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August 26, 2025

VIA EMAIL

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

Dear Sirs/Mesdames:

Re: Proposed Amendments to OSC Rule 48-501 regarding restrictions after short-selling

TMX Group Limited ("**TMX**" or "**we**") welcomes the opportunity to comment on the proposed amendments to OSC Rule 48-501 - *Trading During Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") (and related Companion Policy) ("**Proposed Amendments**") published by the Ontario Securities Commission ("**OSC**") on June 5, 2025 ("**Request for Comment**"). TMX supports the implementation of regulations that prevent short sellers from purchasing the same securities in a financing soon after the short sale. This change would be one means to address short selling concerns perceived by the market. While supportive of this measure, we believe that the scope of the Proposed Amendments is too narrow, as the proposed restrictions are intended to apply only to distributions by Ontario reporting issuers. We urge the OSC to collaborate with other members of the Canadian Securities Administrators ("**CSA**") to ensure that similar protections are afforded to all companies listed on a Canadian exchange and their investors.

TMX

TMX is an integrated, multi-asset class exchange group. 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 and other TMX companies provide securities 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.

I. Executive Summary

TMX is supportive of the Proposed Amendments. We believe that there could be arbitrage activity (i.e. the practice of selling short a security and then shortly after, purchasing the same security in a financing) that may depress the distribution price of that security. This activity is detrimental to both the issuer and the issuer's existing shareholders. However, the Proposed Amendments' scope is too narrow because they are intended to apply only to trading in the

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securities of Ontario reporting issuers. To be effective, we believe that this investor and market protection being offered in the Proposed Amendments should be afforded to all non-ETF issuers listed on a Canadian exchange.

TMX supports the exception in the Proposed Amendments as set out in the Request for Comment's section entitled "*Scope of the Prohibition - Application to Underwriters and Market Makers*" that acknowledges that certain entities may operate separate accounts where trading decisions are made without coordination. We believe this exception is crucial as it allows entities to continue performing their essential functions without undue restriction. We urge the OSC to ensure that the wording of the exception is clear and comprehensive so that market participants are not unduly restricted from performing their regular activities.

Our analysis below discusses the Request for Comment's rationale and the scope of the Proposed Amendments, and includes commentary on potential impacts as well as technical drafting comments. We also provide responses to the specific questions raised in the Request for Comment. Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comment.

II. The Proposed Amendments

A. Rationale for the Proposed Amendments

If implemented, the Proposed Amendments would prohibit a person or company from purchasing an equity security (that is not an ETF unit) in a distribution for cash if that person or company has made a short sale in the equity security during the period that is 5 business days before the pricing of the distribution. TMX supports this change. We believe that there is arbitrage activity by entities that sell short and then soon after purchase the same security in a distribution, and that this arbitrage activity may have the effect of depressing the price of the security, thereby lowering the price at which securities are sold in the financing. Our stakeholders have raised concerns about short selling activity prior to financings, and a number of stakeholders are of the view that this activity is not uncommon. This arbitrage activity is detrimental to the issuers, and to the investors who are existing shareholders, by virtue of the depressed market price at which the new securities are issued under the distribution and the resulting increased dilution. It is important for regulators to take steps to prevent this activity that can negatively impact issuers and their shareholders. While the Proposed Amendments on their own do not address all concerns that the market perceives to be related to short selling, they represent a sound step that, along with other changes, can help address short selling concerns in the Canadian market.

B. Scope of the Proposed Amendments

The Request for Comment states that the Proposed Amendments only apply to distributions made by issuers that are reporting issuers in Ontario. This scope is too narrow to address the concerns raised in the Request for Comment. Regulatory changes that are intended to foster confidence in the capital markets should apply to all publicly listed companies in Canada. For example, a sizable number of issuers listed on TSXV are not reporting issuers in Ontario. It is inappropriate that the Proposed Amendments would fail to protect some TSXV-listed companies and their investors,

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while all other publicly listed companies in Canada, and their investors, would benefit from the Proposed Amendments.

Regulatory changes of this nature should protect all companies listed on a Canadian exchange and their investors regardless of the company's reporting issuer status and regardless of which province or territory the investor lives in. We strongly urge the OSC to work with the CSA to ensure that this rule change would apply to trading in all issuers listed on a Canadian exchange. Our position is consistent with TMX comments made to the Ontario Capital Markets Modernization Taskforce ("Taskforce") where we strongly urged the Taskforce to work collaboratively with the OSC and the CSA to implement recommendations across Canada, as Canada-wide harmonization of securities law should continue to be a regulatory and governmental priority.

In addition to working with the CSA, we would ask the OSC to consider whether it could draft the Proposed Amendments in a manner that would provide protection to all publicly traded companies in Canada. For example, the provisions in the *Securities Act* (Ontario) regarding liability for insider trading[1] include clarifying language that the term 'issuer' includes any issuer whose securities are publicly traded. This precedent shows that when regulating trading activities by persons or companies, the OSC need not limit its jurisdiction to trading in the securities of Ontario reporting issuers.

