March 6, 2013

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DELIVERED BY EMAIL

Mr. John Stevenson
Secretary
Ontario Securities Commission
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Dear Mr. Stevenson:

Re: OSC Staff Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions

TMX Group Limited welcomes the opportunity to comment on behalf of both Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSX Venture**") (each, an "**Exchange**" and collectively, the "**Exchanges**") on the Staff Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions (the "**Consultation Paper**") published by the Ontario Securities Commission ("**OSC**") on December 14, 2012.

All capitalized terms have the same meanings as defined in Consultation Paper unless otherwise defined in this letter.

Overall, the Exchanges support the introduction of new capital raising prospectus exemptions to increase access to capital, together with appropriate investor protection measures. As exchange operators in Canada, we are very much interested in and committed to the long term success of Canada's capital markets in which market integrity and investor confidence play a key role. Our exchange model allows early stage companies to access public capital markets and we are therefore uniquely positioned to understand and comment on some of the proposals in the Consultation Paper.

We strongly support the harmonization of capital raising exemptions in Canada. While we acknowledge efforts to harmonise prospectus exemptions across the country following the introduction of National Instrument 45-106 – *Prospectus and Registration Exemptions* in 2005, there are opportunities to further standardize the Canadian prospectus exemption regime. The Consultation Paper sets out some interesting concept ideas for new capital raising exemptions which if adopted, should be made available across Canada to the benefit of all Canadian market participants.

We note that the proposal to introduce crowdfunding in Canada has been modelled, to a large extent, on the key provisions of the JOBS Act in the United States. The Exchanges consider crowdfunding as one of many capital raising tools that could be used by companies and agree with the proposal that it be made available to both non-reporting and reporting issuers. For many small businesses, crowdfunding will increase capital raising opportunities while being exempted from a well established continuous disclosure regime. It may be appropriate to adopt certain thresholds (e.g. number of shareholders or amount of capital raised) beyond which these issuers will be subject to securities laws and regulations applicable to reporting issuers. Investor protection measures will be crucial to ensure the success of crowdfunding. We are mindful of the challenge in striking the appropriate balance in facilitating capital formation and ensuring that investors are afforded appropriate protection.

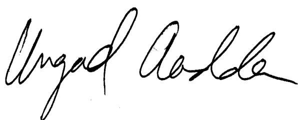
In addition to the proposals in the Consultation Paper, we have identified two additional measures that could be considered by the CSA to facilitate capital formation for listed issuers while providing adequate investor protection. We respectfully submit that the CSA should also consider: i) introducing a prospectus exemption for reporting issuers placing securities to their current shareholders on a private placement basis, as previously discussed with certain CSA members; and ii) amending National Instrument 45-101 – *Rights Offerings*, so that rights offerings may become a more efficient and effective means to access capital. Additional information about these two proposals is in Appendix A to this letter.

The OSC and the CSA have a unique opportunity to fashion a comprehensive and cohesive framework for prospectus exemptions. In our view, these exemptions must be considered on a continuum in which access to capital is proportionate to investor protection measures such as disclosure requirements and the involvement of gatekeepers such as registered dealers, auditors, securities regulators and stock exchanges. These investor protection measures come at a significant cost to reporting issuers and other market participants. In order to preserve the quality of Canadian capital markets, the appropriate balance must be struck between providing greater access to capital and adopting investor protection measures that minimize opportunities for regulatory arbitrage between reporting and non-reporting issuer status.

Attached as Schedule B to this letter are responses to certain of the specific questions set out in the Consultation Paper.

Thank you for the opportunity to comment on the Consultation Paper and potential new capital raising prospectus exemptions. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,



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APPENDIX A – ADDITIONAL MEASURES TO FACILITATE CAPITAL FORMATION

1. "Existing Shareholder Exemption" for Listed Issuers

In order to increase access to capital for listed issuers, we request that the CSA consider a new prospectus exemption whereby listed issuers will be able to place securities to their existing security holders on a private placement basis (the "**Existing Shareholder Exemption**"). This exemption would increase the number of eligible participants for listed issuers undertaking a private placement. We envision that the Existing Shareholder Exemption would be available in addition to the existing prospectus exemptions under NI 45-106 such as the minimum amount and accredited investor exemptions. Given the proposed annual subscription limit of $10,000 per shareholder per issuer, a listed issuer would most likely issue only a small proportion of a private placement under the Existing Shareholder Exemption and would continue to rely on other exemptions to complete a private placement.

