMX Group performs these reporting functions solely due to regulatory requirements related to exchange oversight

(even though TMX Group does not perform any exchange functions). Management and the board of directors of TMX Group do not derive value from having a non-operating entity compile the information required in these reports. These reporting obligations include:

- *National Instrument 21-101 Market Place Operation ("NI 21-101") reporting obligations* – As a recognized exchange, TMX Group is required to file a consolidated Form 21-101F1 Information Statement ("Form 21-101F1") on an annual basis and to provide updates to the information contained in the Form 21-101F1 on a periodic, and at least monthly, basis. The information provided in its Form 21-101F1 is of limited incremental value to the OSC. As a reporting issuer, TMX Group is required to make information regarding its directors and officers, material subsidiaries, significant shareholders, articles and bylaws, board and committee charters and financial status publicly available pursuant to continuous disclosure requirements under securities law. This information is substantially similar to the information TMX Group provides in its Form 21-101F1 filings.

- *Recognition order recognition obligations* - TMX Group is required to provide extensive reporting to the OSC pursuant to its recognition order (the "TMX Recognition Order"), including the following:[1]
  - immediate notification of a decision to enter into a definitive agreement, other than confidentiality agreements and certain standard form agreements, with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market;
  - notification of any plans by TMX Group or its affiliates (whether recognized exchanges or not) that carry on business in Canada to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the board of directors has made the decision to implement those plans;
  - any strategic plan for TMX Group and its affiliates carrying on business in Canada, including strategic plans related to equities, fixed income and derivatives (including exchange-traded and over-the-counter derivatives) businesses, within 30 days of approval by the board of directors;
  - a list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of TMX Group; and
  - at least annually, or more frequently if required by the OSC, TMX Group's assessment of the risks facing TMX Group and its affiliates carrying on business in Canada and its plan for addressing such risks.

Many, if not most, of these reporting requirements explicitly capture activities that are well beyond any exchange-like functions that may be carried out by TMX Group. Similarly, these requirements also go well beyond concerns regarding changes to the delivery of trading, clearing, settlement and depository services to Canadian capital market participants. TMX Group is required to provide a level of reporting to its principal securities regulator regarding non-exchange operations that is much more detailed than the level of reporting provided by its foreign-based competitors to their principal domestic securities regulator(s). These reporting requirements create meaningful regulatory burden on TMX Group.

The OSC did not recognize Nasdaq, Inc., the parent holding company of Nasdaq CXC Limited ("Nasdaq Canada") and Ensoleillement Inc. ("CXCH"), as an exchange when it recognized Nasdaq Canada and CXCH as exchanges in Ontario. Therefore, TMX Group bears a disproportionate amount of regulatory burden compared to a foreign exchange competitor that

[1] See Appendix A to Schedule 2 of the TMX Recognition Order.

has entered the Ontario capital markets. TMX Group noted this discrepancy in its November 13, 2017 comment letter to the OSC regarding Nasdaq Canada and CXCH's application for recognition as an exchange in Ontario (the "Nasdaq Letter").

In the OSC's response to the Nasdaq Letter, the OSC stated:

> The TMX Group comments fail to consider the significant regulatory requirements imposed on Nasdaq Inc., Nasdaq Canada parent holding company, in its principal jurisdiction, the United States. Unlike the TMX Group, Nasdaq Inc. must comply with SEC, CFTC and other U.S. regulatory requirements including the administration of its public interest mandate in in the United States. A comparison of the relative regulatory burdens of the TMX Group and Nasdaq Inc. should take into consideration the entire suite of obligations to which these two entities are subject.[2]

We note that with Nasdaq Canada's application materials neither Nasdaq, Inc. nor the OSC provided a comparison of the regulatory burden TMX Group and Nasdaq, Inc.'s respective domestic regulators impose on each entity. The OSC apparently concluded that the regimes imposed on TMX Group and Nasdaq, Inc. by their domestic regulators are equivalent. TMX Group disagrees with this conclusion. TMX Group is prepared to work with the OSC to undertake a comparison of the relative regulatory burden imposed on TMX Group and Nasdaq, Inc. by their domestic regulators in order to ensure that both entities are competing on a level playing field within Ontario.