III. Industry Impact & Considerations

A. Impact to Issuers

We believe that the Proposed Amendments will have a positive impact on issuers because the Proposed Amendments should address the potential for short selling arbitrage activities to have a disproportionate dilutive impact on an issuer's financing. However, we acknowledge that the Proposed Amendments could impact the ability of certain issuers to raise capital because some purchasers may no longer participate in the financing if they are prevented from short selling in advance of the distribution. This could have an impact on the size of an issuer's offering and possibly the success of the offering. We believe the potential benefits of the Proposed Amendments are significant and more than offset any potential negative impacts.

B. Impact to Dealers

TMX supports the exception in the Proposed Amendments relating to a person or company that has separate accounts where trading decisions are made without coordination of trading or cooperation between accounts. This exception needs to be very clear so that investment dealers have sufficient comfort that their practices do not inadvertently breach the requirements. If the new requirements, including the exception in subsection 4.1.2(4) of the proposed amended OSC Rule 48-501 are not clear, then this could cast a chill on investment dealers who may choose to avoid participating in distributions if there is not enough clarity on the requirement and how to comply with the terms of the exception.

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[1] Subsection 134(7) of the *Securities Act* (Ontario) provides: "For purposes of this section, "issuer" means, (a) a reporting issuer, or (b) any other issuer whose securities are publicly traded.

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IV. General Comments

A. Scope: Application of Proposed Amendments to "a person or company"

Subsection 4.1.1 of the proposed amended OSC Rule 45-501 provides that the Proposed Amendments apply to "a person or company". We understand that this language is intentional, and, similar to the SEC's Rule 105, would capture activity by persons or companies that are outside of Ontario, and outside of Canada. TMX agrees that the Proposed Amendments should apply to any person or company, regardless of location, that is trading in-scope securities and does not fall within an enumerated exception.

B. Scope: "short sale" Definition

The Proposed Amendments introduce a defined term for "short sale" that includes, "...a sale of a security where the seller *does not have title to* the security...". The reference to "title" may be confusing and is not consistent with commonly used terminology in securities law (i.e. "beneficial owner"). We suggest that the OSC review the "short sale" definition to incorporate the concept of beneficial ownership, which would be clearer to market participants. If the OSC is concerned that "beneficial ownership" could be interpreted too broadly, it could include commentary in the Companion Policy, for example, a statement that borrowing under securities lending arrangements is not beneficial ownership for purposes of OSC Rule 48-501.

C. Scope: "short sale" Location

Subsection 4.1.1 of the proposed amended OSC Rule 48-501 prohibits a person or company from purchasing a security in a distribution if they made a "...a short sale of a security..." during the restricted period. We understand that this prohibition captures short sales on any venue. For example, a short sale that is executed on an OTC venue in the U.S. would be in scope. It would be useful to include this statement in the Companion Policy to advise that the rule is agnostic as to where the short sale may have occurred.

D. Scope: Wording of the Restriction

Subsection 4.1.1 of the proposed amended OSC Rule 48-501 is based on two key terms: (i) "equity security" (which is embedded in the new defined term "short sale restricted security"), and (ii) "distribution for cash". We note that this is broader than the current scope of OSC Rule 48-501. We suggest adding language into the Companion Policy to clarify scope and to acknowledge that the proposed Part 4.1 prohibition has a different scope than the other requirements in OSC Rule 48-501.

In addition, it is not clear how the language in subsection 4.1.1 limits the application of the prohibition to Ontario reporting issuers, as it would seem that there would be certain distributions by non-Ontario reporting issuers that could fall within subsection 4.1.1. We suggest that the OSC review the language of the Proposed Amendments to ensure that the wording in subsection 4.1.1 is aligned with the intended scope.

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E. Repricing

The new defined term "short sale restricted period" is the period commencing five business days before pricing and ending at pricing. We agree that the time of pricing is the relevant time from which to measure this restricted period. We note that, on occasion, financings are repriced. We expect that, in the event of a repricing, the OSC's intention would be to have a new, recalculated short sale restricted period to be measured from the repricing date. We suggest including language in the Companion Policy to confirm that if there is a repricing, then the repricing date is to be used when determining the short sale restricted period.

V. Responses to Questions

1. Will the Proposed Amendments address concerns with short selling making pricing and completion of offerings more difficult?

The Proposed Amendments could address the concern that short selling arbitrage activity prior to a financing depresses the market price, resulting in a lower offering price in a financing. However, they represent only one part of a broader solution to address the market's concerns related to short selling.

2. Will the Proposed Amendments have any unintended consequences, such as (i) making it more difficult for certain reporting issuers to raise capital or (ii) requiring a greater price discount on offerings?

As discussed above, the Proposed Amendments may impact an issuer's ability to find purchasers for its financings. This could result in certain issuers having more difficulty raising capital, or having to offer a greater discount or additional sweeteners (e.g. warrants) on offerings. However, we believe the benefits of the Proposed Amendments more than offset these potential challenges.