Principal Terms	**Notes**
Issuer eligibility	Issuers listed on a recognised stock exchange. Issuers listed on a recognised stock exchange are reporting issuers with a fulsome disclosure record. We believe that given this disclosure record is sufficient to support an initial investment decision on the secondary market, it can also be relied upon by existing security holders to buy additional securities from a listed issuer on a private placement basis. In order to use this exemption, listed issuers will have to be in good standing under the securities laws and regulations.
Securities issuable	Under this exemption, the listed issuer can distribute: i) securities of the class that are already listed on a recognised exchange; ii) securities that are convertible into securities that are listed on a recognised exchange; iii) preferred shares (convertible or non-convertible); and iv) non-convertible debt securities.

Principal Terms	Notes
Shareholder eligibility	Current security holders having held securities of the listed issuer for a minimum period of 60 days prior to the execution of the subscription. All eligible shareholders should be able to participate. The subscription agreement will have a certificate for shareholders to confirm that they own securities of the listed issuer and have owned such securities for at least 60 days. The listed issuer must disseminate a press release as a means of informing eligible shareholders. We expect brokers will contact their eligible clients and interested eligible shareholders will contact the listed issuer to obtain the subscription agreement.
Limit on dilution	Dilution will be limited as per applicable exchange rules. TSX Venture: No limit contemplated, as per TSX Venture private placement rules. A 25% dilution limit for listed issuers relying on the Existing Shareholder Exemption could be considered as securities regulation imposes a prospectus requirement for rights offerings where the dilution exceeds 25%. TSX: Private placement rules would apply in regard to dilution (25% when securities are issued at a discount to market price) and insider participation (generally capped at 10%), as provided in Section 607 (g) of the TSX Company Manual.
Subscription limit	An eligible shareholder would be allowed to subscribe for a maximum of $10,000 per twelve-month period per issuer.
Structure of financing	This Existing Shareholder Exemption would be available in addition to other prospectus exemptions. Therefore, listed issuers could approach different subscribers and rely on different exemptions to complete a private placement, as is currently the case.
Subscription period	Private placements would be open for the maximum period prescribed by exchange policies (45 or 60 days for TSX / TSX Venture).
Pricing	Subject to applicable exchange rules and policies in regard to market price and private placement discounts. Listed issuers will be able to apply for price protection (45 days for TSX Venture and TSX).

Principal Terms	**Notes**
Hold period	Four months as per National Instrument 45-106.
Disclosure	As in the case of private placements with accredited investors, no disclosure document (e.g. a prospectus, offering memorandum, etc.) would be required from the issuer. Shareholders will rely on the continuous disclosure record of the listed issuer. The subscription agreement could include a certificate from the listed issuer confirming that continuous disclosure is complete and up-to-date. Listed issuers will disclose the principal terms of the financing (number of securities offered, price, use of proceeds, principal terms of the securities, etc.) in the press release that is issued to announce the financing. The press release will state that shareholders are eligible to participate under the Existing Shareholder Exemption and provide information about how subscriptions can be made. A further press release will be issued once the private placement has closed, disclosing the amount of proceeds raised and how much of the proceeds were raised from shareholders in reliance on the Existing Shareholder Exemption. The disclosure could also be made as part of the issuer's financial disclosure.

The Existing Shareholder Exemption would allow listed issuers to broaden the pool of available investors when completing a private placement. Existing security holders will have the ability to increase their investments in a listed issuer on a cost efficient basis by buying securities at a discount to market price (and in some cases with a "sweetener" such as a warrant) without incurring brokerage fees.

2. Amendments to National Instrument 45-101 – *Rights Offerings*.

We would request that the CSA consider amendments to National Instrument 45-101 – *Rights Offerings* ("NI 45-101") so that rights offerings may become a more viable and effective means for listed issuers to access capital. We believe that rights offerings present many advantages to both listed issuers and their security holders for the following reasons:

1. there is no need for a listed issuer to seek out new investors;
2. a rights offering is inherently fair as it affords all existing security holders the opportunity to maintain their pro rata position in the listed issuer;
3. investors exercising the rights obtain free-trading securities; and
4. when an issuer is listed on an Exchange, the rights are listed, allowing security holders who do not wish to participate the opportunity to sell the rights and enable other investors to participate.