Nonetheless, TMX Group recommends that the OSC no longer recognize TMX Group as an exchange. The regulatory burden on TMX Group of such recognition is disproportionate to the regulatory objective of ensuring the appropriate operation of TSX and Alpha. There are means for the OSC to access information it requires from TMX Group regarding the operation of TSX and Alpha other than recognizing TMX Group as an exchange.

### *b. Eliminate unnecessary constraints on TMX Group's operations*

The TMX Group Recognition Order requires prior regulatory approval for many types of changes to TMX Group's subsidiaries' operations. This creates regulatory burden and uncertainty for TMX Group, and potential time delays regarding the implementation of such changes. TMX Group's foreign-based competitors are not subject to similar constraints, which means they can be more nimble than TMX Group when implementing changes to their operations. We believe that prior regulatory approval should be reserved only for significant items impacting the operation of recognized exchanges. The requirements for prior regulatory approval that make TMX Group less nimble than its competitors in effecting operational changes include the following:

- *Internal cost allocation model* – the TMX Recognition Order requires TMX Group, TSX and Alpha to establish and maintain an internal cost allocation model with respect to the allocation of costs or transfer of prices between the exchanges and their affiliates.[3] TMX Group, TSX and Alpha must obtain prior OSC approval for any changes to this internal cost allocation model, which can be a time consuming and resource intensive process.

- *Integration of business or corporate functions* – The TMX Recognition Order requires TMX Group to obtain prior OSC approval for any significant integration, combination or

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[2] (2018), 41 OSCB 345.
[3] See Section 11 of the TMX Recognition Order.

reorganization of any businesses, operations or corporate functions related to trading, clearing and settlement, including marketplace and clearing agency operations, with its affiliates.[4] The OSC has not imposed a similar requirement on TMX Group's foreign-based competitors. By way of example, Nasdaq Canada is able to integrate its trading operations with any of its U.S. or European affiliates without obtaining prior approval from any Canadian securities regulator. In contrast, TSX and MX require prior approval from the OSC and the Authorité des marchés financiers before a significant integration of their trading operations within Canada.

- *Outsourcing* – The TMX Recognition Order requires TSX and Alpha to obtain prior OSC approval before entering into or amending any outsourcing arrangements related to any of their key services or systems with a service provider, including affiliates.[5] The OSC has not imposed a similar requirement on TMX Group's foreign-based competitors.

TMX Group raised concerns with the regulatory constraints discussed above in its Nasdaq Letter. In its response, the OSC tied these requirements to the acquisition of TMX Group Inc. by Maple Group Acquisition Corporation in 2012 (the "Maple transaction"). In particular, the OSC stated the following:

> In the case of the TMX Group Order, the terms and conditions imposed on TMX Group not only reflect the need to have regulatory requirements in place that ensure proper oversight of the exchange, but also competition concerns that restrict TMX Group from using its dominant market position anti-competitively. Pursuant to the Maple transaction, TMX Group expanded its ownership of the largest Canadian trading venues for trading equity and debt securities and its monopoly for exchange traded derivatives to include both Canada's only clearing and settlement service provider and Alpha, Canada's second largest trading platform at the time for TSX-listed securities. It is the integration of trading, clearing and settlement and derivatives businesses under a single entity owned by significant shareholders, themselves representing significant capital markets participants, that resulted in many new terms and conditions in the TMX Group Order not included prior to Maple.[6]

The competitive landscape for equities exchanges in Ontario has changed significantly in the past seven years. At the time of the Maple transaction, the Canadian Securities Exchange was the only recognized equities exchange in Canada other than those owned by TMX Group. Since the Maple transaction, the OSC has recognized two other equities exchanges, including Nasdaq Canada, which is part of a large, international exchange and issuer services group. When the Maple transaction was completed, marketplaces owned by TMX Group were responsible for approximately 85% of the trading market share of Canadian listed securities, as measured by total volume.[7] Currently, marketplaces owned by TMX Group are responsible for approximately 53% of the trading market share of Canadian listed securities, as measured by total volume.[8]

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[4] See Section 10 of the TMX Recognition Order.
[5] See Section 27 and Section 55 of the TMX Recognition Order.
[6] (2018), 41 OSCB 345.
[7] Market share measured by volume for July 2012 according to the Investment Industry Regulatory Organization of Canada Report of Market Share by Marketplace.
[8] Market share measured by total volume for January 2019 according to the Investment Industry Regulatory Organization of Canada Report of Market Share by Marketplace.

