December 20, 2024

VIA E-MAIL

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: OSC Notice 11-799 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year 2025-2026 (the "Request for Comments")

TMX Group Limited ("**TMX**" or "**we**") is an integrated, multi-asset-class exchange group with global operations. TMX'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**"), Alpha Exchange, The Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited, TMX Trayport, TMX VettaFi and other TMX companies provide securities listing markets, trading markets, clearing facilities, depository services, technology solutions, data products and other services to the global financial community, and play a central role in Canadian capital and financial markets.

The Ontario Securities Commission (the "**OSC**") publishes its draft Statement of Priorities annually for public comment prior to finalizing its priorities in the annual Business Plan, which it submits to the Minister of Finance. TMX appreciates the transparency of this process, and welcomes the opportunity to comment on the OSC's Statement of Priorities for the fiscal year 2025-2026 (the "**SoP**"). We are supportive of the OSC's statement of its priorities, and highlight its focus on fostering capital formation and dynamically right-sizing regulation informed by changing global factors. Our comments below address certain broad goals and key priorities that are directly tied to the OSC's Strategic Plan[1] and which we believe should be more prominently incorporated in the final SoP. As emphasized in the Strategic Plan, keeping Ontario and Canada competitive globally and improving the conditions for economic growth is of vital importance. At a time when the productivity gap between Canada and the U.S. is already at an all-time high[2] and the U.S. is poised to undergo a period of deregulation (involving

[1] See the OSC's Strategic Plan for 2024-2030 available at: https://www.osc.ca/sites/default/files/2024-05/pub_20240503_OSC-strategic-plan.pdf.
[2] See, for example "Canada's Growth Challenge: Why the economy is stuck in neutral", available at https://thoughtleadership.rbc.com/canadas-growth-challenge-why-the-economy-is-stuck-in-neutral/.

unwinding proposed and finalized rules), the stakes for our capital markets have never been higher. Allowance for regulatory friction, both domestically and cross-border, must be limited to instances where it is absolutely necessary, and seeking out opportunities for advancing the competitiveness of our markets is of paramount importance, including pruning unnecessary or outmoded regulations.

All capitalized terms used but not defined in this letter have the meaning as set out in the Request for Comments.

A. Global Competitiveness

The OSC plays a vital role in creating, maintaining and fostering the conditions that enable the capital markets in Canada to thrive.[3] Capital markets are global and fostering a thriving Canadian capital markets ecosystem requires that the OSC place an increased emphasis on our market's global competitiveness. We believe that in implementing the OSC's mandate, which was expanded in 2021 to include fostering competitiveness and capital formation, such considerations should be the prism through which all initiatives should be viewed, as well as a driver for formulating policy. This vital component of the OSC's mandate must always be balanced against other key aspects of its mandate that form the bedrock of a well-functioning capital market, such as investor protection. However, as the already competitive landscape for capital is poised to undergo significant changes as a result of inward-focused economic and burden-reduction regulatory policy, increasing the already substantial competition we face south of the border, we urge the OSC (and the Canadian Securities Administrators ("**CSA**") to squarely and proactively focus on the competitiveness of our capital markets globally.

While our symbiotic relationship with the U.S. capital markets brings clear benefits, we face significant competitive pressure from the very deep and very liquid U.S. capital markets. The strong connection between the Canadian and U.S. capital markets is evidenced by the number of interlisted Canadian companies. As at November 30, 2024, 172 TSX listed corporate issuers are interlisted on New York Stock Exchange and NASDAQ, making up 24% of total corporate issuers listed on TSX.[4] In addition to the securities of Canadian issuers that trade in the U.S. public markets, many non-interlisted Canadian securities also trade in the U.S. over-the-counter markets. To date, our markets have fared relatively well as compared to other jurisdictions, such as the U.K. and the E.U., which have already experienced significant challenges competing with the U.S. for domestic public company listings.[5] As a result, the U.K. and E.U are each considering significant reforms to improve the attractiveness of their capital markets.[6] But once listings, trading and capital flow elsewhere, it is difficult to reverse the tide, and that tide is already turning. We expect a shift in the regulatory agenda of the U.S. Securities and Exchange Commission ("**SEC**") to a more pro-business and burden reduction focus, which will only increase competitive pressure. At this juncture, we cannot afford to be complacent, and while the SoP touches on this theme, we cannot emphasize enough how important it is for the OSC to match this call to action.