Notwithstanding these advantages, in our opinion, rights offerings remain an underutilized means of capital raising by listed issuers. Over the past five years, there has been an average of only 9.6 rights offerings per year on TSX and an average of only 4.2 rights offerings per year on TSX Venture, compared to approximately 2,600 financing transactions completed by issuers listed on the Exchanges in 2012. These rights offerings have allowed listed issuers to raise a modest 1.9% of the total capital raised on the Exchanges by listed issuers over this same period of time.

In seeking to identify opportunities to improve the current rights offering regime, we consulted extensively with the Exchanges' respective Listings Advisory Committees which are comprised of individuals who have current, relevant experience and expertise pertaining to Canadian capital markets and Exchange related matters.

<u>Issues Identified</u>

We have identified the following key issues which need to be addressed in order to improve the current rights offering regime:

1. <u>Timing</u>: Rights offerings take too long to complete. A rights offering can take up to 60 days to complete for the following reasons:
    a. Rights offerings require the preparation of a disclosure document (either a circular or a prospectus);
    b. the disclosure document must be filed with, and approved by, the CSA;
    c. at least seven trading days must elapse between receipt of a decision document from the reviewing authority and the record date ;
    d. the disclosure document must be mailed to the issuer's security holders; and

   e. NI 45-101 requires that the rights must be exercisable for at least 21 calendar days after the date on which the disclosure document is sent to security holders (the "Exercise Period").

2. Lack of Certainty: Unless the listed issuer secures the participation of a stand-by guarantor, by nature, rights offerings do not have a guaranteed outcome. This is further compounded by the significant length of time required to complete a rights offering, as outlined above. As a result, in market conditions that are increasingly volatile, there is a significant amount of uncertainty as to whether the listed issuer will actually be able to raise the funds under a rights offering. Some issuers have even raised concerns that the proceeds may, in some instances, be insufficient to cover the costs of the rights offering.

3. Cost: The cost of capital in a rights offering is expensive for the following reasons:

   a. there are significant costs associated with the preparation of the required disclosure document;

   b. the exercise price of the rights must be set at a discount to market price to entice security holders to exercise the rights, hence resulting in potentially more economic dilution that other types of financings; and

   c. due to the uncertainty as to whether a rights offering will actually be successful, listed issuers must often engage a stand-by guarantor resulting in additional cost.

4. Optics: Rights offerings are often viewed by market participants as a "distress financing" or a "financing of last resort" due to the issues identified above.

Proposed Policy Changes

The Exchanges and the CSA should both consider amendments to their respective policies, and specifically NI 45-101, to address the concerns outlined above, with a view to improving the effectiveness of rights offering as a viable financing tool for listed issuers. In this regard, we submit that reducing the standard timetable and associated costs of completing a rights offering are key to increasing the viability of rights offerings as a useful way for listed issuers to access capital.

Changes to Exchanges' Policies

The Exchanges are considering how their policies could be amended to reduce the timetable for completing a rights offering. We have identified the following possible changes:

1. Reduce delays to set the record date. Currently, all requisite documentation must be filed with the relevant Exchange at least seven trading days prior to the record date. This seven-day period is designed to enable the Exchange to properly set the record

date and list the rights two trading days prior to the record date. The Exchange will also issue a bulletin in respect of the rights offering that provides market participants with adequate notice of the rights offering and the key terms related to it. Based on our review, we believe that the Exchanges can reduce this seven-day period to five days, without compromising the objective of providing adequate notice to market participants.

2. Use "due bills" to further reduce delays. The recent introduction of "due bill" trading in Canada, which can be used to accommodate conditional record dates, may provide an opportunity to reduce the period between the time a listed issuer files a final prospectus with the reviewing authority and the commencement of the exercise period. Under current Exchange policy, a listed issuer must file a final prospectus with the Exchange seven trading days prior to the proposed record date. If the Exchanges were to allow the setting of a conditional record date on the basis of a preliminary prospectus, then the record date could be set in advance of the filing of the final prospectus. "Due bill" trading would be used until the rights offering is no longer conditional, that is, until after the filing of the final prospectus. Currently, the time period between an issuer filing the disclosure document and the expiration of the Exercise Period is a minimum of 31 calendar days (seven trading days to set the record date + 21 calendar day exercise period). The use of "due bill" trading could reduce the period to 23 calendar days (two days to print and mail the offering document + 21 calendar day exercise period).