Additionally, none of the original shareholders of Maple Group Acquisition Corporation currently have the right to nominate a candidate for election to the board of directors of TMX Group.

It is time for the OSC to re-evaluate the additional constraints it imposed on TMX Group in the context of the Maple transaction. Given the changes in the competitive landscape for equities exchanges in the past seven years, TMX Group believes that there is no need for a provincial securities regulator to impose requirements meant to address anti-competitive concerns over and above those imposed by Canada's federal competition legislation. Constraints related to TMX Group's ownership structure immediately following the completion of the Maple transaction have also become less relevant over the past seven years. Further, TMX Group believes that the OSC's regulatory approach to TMX Group must acknowledge the broader competitive environment in which TMX Group exists. For example, Nasdaq, Inc. has more competitive power than TMX Group in North America and globally. The Ontario securities regulatory regime should not fetter TMX Group's ability to compete with foreign-based competitors that are operating in Ontario.

### *c. Adopt a principles-based approach to clearing agency regulation*

Canadian clearing agency regulation continues to be at odds with clearing agency regulation in other key financial centers around the world. TMX Group appreciates that an appropriate regulatory system blends rules-based and principles-based regulation; however, compared to other key financial centers around the world, Canadian clearing agency regulation is decidedly tilted toward rules-based regulation. For example, CDS, a recognized clearing agency by the OSC, is required to abide by National Instrument 24-102 *Clearing Agency Requirements* ("NI 24-102") and Companion Policy 24-101CP to NI 24-102 ("CP 24-102"). These securities regulations transcribe and expand upon certain Principles for Financial Market Infrastructures requirements. NI 24-102 and CP 24-102 contain a mix of principles and rules. In addition, CDS must abide by recognition orders from three provincial regulators and an oversight agreement with the Bank of Canada. The provincial recognition orders are highly prescriptive and are characterized by many notification, approval, form, and reporting requirements which can be resource-intensive for CDS and go beyond international practices. In contrast, not only do our global peers benefit from principles-based regulation in their home jurisdiction, but they establish themselves in Canada with ease, obtaining exemptive relief from having to comply with burdensome prescriptive rules to which Canadian clearing agencies are subject. These conditions put Canadian clearing agencies and their users at a competitive disadvantage.

To illustrate, we draw the OSC's attention to the following examples, which are not exhaustive. We note that we raised these examples in our response to LME Clear Limited's ("LMEC") application to the OSC for exemption from recognition as a clearing agency:

- *Fees* – OSC recognition order requirements for CDS impose prescriptive requirements for fee and rebate changes that include prior OSC approval, conditions in which re-approval of fees may be required, triennial fee reviews and benchmarking of fees and fee models in other jurisdictions. In contrast, LMEC is required to apply public disclosure principles as set out in Article 38(1) of the European Market Infrastructure Regulation (the "EMIR") and follow internal governance practices described in their rulebooks. The LMEC Rules stipulate that LMEC may amend its fee schedule from time to time subject to a notice to all its members published on the LMEC website.

- *Governance* – The OSC's recognition order requirements for CDS delve into the mechanics of board of directors composition, clearing agency participant committees, reporting requirements to the OSC, prior approval from the OSC before making changes

to the structure of the board of directors, changes to board committees and their mandates, and prescriptive requirements around the mandate of the Risk Management and Audit Committee. In contrast, LMEC must demonstrate universal governance principles as set out in Article 26 EMIR.

- *Clearing agency rules* – To amend its own clearing member rules, among other things, CDS must follow prescriptive requirements detailed in Appendix "A" to its recognition order, otherwise known as the "Rule Protocol," in which CDS must receive OSC approval for rule changes in a prescribed manner that identifies the type of rule as "material" or "housekeeping" and sets out the documents that must be filed, including public notice requirements, and prescribes what information must be contained in the notice of publication among other prescriptive requirements. In contrast, LMEC follows internal governance practices described in its rulebook and which have been made transparent. LMEC is not burdened by the same regulatory right of approval that CDS faces.

Canadian clearing agencies and their regulators must position themselves to respond and adapt to fast-paced, complex, global, technology-driven changes, or risk losing their relevance on the global stage. Canadian clearing agencies are sophisticated and well established. With its emphasis on partnership, a principles-based regulatory approach would more effectively leverage that expertise and experience, and create efficiencies in the process while enabling regulators to maintain necessary oversight over Canadian systemically-important financial market infrastructures.