[3] The OSC is mandated, in part, "to foster fair, efficient and competitive capital markets and…to foster capital formation." The OSC's mandate is available at https://www.osc.ca/en/about-us.
[4] Source: TSX/TSXV Market Intelligence Group. Excludes exchange traded funds, closed end funds, and special purpose acquisition corporations.
[5] For example, although not U.S. companies, Arm Holdings, Birkenstock Holding plc, and Ermenegildo Zegna Group carried out their initial public offerings on U.S. exchanges.
[6] See pages 11 to 12 of The Capital Flywheel: European Capital Markets Report.

1. Align where appropriate, but dare to be different

As you are aware, areas of misalignment between the Canadian and U.S. capital market regulatory frameworks already are taking shape, and more are likely to arise under the new U.S. administration. For example, the SoP states that the OSC, together with the CSA, will continue to develop and publish for comment a revised climate-related disclosure rule for reporting corporate issuers, which we understand will be based on the climate-related standards produced by the Canadian Sustainability Standards Board[7] with certain modifications. TMX is supportive of regulatory initiatives that facilitate a global baseline of decision-useful sustainability-related disclosures, but it also is essential to consider the impact of mandated climate-related disclosure rules in an internationally competitive context. We appreciate that the CSA is mindful of shifting global dynamics. We reinforce the need to carefully consider the implications of misalignment of these requirements with the U.S.

Another aspect of implementing priorities in the context of being neighbors with the largest, deepest and most liquid capital market in the world, is being mindful of alignment for the sake of alignment versus calibrating requirements to make our markets more attractive. Maintaining the global competitiveness of the Canadian capital markets is more complex than harmonizing with the regulatory standards of other nations. It requires deep and nuanced analysis. For example, we understand that the OSC and the CSA are working on adopting the access fee model recently announced by the SEC (i.e., capping access fees at 10 mils for certain NMS stocks) if it comes to pass.[8] In contrast with harmonizing SEC tick size amendments, the access fee model announced by the SEC is not appropriate for the Canadian market, including for interlisted securities. Aligning to this model may well constrain competition in Canada's smaller market, posing a risk to order flow, liquidity and spreads. Liquid secondary markets support robust primary markets and the broader economy. In this instance, maintaining the competitiveness of the Canadian market may best be accomplished by providing greater flexibility to tailor the Canadian access fee model rather than harmonizing with the approved but yet-to-be-implemented changes in the U.S. market (should they become effective).[9]

It is clear that fostering and maintaining the global competitiveness of Canada's capital markets will become an increasingly vital concern in the coming years and that doing so will require adept decision-making under tight time constraints. Accordingly, TMX suggests that the SoP place more emphasis on global competitiveness. Actualizing this as a priority involves, among other things, proactively analyzing regulatory initiatives and trends in other jurisdictions and proposed domestic regulatory changes, each in terms of their likely effect on the competitiveness of Canada's capital markets, and factoring that analysis into what is optimal action in this context. This would provide a depth of understanding that could inform and accelerate OSC regulatory initiatives to respond to competitive challenges.

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[7] The Canadian Sustainability Standards Board recently published the final Canadian Sustainability Disclosure Standard 1: General Requirements for Disclosure of Sustainability-related Financial Information and final Canadian Sustainability Disclosure Standard 2: Climate-related Disclosures. More information is available at: https://www.frascanada.ca/en/cssb/news-listings/csds1_csds2_launch.