Changes to NI-45-101

We have identified the following amendments to NI 45-101 that we submit could be considered by the CSA with a view to reducing the timetable and costs associated with rights offerings:

1. Reduced CSA review period of the disclosure document. NI 45-101 provides that a reviewing authority has 10 days to provide the issuer with written notice as to whether it objects to the rights offering circular. The CSA could consider shortening this 10-day period to three business days, in line with that of a short form prospectus. The Exchanges do not believe that the differences between the disclosure contained in a rights offering circular and a short form prospectus are commensurate with this difference in the review period.

2. Allow the use of rights offering circular, notwithstanding dilution. Under NI 45-101, in order for a rights offering to be exempt from the requirement to prepare a prospectus, one condition is that there must not be an increase of more than 25% in the number of outstanding securities of the issuer of the class to be issued upon the exercise of the rights under the offering, assuming the exercise of all rights under the offering. The CSA could consider removing this requirement so that more issuers may use a rights offering circular. We submit that the disclosure contained in the rights offering circular is adequate and that prospectus level disclosure is not necessary where securities are

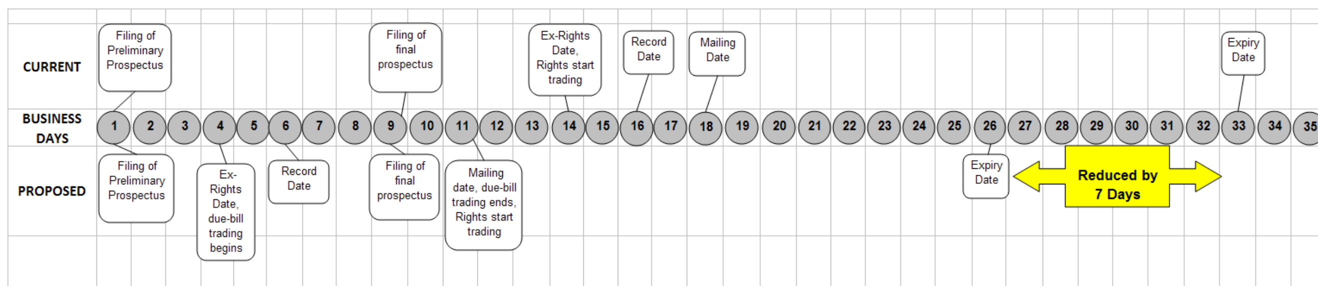
being distributed to existing security holders who are already familiar with the listed issuer and where the listed issuer's continuous disclosure record is easily accessible on SEDAR. Permitting listed issuers to rely on a rights offering circular has the benefit of reducing the time required to prepare the disclosure document, thereby also reducing the associated costs.

3. <u>Reduce the Exercise Period.</u> Under NI 45-101, rights must be exercisable for at least 21 days after the date the disclosure document is sent to security holders. This period is designed to ensure that recipients of the rights have adequate time to read the disclosure document and make an informed decision as to whether to exercise the rights. The CSA could consider reducing the 21-day period to ten business days in view of the fact that recipients of the rights are existing security holders who are already familiar with the listed issuer and, as a result, do not require 21 days to make an informed investment decision. Secondary market purchasers of rights are not prejudiced by a shortened exercise period as their investment decision is made at the time they purchase the rights and is not based on receipt of a disclosure document. These purchasers will instead rely on publicly available disclosure.

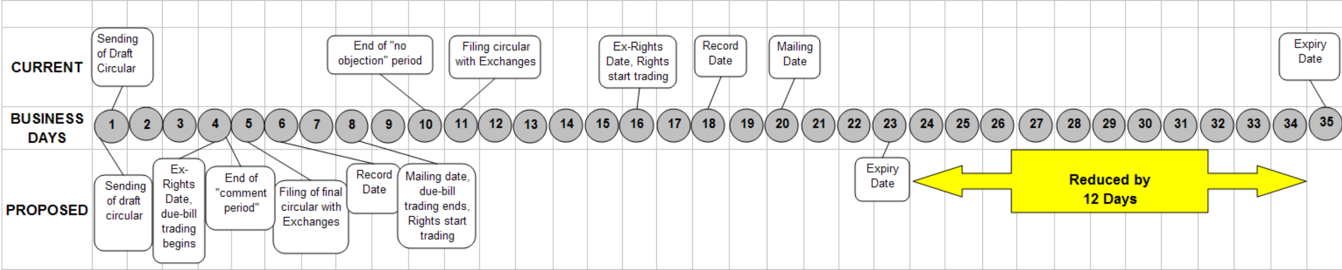
4. <u>Allow for electronic delivery of documents.</u> NI 45-101 requires physical delivery, by mail, of the disclosure document to security holders. Printing and mailing of a disclosure document involves a significant amount of time and cost. The requirement to physically deliver documents in the context of a rights offering was developed at a time when electronic communications were not prevalent. In 2013, electronic communication is ubiquitous and should be utilized to expedite communication between listed issuers and their security holders. Therefore, the CSA could consider permitting listed issuers to use electronic mail as an alternative form of acceptable delivery of such documents. In addition, the disclosure document could be posted on SEDAR and the listed issuer could issue a news release to provide notice of the proposed rights offering. This would be in line with other recent changes by the CSA to permit electronic communications.