TMX Group believes that the OSC should pause to consider how its rules-based approach to clearing agency regulation and granting such exemptions for foreign-based clearing agencies inadvertently undermines the interests of Canadian clearing agencies and their users.

### *d. Facilitate access of Ontario-based capital market participants to foreign jurisdictions*

As discussed above, in many contexts the OSC allows foreign-based competitors to Canadian regulated entities to establish themselves in Ontario with ease, and the OSC defers to the regulatory regime imposed by the entity's domestic regulator(s). This is the case even where that regime is less burdensome or more principles-based than the regime the OSC applies to Canadian-based regulated entities. However, Canadian-based regulated entities often have much more difficulty establishing themselves in foreign jurisdictions. This differing approach in how the OSC treats foreign-based entities versus how foreign regulators treat Ontario-based entities undermines the global competitiveness of, and increases the level of regulatory burden faced by, Ontario-based entities.

In order to enhance the competitiveness of Ontario-based businesses and ensure they compete on a level regulatory playing field internationally, the OSC must pursue mutual reciprocity arrangements with international regulators to facilitate the access of Ontario-based entities to foreign jurisdictions. In this regard, we commend the work done by the OSC and other members of the Canadian Securities Administrators ("CSA") in helping the Canadian securities regulatory regime to be found equivalent to the European Union ("EU") regime in order to allow some TMX Group entities to apply for and obtain third-country recognition in the EU. We urge the OSC to focus on efforts with international regulators aimed at mutual coordination and recognition across jurisdictions. This will facilitate Ontario-based regulated entities' access to other jurisdictions on terms that ensure such entities face an overall regulatory burden that is commensurate with their international competitors.

## 2. Reduce the regulatory reporting burden on TSX and Alpha

### *a. Eliminate duplicative and unduly burdensome reporting requirements*

TMX Group understands that the OSC requires extensive reporting regarding the exchange operations of TSX and Alpha. However, TMX Group notes that these entities are subject to overlapping and/or entirely duplicative reporting requirements in the TMX Recognition Order and NI 21-101. TMX Group urges the OSC to eliminate such regulatory overlap. TMX Group believes that where there is such overlap, NI 21-101 should be the governing requirement, since the requirements of NI 21-101 apply equally to all recognized exchanges. Additionally, there are certain reports that TSX and Alpha provide to OSC staff that are very time consuming for TSX and Alpha staff to prepare. We urge the OSC to consider the utility of each piece of reporting it requires under the TMX Recognition Order, and to do a cost/benefit analysis against the resources exchanges spend in preparing such reports.

We note that the OSC recently amended the TMX Recognition Order (along with the recognition orders of other recognized exchanges) to eliminate certain reporting requirements. We commend the OSC for undertaking this initiative. However, in connection with the Staff Notice, we urge the OSC to consider further changes to the TMX Recognition Order and NI 21-101 to eliminate duplicative and/or unnecessary reporting requirements.

### *b. Improve processes for submitting reports to the OSC*

TMX Group notes that it and its various regulated subsidiaries submit the vast majority of reports required pursuant to their recognition orders and NI 21-101 to the OSC by email. These reports often contain highly sensitive and/or confidential information. Sending such information by email puts this information at risk compared to other more secure methods of sharing documents. Further, OSC staff typically expect TMX Group entities to send the report to the applicable OSC staff members. This expectation means staff at TMX Group maintain various tracking documents and email groups to ensure the correct OSC staff members receive relevant reports, which creates a process-related burden for staff at TMX Group.

Instead, TMX Group recommends that the OSC set up a secure file sharing portal (or other similar secure, technology-based solution) for all regulated entities to upload reporting documents and conduct communications with OSC staff. In the interim, the OSC should permit regulated entities to fulfill all reporting requirements by submitting reports to generic OSC email addresses established for this purpose. We note that TSX and TSXV have initiated a review of filing and disclosure obligations they impose on listed issuers to determine how technology can be used to streamline exchange reporting requirements. TMX Group recommends that the OSC undertake a similar review of its reporting processes and implement secure, technology-based solutions.

