



September 24, 2021

**VIA EMAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
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Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal  
Affairs  
Autorité des marchés financiers  
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Dear Sirs/Mesdames:

**Re: Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis**

TMX Group Limited (“**TMX Group**” or “**we**”) welcomes the opportunity to comment on behalf of its subsidiaries, Toronto Stock Exchange (“**TSX**”) and TSX Venture Exchange (“**TSXV**”) (each, an “**Exchange**” and collectively, the “**Exchanges**”), on the notice and request for comment published by the Canadian Securities Administrators (“**CSA**”) entitled “*Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Other Amendments and Changes*

*Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis” (the “Request for Comments”). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comments.*

TMX Group’s interests are aligned with the CSA’s, as it is vital to our clients and to all investors that the capital markets in Canada remain fair, efficient and competitive. Our businesses rely on our customers’ continued confidence and participation in Canada’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 Canadian economy can grow and successfully and sustainably compete on an international level. We are pleased that the Request for Comments is informed by this focus on achieving regulatory balance. We note that many of the potential amendments to reduce regulatory burden discussed in the Request for Comments align with work undertaken by TMX Group. TMX Group looks forward to working with the CSA on initiatives in this area and sharing our expertise with the CSA.

## **Proposed Amendments to Reduce Regulatory Burden**

### **1. Streamline the Disclosure Requirements**

The Exchanges strongly support CSA efforts to reduce burdensome disclosure requirements in annual and interim filings, particularly by removing duplicative form requirements in the disclosure documents. Generally speaking, issuers frequently include repetitive and boilerplate language in their disclosure documents in order to comply with current form requirements, forcing investors to sift through the “filler” language in order to get to the useful disclosure. The amendments to streamline disclosure by removing duplicative form requirements should make it more efficient for issuers to prepare such disclosure, discourage the use of repetitive and boilerplate language and encourage the issuer to focus on disclosing only relevant and material information. This should provide more meaningful disclosure to investors.

The Exchanges caution that some of the amendments for removing disclosure requirements may result in the elimination of information that is important to investors. For example, the summary of quarterly results in the MD&A is valuable information for an investor. This summary puts the current quarter into context and explains the variations over the quarters necessary to understand general trends and the seasonality of the business. Similarly, the Exchanges note that including a tabular summary of quarterly results for the eight most recently completed quarters in the MD&A provides a useful sequential analysis of financial results. It is much more efficient for investors to have this information in one document than to review prior filed disclosure to retrieve this information and create their own analysis. In this instance, reducing the regulatory burden for issuers may be at a cost to investor access to information.

The Exchanges are supportive of the added clarifications in the proposed amendments to the disclosure requirements. In particular, the Exchanges support removing the variety of material qualifiers such as “significant”, “critical”, “major” and “fundamental” throughout the disclosure requirements and having disclosure subject to the general instruction that issuers are to focus on material information. This will create uniformity throughout the requirements and reduce uncertainty for issuers completing the disclosure statements.

## **2. Combine Documents**

The Exchanges support consolidating the MD&A, AIF (if applicable) and annual or interim financial statements, as the case may be, into one disclosure statement. The Exchanges note that in preparing the AIF, many issuers incorporate by reference large sections of the annual financial statements and MD&A. Therefore, 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 as 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. The Exchanges believe that the combined annual and interim disclosure statements will reduce the time and expense incurred to prepare the disclosure documents and will make key information easier for investors to locate and understand.

## **3. Address Gaps in Disclosure**

The Exchanges are supportive of the addition of certain information in the disclosure statements in order to address gaps in the disclosure. As always, the CSA must take a balanced approach to ensure investor protection without creating undue regulatory burden on issuers. The Exchanges believe that the small number of new requirements will not create undue regulatory burden on issuers, but rather fill gaps in disclosure where such attention is needed. For example, the Exchanges support the amendment to require issuers to provide a description of their business in the MD&A portion of the disclosure statements. This disclosure gives the issuer the opportunity to describe their business, including its lines of business, products, services and principal markets in order to entice potential investors to invest and, in turn, provides a more fulsome picture of the business to the investor. As non-venture issuers currently provide this information in their AIF, the Exchanges believe that these amendments will now address gaps in disclosure for venture issuers without creating undue regulatory burden.