Together, these proposed measures could significantly reduced the time required to complete a rights offering in Canada, as illustrated in the charts below:

<u>Timetable – Rights offering by prospectus</u>



Timetable – Rights offering by circular



Conclusion

We submit that the above-noted changes to the rights offering system would make rights offerings a more viable means for listed issuers to access capital. Reducing the time and cost required to complete a rights offering will significantly increase deal certainty. An anticipated increase in the number of rights offerings will, over time, remove the perception that rights offerings are a financing of last resort.

Rights offerings are inherently fair to security holders and should therefore be supported by regulatory authorities. As exchanges, we are committed to amending our policies in order to increase the attractiveness of rights offerings. However, a comprehensive solution can only be achieved together with the CSA.

APPENDIX B
RESPONSES TO CERTAIN CONSULTATION PAPER QUESTIONS

Prospectus exemptions based on relationships with the issuer

- Should the OSC consider adopting a family exemption that allows for securities to be issued to an unlimited number of family members of the directors, executive officers or control persons of the issuer or its affiliates? Please explain.

  The OSC should adopt the exemption set out in Section 2.5 of NI 45-106 currently available in all other Canadian jurisdictions. We support harmonization of the prospectus exemptions across the country. We are also unaware of any negative issues that have arisen in jurisdictions where this exemption is available and therefore believe any reservations Ontario had regarding this exemption can be alleviated.

- Are there other changes that should be made to the current Ontario exemptions referred to above?

  The CSA should consider adopting an "existing shareholder exemption" for listed issuers as well as certain amendments to National Instrument 45-101 – Rights Offerings *as detailed in Appendix A of this letter.*

Crowdfunding

- Would a crowdfunding exemption be useful for issuers, particularly SMEs, in raising capital?

  We believe that crowdfunding can be a useful additional tool for issuers and, in particular, for SMEs. We also consider that it is important to stay abreast of international developments and note the United States is proposing to introduce crowdfunding as a result of the adoption of the JOBS Act. We are pleased the OSC is proposing to allow both reporting and non-reporting issuers to use this exemption. We consider crowdfunding as an additional tool within a broader financing and investment ecosystem that include many alternatives, including accessing capital through an exchange listing.

- Have we recognized the potential benefits of this exemption for investors?

  While the Consultation Paper has clearly identified the benefits for issuers (broader access to capital), the benefits for investors are not as clearly articulated or easily identifiable. We understand that investors will potentially have access to a greater number of investment opportunities. Where such investments are made in non-reporting unlisted issuers, these investments will be highly illiquid and will likely remain illiquid in the absence of an exchange listing. If investors cannot monetize their investment due to illiquidity, the benefits of the investment are potentially limited.

- Can investor protection concerns associated with crowdfunding be addressed and, if so, how?

  Since there are no proposed limitations in terms of the level of financial means or sophistication of individuals who may purchase securities under this exemption, some concerns can be addressed by limiting the size of the investment and of the offering, in addition to providing adequate information to support an investment decision.

  However, not all concerns may be addressed and there will remain some significant residual risks of fraud and illiquidity. Potential investors should be made aware, and perhaps even acknowledge, these residual risks. In essence, investors must understand and recognise that there is a risk that the totality of their investment will be lost. The proposed risk acknowledgement from the purchaser is helpful in that regard.

- What measures, if any, would be the most effective at reducing the risk of potential abuse and fraud?