[8] See the CSA and the Canadian Investment Regulatory Organization announcement available at https://www.securities-administrators.ca/news/canadian-securities-regulators-and-ciro-provide-update-on-sec-adopting-amendments-to-rules-regarding-minimum-pricing-increments-and-trading-fee-caps/.

[9] On December 12, 2024, the SEC issued an order granting a partial stay, halting the amendments regarding reductions in the exchange access fee cap and the tick size reduction rule pending judicial review of the final changes. See https://www.sec.gov/files/rules/other/2024/34-101899.pdf.

2. Proactively right-sizing regulation

TMX recognizes that dynamically right-sizing regulation is a goal of the OSC.[10] Canada has a highly efficient capital market through which start-up companies can gain financing through offering their shares to the public, listing on venture exchanges and graduating to senior exchanges. This Canadian innovation, which is fundamental to the unique nature of our capital markets, exemplifies our ability to develop differentiated solutions that cater to the needs of our market. As a key player in Canada's financial ecosystem, we believe that right-sized regulation is essential for ensuring investor protection as well as for fostering a competitive and dynamic market in Canada.

The OSC's appreciation of right-sizing regulation is evidenced by OSC's conclusion under Goal 3, which indicates that regulatory proposals should be "reviewed for proportionality and relevancy," while ensuring that regulation does not have the unintended consequences of being overly intrusive or burdensome on, or discouraging, capital formation, innovation or competition in Canada. However, the OSC has not included as a key priority a proactive, top-to-bottom review of existing rules for their continued proportionality, relevance and effectiveness. TMX believes that such a thorough review of the continued relevance, proportionality and effectiveness of its rules is necessary to meet the changing needs, risks and practices for the Canadian capital markets in order to reach a higher level of competitiveness, or at the very least, to remain competitive. Such a thorough re-evaluation should be undertaken periodically.[11]

As emphasized in our prior comment letters and enshrined within the *Securities Act* (Ontario),[12] cost/benefit analysis is a fundamental part of the OSC's rule-making process. We applaud this aspect of the rule-making process. However, it should not be limited to newly enacted or amended rules, but should also be part of the re-evaluation process given that capital markets, including global developments, are far from static. It should be a key priority of the OSC to give careful consideration to the regulatory framework and to eliminate outmoded regulations, and such a re-evaluation is one available tool to maintain Canada's competitiveness.

Although the particulars of the U.S. regulatory agenda remain to be outlined, we suspect there will be a substantial focus on invigorating public markets by potentially streamlining disclosure and offering rules that have the effect of reducing regulatory burden. However, we cannot wait for such burden reduction initiatives to be solidified before acting. For example, we note the increased securities laws requirements relating to financial disclosure for certain companies seeking to go public in Canada

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[10] Goal 3 of the SoP states that it is a goal of OSC to "ensure that all elements of the OSC's regulatory framework remain consistent, risk-informed, and relevant," and to "ensure continuous modernization of regulatory actions without sacrificing fundamental investor protections by implementing a systematic approach to continually reviewing the OSC's regulations for proportionality and relevancy."

[11] While we understand that under the *Securities Act* (Ontario) and *Commodity Futures Act* (Ontario), the Minister of Finance (Ontario) is charged with periodically appointing advisory committees to review securities and commodity futures legislation, regulations, and rules, we urge the OSC to continually review its rules and regulations as well. We note that the most recent committee (the Capital Markets Modernization Taskforce) appointed by the Finance Minister was in 2019, and a review was conducted and a final report was published in 2021. Prior to this, a committee was appointed in 2000, and a final report was published in 2003.