### **Semi-Annual Reporting for Venture Issuers on a Voluntary Basis**

The Exchanges understand that implementing voluntary semi-annual reporting for venture issuers would likely be a big shift for the Canadian market as issuers and investors are familiar with and expect quarterly reporting. Voluntary semi-annual reporting may not be welcomed by some investors who have established investing practices that are shaped by quarterly reporting and some market participants may find it more challenging to compare certain issuers to their sector peers, particularly over short time periods. However, the Exchanges believe that the voluntary nature of the proposal will allow issuers, their shareholders, and the market generally, to determine the best approach for each particular issuer, and, over time, allow the market to acclimate to the new regime as more issuers “test” the semi-annual approach.

The Exchanges also understand that considerable time and resources are required for issuers to report quarterly and, for a subset of issuers, the burden associated with quarterly reporting may outweigh the benefits that investors derive from the quarterly reporting. Generally speaking, venture issuers typically have lower market capitalizations and generate lower revenues than non-venture issuers and experience a proportionately greater regulatory burden than their counterparts for detailed quarterly reporting. Allowing a venture issuer to report semi-annually will help enable those issuers to reallocate resources and attention on the business and operations

rather than on reporting. Therefore, the Exchanges are supportive of semi-annual reporting for venture issuers on a voluntary basis.

### **1. Voluntary Framework**

The Exchanges understand that the CSA must ensure a fair balance between investor protection and regulatory burden. Accordingly, the Exchanges applaud CSA efforts in striking this balance by enabling issuers to voluntarily opt in and out of semi-annual reporting and allowing the issuers to choose what is best for them. Market forces such as institutional investors and U.S. capital markets may impact the decision of a venture issuer to report quarterly or semi-annually, but by having semi-annual reporting as an option, the issuer can determine what frequency of reporting is most appropriate for them. The Exchanges also support the requirement for venture issuers to opt in and out of semi-annual reporting at the beginning of each year by filing a notice advising the market of such election and further support that the commitment must be for one year. This gives the venture issuer flexibility in reporting when things change from year to year and ensures that the investors will know the frequency and type of disclosure to be filed for the ensuing year.

### **2. Specific Types of Venture Issuers for which Semi-Annual Reporting may not be Appropriate**

The Exchanges do not support creating limits as to the type of venture issuer for which semi-annual reporting is available. While we appreciate that some venture issuers have large market capitalizations and revenues that are more akin to non-venture issuers, the Exchanges support a framework for voluntary semi-annual reporting that applies to all venture issuers.

Venture issuers are susceptible to volatile market capitalizations and revenues due to various factors such as the stage of business, business sector, seasonality and other market factors. Setting a maximum market capitalization or amount of revenue generated that an issuer must fall under in order to be able to opt into semi-annual reporting can create an arbitrary limit that an issuer may fluctuate above and below over time. If an issuer rises above or falls below these limits in any given period, confusion may arise as to whether or not the issuer may continue to report semi-annually or must return to quarterly reporting. The current amendments in the Request for Comments suggest that when an issuer loses eligibility during a year to report semi-annually, it must file all applicable interim filings that were not otherwise filed prior to the date that it no longer qualified for semi-annual reporting. If the CSA imposes limits in the semi-annual reporting framework, the Exchanges believe that the CSA should provide specific rules as to what point in time the issuer must evaluate their business to ensure it does not exceed those limits to be able to opt into semi-annual reporting and provide rules on what happens if an issuer rises above the limits during the course of the year. This will help both issuers and investors better understand the framework.

Securities laws have long-established and well understood frameworks for different disclosure and reporting requirements for venture issuers and non-venture issuers. This distinction is logical and provides ease in determining the disclosure requirements applicable to each issuer. Departing from that distinction to include a type of venture issuer that is not appropriate for semi-annual reporting would add confusion to the new reporting regime. The Exchanges believe that all venture issuers should have the flexibility to decide whether or not reporting semi-annually is appropriate for them regardless of size, revenues or market capitalizations.

## **Final Remarks**

Overall, the Exchanges are very supportive of CSA initiatives to reduce the regulatory burden associated with the ongoing costs of remaining a reporting issuer without impeding the ability of the CSA to fulfill their regulatory responsibility to protect investors. Addressing undue regulatory burden on reporting issuers is important for ensuring the vibrancy of Canada's capital markets.

We appreciate the opportunity to respond to the Request for Comments. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

*"Loui Anastasopoulos"*

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TMX Group