  Issuers may not raise a sufficient amount of cash to further their business plans, which increases the potential risk of an investment being lost. We suggest that issuers using this exemption be required to provide a detailed use of proceeds and a clear business plan together with a minimum raise condition tied to the business plan. If the issuer fails to raise the minimum disclosed, the financing should not be allowed to close and proceeds should be returned to investors.

  The introduction of additional limits for non-reporting issuers should be considered with a view to reducing the risk of potential fraud. For example, limiting the number of shareholders in non-reporting issuers using the crowdfunding exemption or capping the overall aggregate amount of money that can be raised though this exemption, in addition to the proposed annual limit of money that can be raised.

  We also submit that the registration requirements for the portal are particularly important to help prevent fraud given that the internet may be used to reach a mass audience at minimal cost. Registration will be helpful to investors in order to establish the legitimacy of investment opportunities and will also allow securities regulators to establish their jurisdiction over funding portals. We believe that registration requirements for funding portals are essential to establish accountability in light of minimal regulatory oversight and third party involvement.

- Are there concerns with retail investors making investments that are illiquid with very limited options for monetizing their investments?

  This is probably the most significant and tangible risk a purchaser will bear in investing in an unlisted non-reporting issuer. The proposed investment size limits partially addresses this concern. Ultimately, the investors will have to understand and acknowledge the illiquid nature of the investment.

- Are there concerns with SMEs that are not reporting issuers having a large number of security holders?

  In keeping with our view that access to capital and issuer reporting and on-going obligations should be viewed on a continuum, we believe that there may well be a tipping point where a non-reporting issuer should be considered as a reporting issuer under applicable securities laws and regulations. In particular, non-reporting issuers with a large number of shareholders or raising a significant amount of cash should have a greater level of accountability to their shareholders, in a manner that is similar to publicly listed reporting issuers. We believe this can be an important investor protection measure.

  We note that a company raising the annual maximum of $1.5 million under the crowdfunding exemption would have 600 shareholders (assuming that all investors would invest the maximum permitted of $2,500). A company using this exemption on a recurring basis could end up with thousands of shareholders. To put this in context, TSX Venture Tier 2 / Tier 1 and TSX original listing distribution requirements are, respectively, 200, 250 and 300 board lot holders.

  Allowing non-reporting issuers to have potentially thousands of shareholders may also hinder or delay liquidity by impeding an exchange listing as a result of: i) significant additional costs with complying with continuous disclosure obligations; or ii) a capital or share ownership structure deemed unattractive to support a going-public event. Finally, this may also negatively impact the likelihood of a liquidity event such as the sale of the company to a competitor or a strategic investor.

<u>Issuer restrictions</u>

- Should there be a limit on the amount of capital that can be raised under this exemption? If so, what should the limit be?

  There should be a limit on the amount of capital raised under this exemption. The proposed limit of $1.5 million seems appropriate.

  We submit that listed issuers should be exempted from these annual limits and caps given they are subject to exchange and securities regulation and oversight, continuous and timely disclosure requirements, in addition to having an organised market to trade the securities, alleviating investor protection concerns.

- Should issuers be required to spend the proceeds raised in Canada?

  We do not think it would be appropriate to adopt such a requirement, which would, in any case, be difficult to monitor and enforce. In addition, this could unjustly penalise issuers in the natural resource sector with properties in foreign jurisdictions. In our experience, issuers in the mining and oil & gas sectors are very active in jurisdictions outside of Canada. We also note that there are no requirements in regard to how and where proceeds raised under

other prospectus exemptions should be spent. It is therefore unclear to us why such a distinction would be suggested under the crowdfunding exemption.

<u>Investor protection measures</u>

- Should there be limits on the amount that an investor can invest under this exemption? If so, what should the limits be?

  The proposed $2,500 per investment / $10,000 per year limits appear reasonable, especially for non-reporting issuers and in light of concerns for illiquidity of investments.

  As noted above, we believe listed issuers should be exempt from these limits given the reduced investor protection concerns as a result of enhanced regulatory and exchange oversight.

- What information should be provided to investors at the time of sale as a condition of this exemption? Should that information be certified and by whom?

  We believe there is an opportunity to harmonise the information required to be provided under an offering memorandum and what is proposed to be provided in the information document under the crowdfunding exemption. Under both exemptions, retail shareholders are allowed to participate in a distribution of securities with (the Alberta model) or without (the BC model) restrictions on investor participation.