[12] Section 143.2(2)(7) of the *Securities Act* (Ontario) requires "a qualitative and quantitative analysis of the anticipated costs and benefits of [a] proposed rule."

versus in the U.S.[13] Individual regulatory requirements may appear to only incrementally increase regulatory burden, but in their totality, regulation of the capital markets can impose disproportionate administrative burden, stifle competition, and potentially discourage new entrants from entering the public markets. The totality of requirements must support, and not inhibit, companies from going public, and strengthen the liquidity and depth of our markets. In the current competitive environment, it is also more important than ever that the CSA take a unified approach to securities regulation, and dispel any perception of a fractious system. We appreciate there are appropriate deviations at times, however the OSC has an opportunity to lead the way by seeking to eliminate any frictional distinctions amongst the CSA. Championing the CSA and revisiting existing requirements, as highlighted above, will improve the perception of our markets globally and yield efficiencies and opportunities to improve our competitiveness in a way that is calibrated to the particulars of our market, and it reflects the proactive, rather than reactive, stance we need to policy changes in other jurisdictions.

3. Enhancing the OSC's influence

TMX supports the OSC's goal of strengthening its position as a trusted and influential voice domestically and internationally. As the competitive landscape continues to evolve, it is essential to Canada that the OSC maintain and further embolden its presence and recognition as a trusted and credible authority on issues relating to the Canadian capital markets. For example, an equally important strategy to actualize the goal of fostering the competitiveness of the capital and investment markets in Canada is to proactively improve the operational and investment climate. Although Canada has a highly efficient capital market that supports start-up company financing, additional work is needed. For example, some jurisdictions, such as Sweden, have gone further in implementing policies that encourage and support the growth and efficiency of their capital markets.[14] Such policies further support capital formation, but also increase access and investment options for individuals.

We appreciate that the OSC cannot alone effect all of the changes needed to meet the challenges of global competition and propel Canadian markets to the next level, but it can continue to play an important and highly influential role. Some of the factors influencing the number of new listings include structures to encourage and support retail participation in the capital markets, tax policies encouraging investment in the capital markets, efficiently operating equity markets and a supportive entrepreneurial climate. Although the OSC mandate does not extend to all of these areas, the OSC has the ability, as a trusted and credible regulatory authority, to work with other domestic regulators and policy makers in Canada and be an influential voice. The first step in bringing about improvements to the Canadian capital markets is to prioritize a study of the Canadian capital markets to understand the frictions that currently impede their competitiveness and the types of changes that could enhance their competitiveness. This understanding should be a high priority. It would be the foundational blueprint for bringing about the increased competitiveness that would propel the Canadian capital markets to a higher tier of performance, and by leveraging the OSC's expertise and deep understanding of the

[13] In the U.S., certain issuers (such as "emerging growth issuers" and "smaller reporting companies") are required to provide audited financial statements for two fiscal years. In contrast, under applicable Canadian securities laws, non-venture issuers are generally required to provide audited financial statements for three fiscal years.

[14] See generally, "Factors influencing the number of new listings/IPOs in Sweden," available at: https://betterfinance.eu/article/factors-influencing-the-number-of-new-listings-ipos-in-sweden/.

Canadian capital markets, the OSC can help shape policies that foster growth and innovation in Canada, while ensuring that our markets remain competitive and resilient in a global context.

B. Conclusion

We believe, as does the OSC, that regulation is essential to protecting investors and maintaining the integrity of the capital markets, and that it is crucial that regulatory frameworks evolve to meet the demands of a dynamic global economy, enabling our markets to remain attractive to investors, innovators and entrepreneurs. We believe strengthening the emphasis on competitiveness in the final SoP and incorporating the recommendations above will help foster a regulatory environment that is both robust and flexible, and that rises to meet the challenges presented by Canada's global competitors, and helps our Canadian markets continue to thrive through driving capital formation, supporting innovation, and enhancing the growth of Canadian companies and markets. This will not only strengthen our position as a strong financial hub and create opportunities to ensure that we remain competitive in an ever-changing capital market, but it will also foster growth of the Canadian economy, generally.

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We appreciate the opportunity to respond to the Request for Comments. We would be pleased to discuss any of our comments on the SoP in more detail at your convenience.

Sincerely,

"Rajeeve Thakur"

Rajeeve Thakur
Vice President, Regulatory Affairs and Enterprise Compliance
TMX Group Limited