July 12, 2013

DELIVERED BY EMAIL

Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
E-mail: consultation-en-cours@lautorite.qc.ca

Mr. John Stevenson, Secretary
Ontario Securities Commission
E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments to Multilateral Instrument 62-104 – *Take-Over Bids and Issuer Bids*, National Policy 62-203 – *Take-Over Bids and Issuer Bids* and National Instrument 62-103 – *Early Warning System and Related Take-Over Bid and Insider Reporting Issues*

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 CSA Notice and Request for Comment – Proposed Amendments to Multilateral Instrument 62-104 – *Take-Over Bids and Issuer Bids*, National Policy 62-203 – *Take-Over Bids and Issuer Bids* and National Instrument 62-103 – *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (the "**Request for Comment**") published by the Canadian Securities Administrators ("**CSA**") on March 13, 2013.

All capitalized terms have the same meanings as defined in the Request for Comment unless otherwise defined in this letter.

As exchange operators in Canada, we are very interested in and committed to the long term success of Canada's capital markets in which investor confidence, meaningful disclosure and transparency play a key role. We believe, however, that any new rules or regulations must find the proper balance between enhancing market integrity, protecting the public interest and encouraging beneficial market activity (in terms of both primary and secondary market transactions).

The Exchanges are supportive of disclosure of 5% security holdings for TSX listed companies. However, as noted below, the benefits associated with the lower reporting threshold must be considered in light of the additional burden and potential impact on the Canadian public

market, particularly where the absolute amount of an investment may be relatively small, as is frequently the case with TSX Venture listed issuers.

As at May 31, 2013, we note that the median market capitalization of listed issuers on TSX and TSX Venture was $103.7 million and $2.8 million, respectively. 1,894 out of the 2,217 listed issuers on TSX Venture (85%) at this time had a market cap of less than $20 million. Accordingly, a 5% investment in the median TSX and TSX Venture listed issuer would be $5.2 million and $140,000, respectively. For 85% of TSX Venture listed issuers, a 5% investment would be less than $1 million. Comparatively, the median market cap of listed issuers on the New York Stock Exchange, NASDAQ and Australian Stock Exchange was $1.7 billion, $280.6 million and $19.8 million[1], respectively. Therefore, while the median market capitalization of TSX listed issuers is in line with that of these other exchanges, the median market capitalization of TSX Venture companies falls significantly below them.

Given the significant differences in market capitalization of listed issuers on TSX and TSX Venture and the recognition by the Canadian securities regulatory regime that certain distinctions between venture and non-venture issuers warrant different considerations, we support implementing the proposed 5% threshold for TSX listed issuers while maintaining the existing 10% threshold for TSX Venture listed issuers.

For TSX, a 5% early warning reporting threshold will bring senior issuers in Canada in line with the global reporting standards of other countries such as the United States and Australia. Based on the comparative market capitalization size of TSX listed issuers, we believe that the Proposed Amendments are appropriate for TSX listed reporting issuers in Canada.

Based on feedback we received from global market participants, we support increased transparency and visibility into security holders of 5% or greater and believe that it is material and desirable information in the context of TSX listed companies. We also believe that the 5% threshold is a meaningful percentage for companies listed on TSX, which is supported by shareholder requisition rights under Canadian corporate law, among other things.

For TSX Venture, as further described under question 13 in Appendix A to this letter, we believe that the impact of the Proposed Amendments should be considered separately. The Exchanges support maintaining the existing early warning disclosure threshold for venture issuers at 10%.

There are different characteristics and considerations that are applicable to venture issuers as compared with companies listed on the senior exchange. Correspondingly, there are differences in the scope and nature of the impact that reducing the early warning reporting threshold to 5% could have on the venture market in terms of trading, liquidity and financing. As outlined above, TSX Venture represents a unique market where issuer market capitalizations are generally very small compared to the TSX and other exchanges. Accordingly, investors in the venture market can more easily accumulate a 5% or greater security interest than investors on

[1] Source: Capital IQ on July 4, 2013

other markets can. If the early warning reporting threshold were to be reduced to 5% for venture issuers, we believe there is a risk that these increased reporting obligations may cause investors to reduce their investment activity on the venture market to avoid reporting obligations, or to simply avoid the costs and administrative burdens associated with investments of such a potentially small absolute size. This threshold is not therefore as meaningful or material for TSX Venture as it is for other issuers and exchanges and reducing the early warning reporting threshold to 5% for venture issues could therefore potentially have a materially negative impact on the Canadian public venture market without sufficient corresponding benefits. Please see our response under question 13 of Appendix A to this letter for further details in support of maintaining the existing 10% threshold for venture issuers.

The Exchanges do however support the Proposed Amendments, other than the 5% early warning reporting threshold, being applicable to both TSX and TSX Venture listed issuers.

