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**DELIVERED BY EMAIL**

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-and-

Susan Greenglass  
Director, Market Regulation  
Ontario Securities Commission  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
[marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

Dear Ms. Mahew and Ms. Greenglass:

**Re: Toronto Stock Exchange Request for Comments - Amendments to Toronto Stock Exchange Company Manual - Section 606 Prospectus Offerings**

We are pleased to provide the following comments in response to the Request for Comments (the “**Request**”) published by the Toronto Stock Exchange (the “**TSX**”) on December 1, 2022 with respect to proposed amendments (the “**Proposed Amendments**”) to Section 606 of the TSX Company Manual (the “**Manual**”).

We thank you for the opportunity to comment on the Proposed Amendments. This letter represents the comments of Eight Capital, as set out below.

We have organized our comments in response to the questions posed in the Request. Capitalized terms used in this letter that are not defined have the meanings attributed to them in the Request.

**Comments**

1. *Do you agree with TSX’s overall approach with respect to how it proposes to view public offerings under Section 606 of the Manual as described in the Request?*

Yes, Eight Capital agrees with the TSX’s general approach and commends the TSX for putting forth the Proposed Amendments. Eight Capital believes that the Proposed Amendments will provide issuers, investors, and investment dealers with greater certainty regarding the pricing of prospectus offerings, resulting in a more efficient market for public offerings on the TSX.

More specifically, Eight Capital is in agreement that deference should be given to an issuer’s directors in fulfilling their fiduciary duties when determining the price of securities to be distributed pursuant

to a prospectus, and the proposed conclusion that, assuming that a prospectus is Broadly Marketed and there is no insider participation (discussed below), the TSX will generally accept the offering price of the securities offered by way of prospectus, regardless of the discount amount. This Proposed Amendment will give market participants the ability to execute prospectus offerings without ambiguity as to whether the Private Placement Rules will be applied, removing an uncertain element that has previously been the cause of delays and complications with certain public offerings. Eight Capital believes that this change will be welcomed by all participants in the Canadian capital markets.

With respect to Insider Participation as it relates to Prospectus Offerings, Eight Capital acknowledges that, in theory, Insiders may be tempted to price an offering at a significant discount to allow themselves to participate at a lower price. In our experience, however, this risk is sufficiently off-set by, (A) the fiduciary duty of directors to an Issuer that would prevent them from allowing the Issuer to complete an overly-dilutive transaction for the benefit of Insiders participating; (B) the alignment of Insiders' interests with broader shareholders when it comes to building shareholder value – Insiders typically hold significant amounts of equity in an issuer and/or have compensation packages that are linked to share price performance (which typically declines following a significantly discounted offering). In our view, an offering that is priced beyond a 15% discount to the market price reflects the appropriate price required to complete the offering successfully, rather than an opportunity for Insiders to increase ownership at an artificially depressed valuation. Furthermore, we note that Insider participation is generally viewed positively by market participants, as investors appreciate Insiders increasing their financial commitment to an issuer and building further alignment with non-Insider shareholders.

While we appreciate the TSX's concern about the optics of Insider participation in a discounted offering, for the reasons above, we believe the limits proposed are overly restrictive and could prevent Insiders from participating in an offering (which, as noted, is generally viewed favourably by market participants). As an alternative to the proposed restrictions, Eight Capital proposes a maximum of 25% of a public offering be available for purchase by Insiders, beyond which Insider participation would be subject to the Private Placement rules. We believe this would guard against the optics of a discounted offering being taken up by Insiders in a significant amount, while allowing for a level of participation that would accommodate Insider demand in the majority of public offerings.

- 2. In determining what level of discount exists, where insiders receive standby or commitment fees, or do not purchase via underwriters and subsequently the issuer does not pay the underwriting fee on the insiders' purchase, TSX intends to consider the net proceeds received by the issuer from the prospectus offering, rather than the discounted price paid by the subscriber. Pursuant to this proposed approach, TSX would require disclose by the issuer of the actual proceeds paid by subscribers benefiting from receiving fees or who are exempt from underwriting fees. Note that where the net proceeds received by the issuer from insiders are, in fact, less than other subscribers, TSX would take the view that this is a different purchase price and therefore would apply the Private Placement Rules to the insider purchase, rather than regard it as part of the prospectus offering. Is this approach appropriate? Are there concerns with the perception that insiders are offered securities at a lower price than other subscribers?*

We note that, with respect to Insider participation in an Offering whereby an issuer does not pay commission (or pays a reduced commission), in our experience the purchase price paid by the Insider

is equal to the price paid by non-Insiders, meaning the net proceeds to the Issuer from Insider participation is greater than the net proceeds from non-Insider participation, after accounting for commissions. In any instance that an Insider pays a lower purchase price than a non-Insider, Eight Capital agrees that applying the Private Placement rules is appropriate.

With respect to standby or commitment fees, our view is that such a fee would be highly unusual for an equity financing, outside of the context of a rights offering (which are expected to be done at a “significant discount” to market price at the time of the offering in accordance with Section 614 of the TSX manual, and for which the TSX provides guidance on Backstop fees in Section 614). We would expect that any changes to the TSX rules on rights offerings would be made by amending Section 614. We do not otherwise have concerns with the approach of the TSX as it relates to standby or commitment fees.

- 3. With respect to pricing a prospectus offering where there is material undisclosed information, the Staff Notice states that TSX typically views five days as an appropriate benchmark for the dissemination of material information. However, where an abbreviated period of time is required by an issuer, TSX will take into consideration certain factors as set out in this Staff Notice. Given the speed and manner in which market information is now disseminated and TSX’s desire to: (i) decrease the burden of TSX pre-clearance; and (ii) increase transparency and predictability of our policies, TSX is considering reducing the number of days required for the dissemination of Material Information (as defined in the Staff Notice) from five days to one day. Does this approach raise any concerns?*

This approach does not raise any concerns from Eight Capital’s perspective and we are supportive of the proposal to reduce the number of days required for the dissemination of Material Information from five days to one, given the pace at which new information is absorbed and processed by the market.

- 4. The Proposed Amendments introduce a definition of “Broadly Marketed”. Is the proposed definition appropriate? Are there other measures that TSX should consider? Is “Broadly Marketed” a reasonable standard for public offerings that are led by investment dealers outside of Canada?*

Eight Capital believes that the new definition of “Broadly Marketed” is a reasonable standard that reflects the majority of public offerings in Canada, and that market participants will appreciate the clear guidance provided by the TSX on this point.

\* \* \* \* \*

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions with respect to our comments above or wish to discuss.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Morrison", with a long horizontal flourish extending to the right.

David Morrison  
Principal, President and Chief Executive Officer  
Eight Capital