## 3. Ensure the consistency of the regulatory regime applicable to the Canadian derivatives market

TMX Group encourages the OSC, along with other members of the CSA, to be mindful of the consistency of the entire regulatory regime applicable to derivatives markets in Canada. We note that the CSA have proposed reforms of the regulatory regime for over-the-counter ("OTC") derivatives in Canada through the proposed Business Conduct Rule[9] and the Derivatives

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[9] Through proposed National Instrument 93-101 *Derivatives: Business Conduct* and Companion Policy 93-101 *Derivatives: Business Conduct*.

Registration Rule.[10] We commend the CSA for the significant thought put into these OTC regulatory proposals, which are likely to continue to evolve based on public comments and consultations. However, we believe it will be paramount, once the regulatory regime for OTC derivatives products is settled, to ensure that the regulatory regime for listed derivatives products is reviewed and updated to remain consistent with the new OTC regime. The CSA must ensure the drivers behind the G20 commitments with respect to derivatives are appropriately served by the Canadian regulatory regime for both listed and OTC derivatives. While differences are likely to exist between both regimes, these differences should be purposeful, responsive to the risks posed by each market and consistent with regulatory policy regarding derivatives. Further, the regulatory regime should not favour the OTC market over the listed market. We believe that a thorough review and harmonization of the regulatory regimes across Canada for listed derivatives will be required to ensure that the burden associated with trading listed products and servicing clients of listed products is commensurate with the eventual OTC regime. This review should consider the inherent characteristics of these markets with respect to investor protection, risks and transparency.

### 4. Reduce the burden associated with raising capital in Ontario

TMX Group provided detailed comments in July 2017 in response to the CSA's consultation paper entitled "*CSA Consultation Paper 51-404 –Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*" (the "CSA Consultation Paper"). We note that the CSA received 57 comment letters in response to the CSA Consultation Paper. In March 2018, the CSA announced that it had prioritized six policy projects in the near term. TMX Group encourages the OSC to coordinate its efforts to respond to comments on the Staff Notice with existing CSA efforts to respond to comments on the CSA Consultation Paper. Numerous capital markets participants have spent considerable time and resources responding to the CSA Consultation Paper. TMX Group continues to support the regulatory changes outlined in its 2017 response letter to the CSA Consultation Paper (the "2017 Letter"), and encourages the OSC to advocate for these changes with the CSA. We discuss the main points from our 2017 Letter in more detail below.

#### *a. Reduce audited financial statement requirements in an initial public offering prospectus*

In an initial public offering ("IPO"), venture issuers are required to file two years of audited financial statements in their prospectus. In contrast, non-venture issuers must provide three years of audited financial statements in their IPO prospectus. TMX Group supports extending the eligibility criteria for the provision of two years of audited financial statements to all issuers. TMX Group does not believe that this change will adversely impact the ability of investors to obtain useful disclosure about issuers. Furthermore, TMX Group believes that this change will meaningfully reduce the expense, time and effort associated with becoming a Canadian public company.

Over a three year period, many issuers, especially early stage issuers, experience fundamental changes in the nature of their business or operations. For example, these businesses often experience significant changes in management, debt facilities and business strategy, as well as significant growth. Businesses are valued based on financial projections using the most representative fiscal year, typically, the most recently completed fiscal year. Accordingly, the third

[10] Through proposed National Instrument 93-102 *Derivatives: Registration* and Companion Policy 93-102 *Derivatives: Registration*.

year of historical audited financial statements may not be representative of the current business and may be the least meaningful in the valuation of a business.

In 2015, the CSA approved amendments that reduced the historical financial statement disclosure required in IPO prospectuses of venture issuers to two years. This regulatory change lends support to the premise that the third year of financial statements is of limited relevance to investors. This is true irrespective of the size of the issuer. The CSA has acknowledged that there is limited benefit to investors from the third year of audited financial statements when compared with the time and expense incurred by issuers when preparing such statements.

Perhaps as importantly, requiring two years of financial statements in an IPO prospectus will make the Canadian capital markets more attractive to issuers. We note that in the United States, certain companies, including emerging growth companies, are required to include only two years of audited financial statements in their IPO registration statements. For such companies, a requirement to provide three years of audited financial statements to satisfy Canadian securities law requirements may be a barrier leading the issuer to bypass Canada and to instead go public and list only in the U.S. If a company successfully goes public in the U.S., it may have little incentive to list on a Canadian exchange thereafter. More importantly, listing solely on a U.S. exchange may limit the investment choices for retail Canadian investors. Such investors may have additional costs or limitations associated with buying in the U.S. markets, or may be restricted from buying securities not listed on a Canadian exchange.

