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VIA EMAIL

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

Dear Sirs/Mesdames:

Re: Request for Comments on Introduction of Proposed Prospectus Exemptions and Proposed Reports of Exempt Distribution in Ontario

TMX Group Limited ("TMX Group" or "we") welcomes the opportunity to comment on behalf of its subsidiaries Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX Venture") (each, an "Exchange" and collectively, the "Exchanges") and Shorcan Brokers Limited, the exempt market dealer responsible for the recently announced TSX Private Markets initiative, on the Request for Comments published by the Ontario Securities Commission ("OSC") on March 20, 2014 entitled "Introduction of Proposed Prospectus Exemptions and Proposed Reports of Exempt Distribution in Ontario" ("Request for Comments"). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comments.

TMX Group is supportive of the OSC's efforts to facilitate capital raising through expanded prospectus exemptions while maintaining investor protection. TMX Group further supports the introduction of new means of raising capital, such as crowdfunding, while recognizing the need for regulatory monitoring and oversight of the expanding exempt market.

We are deeply committed to supporting an exempt market in Canada that is robust and fair to investors while providing the necessary opportunity for early stage companies to grow and prosper.

TMX Group continues to strongly support the harmonization of prospectus exemptions across all Canadian jurisdictions and is hopeful that the Proposed Prospectus Exemptions will benefit all market participants, regardless of the jurisdiction of their lead regulator. As a result, TMX Group does have concerns that the Proposed Prospectus Exemptions are not harmonized across Canadian Securities Administrator ("CSA") jurisdictions. We understand and appreciate that each member of the CSA must act in a manner that best serves its mandate. However, we do not believe that residents of each province of Canada fundamentally require different levels

of investor protection. Accordingly, we encourage all members of the CSA to give harmonization of the capital formation process the highest priority.

Even slight differences between Ontario and other CSA jurisdictions in any of these Proposed Prospectus Exemptions can increase compliance challenges, costs and confusion if companies wish to use these exemptions in more than one province or territory. Undue complexity across Canadian jurisdictions may serve to deter issuers, particularly SMEs, from optimizing the use of these exemptions to raise funds. We encourage the OSC (as we encourage all members of the CSA) to continue to collaborate with the other members of the CSA on all prospectus exemptions, including on the Multilateral CSA Request for Comment in relation to the OM Prospectus Exemption and reports of exempt distribution (the "OM RFC") and the Multilateral CSA Request for Comment on Regulation 45-108 – *Crowdfunding* (the "Crowdfunding RFC") in order to implement one harmonized regime for exempt market capital raising across all Canadian jurisdictions.

OM Prospectus Exemption

TMX Group is supportive of the introduction of the OM Prospectus Exemption in Ontario. We believe that the OM Prospectus Exemption will assist in capital formation for start-ups and SMEs while providing the appropriate investor protection measures. While we recognize that companies will need to prepare a substantive disclosure document, we believe that this is appropriate in order to allow retail investor participation.

We do not believe that the proposed individual investor limits under the OM Prospectus Exemption and in the OM RFC are desirable or necessary. If the OSC and the members of the CSA who authored the OM RFC proceed with implementing individual investor limits, the introduction of such limits would represent a break from the offering memorandum exemption available in British Columbia, New Brunswick, Nova Scotia, Newfoundland and Labrador. Without national harmonization regarding the asset tests used to characterize an investor as an "eligible investor" there will be additional compliance costs and complexity for companies wishing to distribute securities in Ontario and any additional jurisdictions. It would be preferable for the OM Prospectus Exemption to be fully harmonized to reduce the complexity of raising capital in reliance on this exemption.

FFBA Prospectus Exemption

TMX Group supports the proposed introduction of the FFBA Prospectus Exemption which will lead to further harmonization of the prospectus exemption regime under National Instrument 45-106 – *Prospectus and Registration Exemptions* ("NI 45-106"). We note that implementing restrictions on the types of securities issuable under the FFBA Prospectus Exemption would make the Ontario regime different from the existing exemption in Section 2.5 of NI 45-106. While we find the revised guidance in NI45-106CP to be helpful, we encourage coordination with the other members of the CSA to ensure that Section 2.5 of NI 45-106 is interpreted with the same guidance. We also note that the additional information proposed to be required in Form 45-106F1, as it relates to the FFBA Prospectus Exemption, is not being requested by other CSA jurisdictions and we encourage harmonization to optimize capital formation and reduce differentiated regulatory burden. We reiterate our concerns about the cost to issuers, particularly SMEs, and confusion for investors of having to navigate different prospectus exemption requirements across Canadian jurisdictions.