Consolidation of Reporting

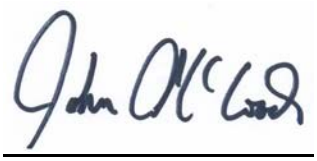
To increase transparency for issuers and security holders, the Exchanges suggest the CSA consider initiatives that would consolidate security holding reports in one place for ease of reference and understanding, such as linking early warning reports with SEDI reports.

Attached as Appendix A to this letter are our responses to certain of the specific questions set out in the Request for Comment.

Thank you for the opportunity to comment. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

Ungad Chadda
Senior Vice President
Toronto Stock Exchange



John McCoach
President
TSX Venture Exchange

APPENDIX A
RESPONSES TO CERTAIN QUESTIONS IN REQUEST FOR COMMENT

1. *Do you agree with our proposal to maintain the requirement for further reporting at 2% or should we require further reporting at 1%. Please explain why or why not.*

We are supportive of maintaining the 2% further reporting threshold as well as applying the disclosure requirement to both increases and decreases in security holdings. We are concerned that the potential additional transparency that would result from reducing the reporting threshold from 2% to 1% would not be materially significant or beneficial to the market, particularly in light of the increase in reporting and regulatory compliance costs that would result. The incremental costs to market participants associated with reducing the further reporting threshold from 2% to 1% would appear to outweigh the incremental benefit of the additional transparency.

2. *A person cannot acquire further securities for a period beginning at the date of acquisition until one business day after the filing of the report. This trading moratorium is not applicable to acquisitions that result in the person acquiring beneficial ownership of, or control or direction over, 20% or more of the voting or equity securities on the basis that the take-over bid provisions are applicable at the 20% level. The proposed decrease to the early warning reporting threshold would result in the moratorium applying at the 5% ownership threshold. We believe that the purpose of the moratorium is still valid at the 5% level because the market should be alerted of the acquisition before the acquiror is permitted to make additional purchases.*

(a) Do you agree with our proposal to apply the moratorium provisions at the 5% level or do you believe that the moratorium should not be applicable between 5% and 10% ownership levels? Please explain your views.

We believe that the moratorium threshold should be the same as the disclosure threshold, as one operates as a function of the other (i.e.: the disclosure of a significant share position necessitates a brief moratorium on the party acquiring additional securities such that there is a reasonable assurance that the market has been made aware of the significant share position). As such, if there is a valid reason to reduce the disclosure threshold to 5%, there should correspondingly be a valid reason to also reduce the trading moratorium threshold to 5%.

(b) The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.

We understand that the proposed amendments include requiring that "equity equivalent derivatives" be included in a security holder's early warning calculations. If this amendment is enacted, we feel that for the sake of consistency within the early warning regime, "equity equivalent derivatives" should be treated the same as conventional equity holdings for all purposes and therefore also be subject to the

trading moratorium. Please also refer to our answer to question 7 below with respect to the definition of "equity equivalent derivatives."

4. *The Proposed Amendments would apply to all acquirors including EIIs.*

(a) Should the proposed early warning threshold of 5% apply to EIIs reporting under the AMR system provided in Part 4 of NI 62-103? Please explain why or why not.

The early warning threshold should be the same regardless of whether the acquirer is an EII. There does not appear to be a compelling reason to support a different disclosure threshold for an EII as compared to other market participants. However, we are supportive of the current AMR regime continuing to be available to qualified EIIs.

(b) Please describe any significant burden for these investors or potential benefits to our capital markets if we require EIIs to report at the 5% level.

We believe there are benefits to the capital markets from consistency and transparency in reporting.

5. *Mutual funds that are reporting issuers are not EIIs as defined in NI 62-103 and are therefore subject to the general early warning requirements in MI 62-104. Are there any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% or does the burden of reporting at 5% outweigh the potential benefits. Please explain why or why not.*

We are supportive of all entities, including mutual funds, being subject to the same early warning disclosure threshold for the sake of consistency and transparency.

6. *As explained above, we propose to amend the calculation of the threshold for filing early warning reports so that an investor would need to include within the early warning calculation certain equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. These provisions would only capture derivatives that substantially replicate the economic consequences of ownership and would not capture partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). Do you agree with this approach? If not, how should we deal with partial-exposure instruments?*

We agree with this approach.

7. *We propose changes to NP 62-203 in relation to the definition of equity equivalent derivative to explain when we would consider a derivative to substantially replicate the economic consequences of ownership of the reference securities. Do you agree with the approach we propose?*

We agree with the proposed approach in principle. However, we feel that it is important for the definition of "equity equivalent derivatives" that the CSA proposes to add to MI 62-104 to be considered further. Due to the complexity and importance of defining equity equivalent derivatives, we urge the CSA to instead compile a comprehensive list of equity equivalent derivatives by way of regulation and to submit the draft regulation for comment by stakeholders.