  The proposed disclosure requirements for "financing facts", "issuer facts" and "registrant facts" appear reasonable, subject to the following comments:

    - *For efficiency, reporting issuers with audited financial statements available on SEDAR should be allowed to incorporate by reference such financial statements in the information statement, rather than have to directly include them.*
    - *For non-reporting issuers in the mining or oil & gas sectors, consider mandating some technical disclosure as well as some involvement of qualified technical person, as is the case for reporting issuers.*

  Finally, in support of investor protection and reducing opportunities for fraud and abuse, we agree that the issuer should be responsible for the disclosure and should certify it.

- Should issuers that rely on this exemption be required to provide ongoing disclosure to investors? If so, what form should this disclosure take?

  Non-reporting issuers using this exemption should provide ongoing disclosure to their investors. In our view, at a minimum the following should be provided:

    - *Audited annual financial statements.*
    - *Updated "issuer facts" on an annual basis.*
    - *Timely disclosure by news release of material information regarding the company's business plan and changes to management and the board.*

For non-reporting issuers, additional guidance should be provided as to how information will be made accessible to shareholders (i.e., the funding portal, issuer's website, mail, e-mail, etc.). This information should be readily accessible, without cost, to shareholders.

- Should the issuer be required to provide audited financial statements to investors at the time of the sale or on an ongoing basis? Is the proposed threshold of $500,000 for requiring audited financial statements (in the case of a non-reporting issuer) appropriate?

  Not all issuers should be required to provide audited annual financial statements. We understand that the requirement to audit financial statements may increase non-reporting issuers' costs in using this exemption. In order to set the appropriate thresholds or circumstances triggering the requirement to provide audited financial statements, we believe that a detailed cost / benefit analysis may be warranted.

- Should rights and protections, such as anti-dilution protection, tag-along rights and pre-emptive rights, be provided to shareholders?

  Tag-along rights are important to ensure that minority shareholders are treated fairly if a change of control event occurs and to increase the likelihood of a liquidity event for investors.

  Anti-dilution protection may be appropriate in certain circumstances to grant "basic" anti-dilution rights for corporate actions such as splits and consolidations. Providing anti-dilution rights based on the price of future financings is not appropriate.

  Pre-emptive rights may be impracticable as the exercise of these rights may be limited given individual limits on investment being set as investor protection measures.

<u>Funding portals and other registrants</u>

- Should we allow investments through a funding portal (similar to the funding portals contemplated by the crowdfunding exemption in the JOBS Act)? If so:
  - What obligations should a funding portal have?

    The funding portal should ensure compliance with provisions regulating crowdfunding such as: ensuring proper documentation and certificates are provided, the information provided at the time of the distribution is complete, providing a place for documentation to be posted (including on-going disclosure documents), and reporting issuers that contravene the regulatory requirements.

    The role of the funding portal should be more detailed. For example, there is no discussion of whether there is any on-going relationship, post financing, between the portal and the issuer.

  - Should funding portals be exempt from certain registration requirements? If so, what requirements should they be exempted from?

No. Registration of the portal is a key way of reducing opportunities for fraud and abuse. Registration will be essential for investors to establish the legitimacy of investment opportunities and will also allow securities regulators to establish their jurisdiction over funding portals. We believe that registration requirements for funding portals are essential to establish accountability in light of minimal regulatory oversight and third party involvement.

Offering Memorandum Exemption

- Should an OM exemption be adopted in Ontario? If so, why?

  Yes. This exemption should be available in all CSA jurisdictions. As noted above, we support harmonization of the prospectus exemptions across the country. We are also unaware of any negative issues that have arisen in jurisdictions that have the OM exemption available and therefore believe any reservations Ontario had regarding this exemption have been alleviated.

  The CSA should also consider harmonising BC and Alberta OM exemption models, and take into account investor protection features and limits being proposed under the crowdfunding exemption.

- Should there be any monetary limits on this exemption? If so, should those limits be in addition to any limits imposed under any crowdfunding exemption?

  The CSA should consider harmonising the BC and Alberta OM exemption models by taking into account investor protection features and limits being proposed under the crowdfunding exemption.

- Should there be mandatory disclosure required in an OM? If so, what level of disclosure should be required?

  There should be a mandatory form of disclosure. Consider harmonising with disclosure to be provided under the crowdfunding exemption.