Existing Security Holder Prospectus Exemption

TSX and TSX Venture have advocated for the expansion and liberalization of various prospectus exemptions in Canada for the benefit of businesses that need to raise capital, while maintaining investor protection safeguards. TMX Group is pleased that the OSC is proposing to adopt the Existing Security Holder Prospectus Exemption as a means of increasing access to capital for issuers listed on exchanges such as TSX and TSX Venture. We note, however, that, unlike other CSA jurisdictions, the OSC is proposing that this exemption be made available to existing security holders on a pro rata basis and is proposing a 100% dilution limit on private placements done in reliance on the Existing Security Holder Prospectus Exemption. We strongly support a harmonized exemption across all CSA jurisdictions and have concerns that any additional complexities or jurisdictional differences may impede the ability or willingness of issuers, particularly SMEs, to optimize this opportunity to raise capital. We appreciate the OSC's intentions in adding these features to the proposed exemption. They reflect thoughtful and careful analysis. However, we believe the net benefit when weighed against harmonization is negative.

Crowdfunding Prospectus Exemption

TMX Group supports the OSC's proposed introduction of the Crowdfunding Prospectus Exemption as a way for start-ups and SMEs to access capital from retail investors. We believe that, other than for start-up companies, the proposed investor protection measures, including investment limits, offering parameters and on-going disclosure requirements, provide an appropriate framework for introducing equity crowdfunding to Ontario. For start-up companies, we believe that it may be advantageous and appropriate for the OSC to introduce the Start-up Exemption, as set out in the Crowdfunding RFC, in order to facilitate cost and time-effective micro financings.

As with other exemptions aimed at facilitating capital raising for smaller companies, and especially because crowdfunding is conducted via an internet portal and the internet is a tool that tends to transcend jurisdictions, we strongly encourage the OSC and the other members of the CSA to work together on the Crowdfunding Prospectus Exemption and the Crowdfunding RFC to implement one harmonized crowdfunding regime in Canada.

Subject to our comments in Appendix A, we also support the implementation of the proposed Crowdfunding Portal Requirements as a key element of investor and market protection.

Short Form Offering Document Prospectus Exemption

As mentioned above, TMX Group is supportive of both the OSC's ongoing efforts to facilitate capital raising through expanded prospectus exemptions and the harmonization of prospectus exemptions across all Canadian jurisdictions. In this regard, we ask that the OSC also consider adopting the existing TSX Venture Exchange Offering Document exemption prescribed by Part 5 of NI 45-106 (commonly referred to as the "Short Form Offering Document Exemption" or the "SFOD Exemption"). At present, the OSC is the only CSA jurisdiction that has not adopted the SFOD Exemption. We would be happy to discuss this proposal in more detail and assist the OSC in its analysis and consideration of this matter. As a starting point, we provide the following high-level summary of some of the key investor protection features of the SFOD Exemption;

(i) SFOD Exemption financings are subject to structured procedures, regulations and oversight by TSX Venture, as set out in Part 5 of NI 45-106 and Policy 4.6 – *Public Offering by Short Form Offering Document* of the TSX Venture Corporate Finance Manual. TSX Venture reviews and must approve of all SFOD Exemption financings;

(ii) the SFOD Exemption requires substantially the same, if not greater, disclosure than under the OM Prospectus Exemption and contains analogous contractual rights of action and withdrawal; and

(iii) SFOD Exemption financings are required to be brokered by a registrant that is a Member or Participating Organization of TSX Venture with prescribed due diligence obligations and is required to sign an agent's certificate included with the SFOD.

Our specific comments on the Proposed Prospectus Exemptions and the Consequential Amendments are attached in **Appendix A**. Where applicable, we have provided answers to some of the specific questions in the Request for Comment.

Thank you for the opportunity to comment. We would be pleased to discuss any aspect of these matters at your convenience.

Yours truly,

Kevan Cowan
President, TSX Markets and Group Head of Equities, TMX Group

Appendix A

Specific Requests for Comment

OM Prospectus Exemption

General

1) We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and SMEs. Have we proposed changes that will encourage start-ups and SMEs to use the OM Prospectus Exemption? What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

> We are very supportive of the OSC's efforts to facilitate capital raising through expanded prospectus exemptions, such as the OM Prospectus Exemption.
>
> We believe that there are adequate investor protection measures in place and that limits on the amount that individuals can invest under this exemption are therefore unnecessary. In the event that the OSC were to determine that individual investment limits are a necessary feature of the OM Prospectus Exemption, we would have concerns that the differentiation of similarly placed prospective investors based on minute variations in their financial status from province to province may be a substantial deterrent for prospective users of the OM Prospectus Exemption. The added cost of advisors, diligence and risk of non-compliance may severely hinder the utility of the OM Prospectus Exemption.
>
> As a result, we support Ontario's adoption of the OM Prospectus Exemption but believe that the proposed variations in the exemption, as compared to the "Alberta" model (both as it currently exists in Section 2.9(2) of NI 45-106 and as proposed in the OM RFC) and the "BC" model as it exists in Section 2.9(1) of NI 45-106 would compound the barriers to start-ups and SMEs using the exemption. While we understand that each jurisdiction may have different concepts of what constitutes adequate investor protection, we believe that without greater harmonization, facilitation of capital raising may be diminished or defeated. We encourage the OSC and the other members of the CSA to better harmonize the proposed OM Prospectus Exemption.