3. Is the definition of "short sale" in the Proposed Amendments adequate for achieving the purposes of the Proposed Amendments?

The intended scope of the definition seems appropriate. We believe that "beneficial ownership" is a commonly understood term that should be used in the definition instead of the phrase "title to the security". If the OSC is concerned that a person or company would argue that the terms of a stock loan arrangement equate to "ownership" then the OSC should include in the Companion Policy a statement that borrowing securities under a lending agreement is not beneficial ownership.

4. Should the Proposed Amendments apply to distributions of securities of a broader or narrower group of issuers? If so, what criteria should be used to define this population?

We believe that the Proposed Amendments should apply to trading in securities of all issuers listed on Canadian exchanges (other than ETFs). As discussed above, if the Proposed Amendments apply only to Ontario reporting issuers, then a significant number of TSXV-listed issuers would not be covered, and therefore those issuers and their shareholders would not receive the same protection as issuers listed on the other Canadian exchanges. We urge the

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OSC to amend the proposal, and/or work with the CSA, to ensure consistent regulatory protection for all issuers listed on Canadian exchanges.

5. Are the securities covered by the Proposed Amendments correctly scoped?

Yes. It is reasonable that ETFs are not in scope given their unique creation and redemption mechanisms, which are performed through an ETF's designated broker and which generally ensure that the ETF's market price remains closely aligned with its net asset value. We are also of the view that it is reasonable that purchases in the open market in an at-the-market distribution are not in scope, for the reasons articulated in the Request for Comment.

6. Is the prohibition on buying and selling short a security "of the same class" too narrow?

We believe the prohibition on buying and selling short a security "of the same class" is too narrow as currently scoped. The distribution of a placeholder security (i.e. a special warrant or subscription receipt) that converts into the underlying security at a later date should be included in the prohibition. This is different from the distribution of a debt instrument that could be converted to the underlying equity security. The Proposed Amendments should be clear that short selling a security and then purchasing its placeholder security in a distribution within the short sale restricted period is not permitted.

7. Is the exemption under section 4.1.2(b) [4.1.2(2)] of the Proposed Amendments appropriate?

Yes, this exception is appropriate. We understand that this exception ties to the prospectus exemption that enables an issuer to distribute its securities to a shareholder in accordance with the terms of a previously issued security (i.e. issuance to perform a conversion or exchange).

8. Are there other types of distributions or securities that should [be] exempted from the Proposed Amendments?

No comment.

9. The 5-day period is based on Rule 105 and is intended to ensure that, in a marketed offering, a short seller intending to participate in the offering would not have an opportunity to adversely affect the market price of the offering through short sales immediately before pricing of the offering, as any activity from before that period should no longer be reflected in the market price of the offered securities. Is this assumption correct?

We believe this assumption is correct and that the 5-day period is reasonable.

10. Should the restricted period be extended for a period of time following pricing?

No, the restricted period should not be extended beyond the time of pricing. As the intention of the Proposed Amendments is to address short selling that could affect the pricing of a distribution, this is achieved by capturing trading prior to the time of pricing.

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11. Does your answer to Question 9 [Question 10] depend on whether the issuer made a press release announcing the offering and when the press release was issued?

No. The speed of financings is extremely fast. Issuance of a press release does not impact the appropriate restricted period which is based off of the actual pricing of the financing.

12. Is the assumption that the separate account exemption will be sufficient for underwriters and market makers correct? If not, please provide specific examples of how the Proposed Amendments would adversely affect their activities.

It is important that the Proposed Amendments, including the exception in subsection 4.1.2(4), are drafted very clearly so that investment dealers that are underwriters, or that may purchase on a distribution, are clear on the activities that their various desks are permitted to perform. If there is confusion about which short selling activities are permitted, then this could cause concerns about potential non-compliance which could then impact an investment dealer's willingness to participate in a financing.

13. Are there any additional foreseeable costs if the Proposed Amendments are adopted? Can these costs be mitigated?

No comment.

VI. Conclusion

The Proposed Amendments are an appropriate measure to address short selling-related concerns and protect issuers and investors. While the Proposed Amendments alone will not address all short selling concerns perceived by the market, they may address the concern that short selling prior to a distribution may result in a lower offering price for the distribution, and thus an unnecessary increase in dilution. However, for this protection to be truly effective, its scope must extend to every non-ETF issuer listed on a Canadian stock exchange. An OSC rule that is intended to only capture distributions by Ontario reporting issuers neglects a significant number of public companies in Canada. Therefore, we strongly urge the OSC to collaborate with CSA members to ensure consistent protection to all issuers listed on Canadian exchanges and their investors, and to consider revising the Proposed Amendments to capture this broader coverage.

We appreciate the opportunity to respond to the Request for Comment.

Sincerely,

"Loui Anastasopoulos"

Loui Anastasopoulos
Chief Executive Officer, Toronto Stock Exchange and Global Head, Capital Formation