8. *Do you agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving securities of the reporting issuer? Are these appropriate circumstances to disqualify an EII? Please explain, or if you disagree, please suggest alternative circumstances.*

We agree with this approach. These circumstances are appropriate as they are consistent with the intent of the policy. An issuer should have notice of proposed solicitations on these important matters to allow the issuer's board to respond in a timely way or, if possible, resolve issues without a costly battle.

13. *Do you agree with our proposal to apply the Proposed Amendments to all reporting issuers including venture issuers? Please explain why or why not. Do you think that only some and not all Proposed Amendments should apply to venture issuers? If so, which ones and why?*

We do not agree with the proposal to change the early warning reporting threshold to 5% for venture issuers. Reducing the early warning reporting threshold for venture issuers would potentially have a materially negative impact on the public venture capital market in Canada while not addressing any identified material market integrity or public interest concerns.

With a view to developing a better understanding of the potential impact that reducing the early warning reporting threshold would have on venture issuers, TSX Venture discussed the CSA proposal with the members of its four regional advisory committees in June 2013. Each of the four advisory committees is comprised of 15 to 20 individuals who have current relevant experience and expertise pertaining to both TSX Venture-listed issuers and the public venture capital market. The members of the committee include a cross-section of corporate executives, investment bankers, merchant bankers, legal counsel and auditors. The committees have a mandate to provide advice and recommendations to TSX Venture on all policy, operational and strategic issues that are likely to have a significant impact on the public venture capital market and the role of TSX Venture in relation thereto.

Upon presenting the CSA proposal to the advisory committees and discussing the matter, there was unanimous support from the committees for our position that the early warning reporting threshold for venture issuers should remain at 10%.

The public equity market in Canada is unique in terms of the level at which it has embraced and supported the concept of early stage or venture issuers accessing capital through the public equity market. It is a systemic feature of the public equity market in Canada that has been created and supported by:

(a) existing Canadian securities laws, through tailoring regulation such that it differentiates between "venture" and "non-venture" issuers;

(b) stock exchanges such as TSX Venture which: (i) target and facilitate the listing of issuers in the earliest stages of development and capital raising cycles; and (ii) institute policies tailored to the characteristics, considerations and risks associated with early stage issuers; and

(c) the investing community.

The result is that Canada has created a securities regulatory framework that specifically recognizes and addresses the different characteristics, considerations and risks associated with venture issuers as compared to senior issuers and has, as a result, become a leader in facilitating access to the public equity market by venture issuers.

We therefore believe that the 10% early warning reporting threshold is appropriate for venture issuers, even if the early warning reporting threshold is reduced to 5% for non-venture issuers.

We note that, as of May 31, 2013:

- 2,217 issuers are listed on TSX Venture which represents more than 50% of the issuers listed on all Canadian stock exchanges.

- Of the 2,217 TSX Venture-listed issuers, approximately 1,900 had a market capitalization of less than $10 million with the median market capitalization of all TSX Venture-listed issuers being $2.8 million.

- The median market capitalization for all TSX-listed issuers is $103.7 million.

These figures provide an indication of the scope of the potential impact that reducing the early warning reporting threshold from 10% to 5% would have on the venture market as compared to the senior market. For example, the acquisition of a 5% position in a venture issuer (in particular when, for the purposes of the early warning reporting threshold, convertible securities such as share purchase warrants are factored into the calculation) does not require a substantial dollar investment and is therefore easier and more likely to occur as compared to a non-venture issuer. Given the relative likelihood of acquiring a 5% position in a venture issuer, the overall impact of reducing the early warning reporting threshold to 5% for all issuers would be far greater for the venture market than for the senior market in terms of the number of market participants and share purchase transactions that would potentially be impacted.

We further believe that there will be a direct negative impact and effect on both trading activity and financing activity within the venture market if the threshold is reduced to 5% for venture issuers. Based on discussions TSX Venture has had with numerous market participants, we understand that market participants often structure their investments to avoid having to comply with the early warning reporting obligations both for strategic and administrative cost reasons. As such, by reducing the early warning

reporting threshold from 10% to 5%, we are concerned that the trading and financing activity of certain market participants will be reduced. The potential for a corresponding reduction in both trading and financing activity due to the lower early warning reporting threshold is magnified on the venture market because of the relative ease of meeting the early warning reporting threshold (whether at 10% or 5%).

We considered whether the proposed reduction to the early warning reporting threshold would address any market integrity or public interest concern that would potentially outweigh the negative impact on the venture market. We are not aware that the existing 10% early warning reporting threshold raises any concerns for integrity or the public interest in the venture market.

Although we are not in a position to quantify the magnitude of the negative impact that reducing the early warning reporting threshold from 10% to 5% may have on trading and financing activity in the public venture capital market, given the potential materiality of the negative impact to the venture market with no offsetting material enhancement of either market integrity or protection of the public interest, we are supportive of maintaining the current 10% early warning reporting threshold for venture issuers.