Issuer qualification criteria

2) We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? If so, what should that limit be and for what period of time? For example, should there be a "lifetime" limit or a limit for a specific period of time, such as a calendar year?

> We do not support a cap or limit on the amount that non-reporting issuers can raise under the exemption. A limit would decrease the harmonization of this exemption nationally.

The OM Prospectus Exemption provides a means for start-ups and SMEs to raise money in a manner that is efficient and that provides an adequate degree of investor protection through, for example, disclosure and statutory rights of action. We believe that a limit on the amount that non-reporting issuers can raise is unnecessary.

3) What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? Should we vary the requirements of the OM Prospectus Exemption to be different (for example, disclosure requirements) depending on the issuer's industry, such as real estate or mining?

We are uncertain whether additional disclosure, depending on the issuer's industry, would lead to better investor protection. We believe, however, that a fractured exemption regime hinders the use of prospectus exemptions and ultimately limits the ability to raise capital in Canada. Therefore we would not support industry specific disclosure, unless it were to be required for all issuers in a category of industries across all CSA jurisdictions.

4) We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?

We believe that the introduction of real estate specific disclosure should be delayed to determine whether such disclosure is appropriate and to weigh the costs and benefits of introducing such a requirement. We assume that, in the absence of or prior to the introduction of real estate specific disclosure, non-reporting real estate issuers will be permitted to use the OM Prospectus Exemption. If there are concerns about non-reporting real estate issuers using the OM Prospectus Exemption, we would appreciate the opportunity to better understand the issues giving rise to these concerns.

Types of securities

5) We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?

We do not believe that any securities should be excluded from being sold pursuant to the OM Prospectus Exemption. The OM Prospectus Exemption provides adequate investor protection through the disclosure document itself which can ensure that even novel and complex securities are understood by prospective purchasers. We feel it is important to give SMEs and start-ups the greatest degree of flexibility when structuring their securities to not only assist in capital raising but to promote innovation as well.

6) Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

Please refer to our answer to question 5 above.

Offering parameters

7) We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? How long does an OM distribution need to stay open? Is there a risk that "stale-dated" disclosure will be provided to investors?

> We believe the OSC is correct in aligning the length of time for which an OM offering can remain open with the OM Prospectus Exemption available in other jurisdictions. To the extent that there is a risk that "stale-dated" disclosure will be provided to investors, we believe that such risk is sufficiently mitigated by the requirement in Subsection 2.9(14) of NI 45-106 and the need to provide up-to-date OM material prior to accepting follow-on purchases.

Registrants

8) Do you agree with our proposal to prohibit registrants that are "related" to the issuer (as defined in National Instrument 33-105 Underwriting Conflicts) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of "related" issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?

> Given the limited nature of "related" in NI 33-105, we are not concerned with this prohibition, other than the ongoing need to harmonize the exemption regime across Canada.

9) Concerns have been raised about the role of unregistered finders in identifying investors of securities. Should we prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? What role do finders play in the exempt market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising?

> We believe that a prohibition on paying finder's fees, except to registered dealers, would unduly restrict capital raising activity for start-ups and SMEs, particularly given that the exemption is being introduced for the first time in Ontario. Finder's fees and finders play an important role in the exempt market because it is far more difficult to find purchasers who meet the prospectus exemption than to find purchasers for prospectus qualified securities. While there exists the risk that unregulated finders may find persons who do not qualify for a prospectus exemption, we believe this risk is mitigated by the fact that the dealer needs to be registered and has an obligation to ensure that a prospectus exemption exists for any trade or distribution.

Investor qualifications – definition of eligible investor

10) We have proposed changing the $400,000 net asset test for individual eligible investors so that the value of the individual's primary residence is excluded, and the threshold is reduced to $250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based

on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets. Do you agree with excluding the value of the investor's primary residence from the net asset test? Do you agree with lowering the threshold as proposed?

Please see our response to question 12 below. In addition to our concerns surrounding individual investment limits under the OM Prospectus Exemption, the minor variation in the definition of "eligible investor" between the rest of Canada, New Brunswick and Ontario is an unnecessary difference that we believe will only provide minor investor protection benefits, if any, at the expense of a more efficient and harmonized prospectus exemption regime. The net asset test and the variation in tests between individuals and non-individuals offer as-yet untried, theoretical benefits. Conversely, the added diligence in determining whether a prospective investor meets the eligible investor test in one jurisdiction but not another could create a serious impediment to capital raising for SMEs and start-ups.