Reducing the audited financial statement requirements in an IPO prospectus to two years will not have an adverse impact on investors, but will meaningfully reduce the expense, time and effort associated with becoming a Canadian public company. There are clear benefits to both issuers and the Canadian capital markets as a whole in requiring only two years of audited financial statements in the IPO prospectus. These benefits certainly outweigh any policy objective associated with requiring three years of audited financial statements.

### *b. Streamline public offering requirements for reporting issuers*

TMX Group welcomes any measures to simplify, streamline and eliminate duplicative information in an issuer's continuous disclosure record and short form prospectus, as long as such measures preserve investor protection.

TMX Group strongly supports adopting measures to further streamline the process for at-the-market ("ATM") offerings by reporting issuers. ATM offerings are important tools for reporting issuers to access extra capital without the cost and complexity of a traditional public offering. It is on its face a less burdensome, faster and more flexible way to access capital.

There are three ways in which the OSC can modernize the ATM offering regulatory regime to reduce the burden on issuers, without sacrificing investor protection. First, the exemptive relief typically granted by the OSC for ATM offerings should be codified in securities legislation to further facilitate such offerings. This would eliminate the expense incurred by issuers to prepare exemptive relief applications, particularly when the OSC typically grants such exemptive relief as a matter of course. Second, due to the interplay between the Canadian and U.S. markets, the Canadian rules should be aligned with the U.S. rules. For example, TMX Group understands that CSA exemptive relief permitting ATM offerings has historically been provided based on a cap on the number of shares sold on TSX on any trading day equal to 25 percent of the trading volume on TSX on that date. We note that the U.S. ATM rules do not have a similar daily cap for ATM offerings. Therefore, we encourage the CSA to consider whether this cap continues to be

appropriate for Canadian ATM offerings. Finally, we also support requiring issuers to disclose on a quarterly basis (rather than monthly) the number and average price of securities sold pursuant to the ATM offering.

Finally, TSXV requests the OSC's support in amending in TSXV's rules for certain qualifying transactions by TSXV-listed Capital Pool Companies ("CPCs") that are reporting issuers in Ontario. TSXV's rules require such issuers to prepare a prospectus as the applicable disclosure document for the transaction. The prospectus is reviewed by both TSXV and the OSC (rather than just by TSXV). The dual review process subjects CPCs that are Ontario reporting issuers to greater regulatory burden than those that are not reporting issuers in Ontario. TMX Group believes that the time and expense involved in this secondary level of review by the OSC outweighs investor protection concerns.

### *c. Reduce the regulatory burden on the independent dealer community*

We support a healthy investment dealer sector and we strongly encourage the OSC to consider options to address undue regulatory burden on investment dealers, particularly the independent dealer sector. The investment dealer community is a key intermediary between issuers and capital. Investment dealers face compliance costs associated with rules that are no longer relevant or provide no clear benefit to the market or investors.

For example, we encourage the OSC to consider the 2015 CSA guidance regarding the steps that must be taken to support the reliance on the accredited investor protection exemption. From discussions with marketplace participants, we understand that this guidance has led issuers and/or investment dealers to request and retain extensive documentation and information about investors, which has created additional complexity and expense in the capital formation process. While we acknowledge the investor protection concerns associated with selling exempt securities to investors that do not qualify as accredited investors, we encourage the OSC to consider whether the measures encouraged in the 2015 guidance are disproportionate to the investor protection concerns this guidance was meant to address. We believe that similar efforts to address undue regulatory burden on both issuers and the independent dealer community will make the public capital markets more attractive to issuers and will facilitate capital formation.

## 5. Reduce the ongoing regulatory burden on reporting issuers

### *a. Introduce 21st century technology for reporting and disclosure*

TMX Group encourages the OSC to invest in and facilitate technology solutions to reduce the regulatory burden on reporting issuers, particularly with respect to compliance with continuous disclosure obligations. Leveraging modern technology is among the most obvious ways for the OSC to deliver services and regulate industry more efficiently. Importantly, technology solutions have the potential to reduce the time and expense incurred by reporting issuers to comply with continuous disclosure requirements, without reducing the substantive disclosure received by investors.

As discussed above, TSX and TSXV have already shown leadership in this regard, by initiating a review of filing and disclosure obligations they impose on listed issuers to determine how technology can be used to streamline exchange reporting requirements. In 2018, TSX and TSXV implemented changes to the personal information form designed to improve the listed issuer experience. Ultimately, the personal information form was automated and made digitally available online. Similar improvements can be made to continuous disclosure requirements in securities legislation and the systems used to comply with those requirements.

The current system of continuous disclosure, which is rooted in the core disclosure documents prescribed under National Instrument 51-102 – *Continuous Disclosure Obligations* and various ancillary documents, includes many duplicative data entry requirements and is not well suited to take advantage of recent technological advances. Rather, the prescribed disclosure documents are generally completed in a word processing program, converted to PDF, and siloed off from one another so reporting issuers must enter the same data multiple times, as required in each document. Although reporting issuers are increasingly using technology vendors to record corporate data in cloud-based solutions, in most cases the data must still be manually input into a word processing program in order to create a disclosure document. We recommend that technology be applied to reduce much of the work currently involved in this process by linking this data to approved templates, where appropriate, and automating the disclosure process.

Even incremental changes to reduce the regulatory burden on reporting issuers would have a significant multiplier effect when compared to the investment required to implement such changes. For example, the disclosure requirements regarding executive compensation are found in a number of different places in securities legislation. Significant effort is often involved in tracking these various requirements and complying with them, although the data actually being disclosed is relatively straightforward. Given that most reporting issuers already record compensation matters in an electronic database, it is not difficult to imagine a technology solution that would automatically retrieve the relevant data from such database to eliminate the manual processing tasks required to comply with the current disclosure requirements. In the case of stock options, standardization and automation of disclosure would also potentially make it easier for listed issuers to comply with stock exchange filing requirements, as exchanges also require information regarding outstanding stock options.

Moreover, by unlocking reporting issuer disclosure data from the current format, primarily consisting of PDF documents filed on SEDAR, regulators would be better able to use data to leverage new forms of analytics and artificial intelligence to fulfil their regulatory mandate. That is to say, implementing 21st century technology will not only reduce the burden on capital markets participants, it will manifest benefits for the OSC as well.

Finally, TMX Group supports permitting a reporting issuer to satisfy the delivery requirements under securities legislation by making continuous disclosure documents (including proxy materials, financial statements and MD&A) publicly available electronically without prior notice or consent. The OSC should require that investors are made aware on an annual basis that such materials are available, and should require that the documents are easily accessible and available for paper delivery at the investor's request. This model would not have an adverse impact on investors.

***b. Eliminate overlap and duplication in regulatory requirements***

An integral part of the OSC's burden reduction efforts should focus on removing duplicative requirements from all continuous disclosure documents. Such efforts will reduce the time and expense incurred to prepare these documents and will make key information easier for investors to locate and understand.

An important example of eliminating duplicative requirements is to eliminate management discussion and analysis ("MD&A") requirements that duplicate International Financial Reporting Standards requirements. Currently, MD&A disclosure regarding financial instruments and key accounting policies appear to be replicated directly from financial statement notes. The focus of the MD&A is to highlight key financial performance measures and why they have changed from

the last quarter, trends that management may be anticipating in the next quarter and any material issues with respect to the issuer's current and future liquidity and capital resources. MD&A should not be a detailed rehashing of the individual financial statement line items, nor a duplication of information in the financial statement notes. The focus of the MD&A disclosure should be to highlight key issues that enable the investor to evaluate the business through the eyes of management and to make informed investment decisions.

There are other opportunities to eliminate duplicative requirements from continuous disclosure documents. There are duplicative, or substantially overlapping, form requirements in the financial statements, MD&A, annual information form ("AIF") and management information circular. The relatively simple step of identifying the duplicative disclosure requirements and requiring that such information only be provided in one document would reduce the regulatory burden on reporting issuers while having no impact on the disclosure available to investors.

***c. Reduce disclosure requirements in annual and interim filings***

TMX Group strongly supports OSC efforts to reduce unduly burdensome disclosure requirements in annual and interim filings. TMX Group supports consolidating the form requirements for the AIF,[11] MD&A and financial statements into one form. A consolidated document will be beneficial to investors because they will no longer have to locate and access numerous documents when looking for current material information regarding the issuer. A consolidated document would also be beneficial to issuers. It would reduce the risk of inconsistent disclosure across three separate documents and eliminate the duplicative internal efforts and resources associated with preparing and reviewing three different documents with three different, but overlapping, sets of form requirements.

Form requirements, whether for a consolidated document or separate documents, should strongly encourage issuers to focus their disclosure on key and material highlights, material changes from prior periods, key trends and important developments about liquidity and capital resources as opposed to simply including boilerplate language to comply with form requirements. The form requirements should be flexible enough that they discourage issuers from using language that is boilerplate, repetitive of information provided in prior reporting periods, duplicative or "filler" so that more meaningful disclosure is presented. Form requirements of this nature are beneficial to investors, as these requirements should encourage issuers to make continuous disclosure documents easier for investors to navigate and understand. Form requirements of this nature will also benefit issuers, as such requirements should enable issuers to more efficiently comply with their disclosure obligations and focus their efforts on disclosure that is useful to investors.

Finally, TMX Group recommends streamlining the continuous disclosure requirements related to executive compensation, particularly Form 51-102F6 – *Statement of Executive Compensation*. As discussed above, complying with these disclosure requirements requires issuers to engage in significant manual data entry and word processing. Additionally, the resulting disclosure is very complex and may not be useful to retail investors. Therefore, TMX Group supports efforts aimed at reducing the time and expense incurred by issuers to prepare executive compensation disclosure while ensuring such disclosure is useful to investors.

[11] We note that venture issuers are not required to file an AIF. If the CSA adopts a consolidated form requirement, there should be different versions for venture issuers and non-venture issuers, so that venture issuers are not subject to more onerous continuous disclosure requirements than is currently the case.

### *d. Eliminate the requirement to file a business acquisition report*

Corporate mergers and acquisitions are a commonplace element of the modern economy, and reducing unnecessary burden associated with this activity is an important pursuit. Therefore, TMX Group supports OSC efforts to reduce the regulatory burden associated with filing a business acquisition report ("BAR"), including eliminating the requirement for a BAR. TSX and TSXV have canvassed representatives of both issuers and investors for feedback on the BAR requirements. Many stakeholders indicated that that the BAR serves no useful purpose, particularly due to the lapse of time before the information in the BAR is made available to the public.

While certain stakeholders indicated that the financial statements of the acquired business and the pro forma financial statements included in a BAR may be useful to investors when making investment decisions, especially where no historical information exists, since the BAR can be filed up to 75 days after the completion of an acquisition the information included in the BAR is stale or irrelevant. Moreover, in many cases the issuer prepares a prospectus in connection with the acquisition, making the BAR completely irrelevant as it provides no new information that is not already provided in the prospectus. There are several scenarios in which the need to file a BAR is an unnecessary regulatory burden on businesses. In those cases, if not entirely, the BAR requirement should be eliminated.

### *e. Permit semi-annual reporting for certain issuers*

It is a generally accepted good business practice for issuers to report results on a quarterly basis. Such reporting provides timely information regarding financial results, enabling investors to evaluate business trends and make informed investment decisions. Requiring quarterly reporting forces issuers to periodically, consistently and transparently communicate with their investors about their business. Additionally, there are a variety of market forces that make semi-annual reporting an unattractive option for many reporting issuers.

However, for a subset of junior issuers, the burden associated with quarterly reporting may outweigh both market forces and the benefit investors derive from quarterly reports. For example, early stage development issuers with no significant revenues simply may not have information to report on a quarterly basis. Reporting on a quarterly basis may not make sense for these issuers. Therefore, creating an exception for certain junior issuers to report semi-annually could be a way to reduce burden on those entities, without adversely affecting investor protection. We note that the ability of these issuers to report semi-annually instead of quarterly should be at the option of the issuer.

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To conclude, we reiterate our support of OSC initiatives to reduce regulatory burden on capital markets participants. TMX Group's interests are aligned with the OSC's in this regard, as it is vital to our clients and all investors that the capital markets in Ontario remain fair, efficient and competitive. Addressing undue regulatory burden on capital markets participants is important for ensuring the vibrancy of Ontario's capital markets. TMX Group looks forward to continuing to work as a strong partner of the OSC in enhancing the vibrancy of Ontario's capital markets. In that regard, TMX Group would be pleased to have representatives of its exchanges, TSX and TSXV, attend the OSC's upcoming roundtable on reducing regulatory burden.

Thank you for the opportunity to comment. We would be pleased to discuss any aspect of these matters at your convenience.

Best regards,

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