Canada does not have a large enough investor pool to fracture it in this manner. We would strongly recommend that individual investor limits not be introduced or, failing that, that the eligible investor test be standardized across all Canadian jurisdictions.

11) An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). Is this an appropriate basis for an investor to qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

We strongly believe that the "eligibility advisor" concept is an appropriate basis for an investor to qualify as an "eligible investor". In particular, the protection of Know Your Client, Know Your Product and Suitability, which registrants are legally mandated to perform on behalf of their clients, is a preferable basis on which to ensure adequate investor protection than one which uses only income or net worth as a proxy for sophistication. The CSA has partially acknowledged this through proposed Form 45-109F9 - *Risk Acknowledgement Form for Individual Accredited Investors,* in which disclosure and the delivery of factual information will be used to ensure that investors make informed decisions and are aware of potential investment risks.

We are also supportive of expanding the category of registrants who qualify as "eligibility advisors" to include EMDs. EMDs specialize in the exempt market and, in many instances, may be the most knowledgeable type of registrant with respect to the particular risks inherent in non-reporting issuers and / or exempt market securities.

Further, since the intention of the proposed OM Prospectus Exemption in Ontario is to increase the ability for SMEs and start-ups to raise capital, it is important that EMDs have the opportunity to participate in a meaningful way in this prospectus exemption. It would be a disservice to the EMD community and the SME and start-up communities to deprive them of the ability to leverage their existing expertise in this space.

Investment limits

12) Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

> Since investors under the OM Prospectus Exemption will be provided with a substantive disclosure document and have rights of action and withdrawal to rely on, individual investors under this exemption will have rights similar to those given to investors buying under a prospectus, under which there are no investment limits. The investor protection measures afforded by these features of the OM Prospectus Exemption provide investor protection measures greater than those under most other exemptions and as such, we do not believe that limits on what individuals can invest under the OM Prospectus Exemption are necessary. We also believe that such limits may deter the use of this exemption to raise capital. We have made the same comment regarding the proposed individual investor limits in our response to the OM RFC.

Point of sale disclosure

13) Current OM disclosure requirements do not contain specific requirements for blind pool issuers. Would blind pool issuers use the OM Prospectus Exemption? Would disclosure specific to a blind pool offering be useful to investors?

> We do not believe that it is appropriate for blind pools (other than Capital Pool Companies and Special Purpose Acquisition Corporations which have comprehensive offering rules) to use the OM Prospectus Exemption.

14) We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

> Clear guidance regarding what is required to be included in an OM would assist issuers to draft concise OMs that contain the disclosure required for investor education and protection.

Advertising and marketing materials

15) In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

> We agree with this requirement.

16) Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements? In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

While we do support some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, we do not believe that requiring audited financial statements, particularly on an ongoing basis, is an appropriate requirement for non-reporting issuers which are often in the early stage of development. We believe that such a requirement could be a disincentive to using the OM Prospectus Exemption and a significant departure from current expectations surrounding non-reporting issuers.

For ongoing disclosure we would recommend the use of annual reviewed statements by an independent public accounting firm and to only require the delivery of audited financial statements at the point of sale when reporting issuers rely on the OM Prospectus Exemption.

17) We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?

While we agree that this sort of ongoing disclosure would be useful to investors who have invested in non-reporting issuers under the OM Prospectus Exemption, we note that this requirement is not in the OM RFC and would result in further de-harmonization of the exemption. Additionally, should the OSC proceed on this basis, we are concerned that the list of events is not sufficiently defined and should be better aligned with concepts or terms which have been considered at law under Canadian jurisprudence. For instance “significant change” should be changed to “material change”. Some of the other terms may also cause confusion regarding the trigger for when to report, such as “significant acquisition” or “major reorganization”. We further note that, as a result of a materiality threshold, smaller issuers may end up being required to file more reports of this nature than larger issuers. This could be costly and onerous for smaller issuers. We expect that, absent further guidance, the reporting of events will be inconsistent between issuers.

18) We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

We agree as to the time frame for reporting these events and the trigger to cease reporting these events. However, we do not believe that audited financial statements should be part of the ongoing reporting regime for non-reporting issuers (see our response to question 17 above). We question whether non-reporting issuers that are involved in an M&A transaction will continue to be subject to the on-going disclosure requirement.

Existing Security Holder Prospectus Exemption

Issuer qualification criteria

1) Do you agree with allowing any issuer listed on the TSX, TSXV and CSE to use the Existing Security Holder Prospectus Exemption?

We believe that TSX and TSX Venture have rules, policies and review processes in place with respect to private placements that aim to protect existing security holders and the quality of the market. We review financings in light of these rules and policies before granting approval to close financings on our markets. We therefore believe it is appropriate to allow issuers on TSX and TSX Venture to rely on the Existing Security Holder Prospectus Exemption.

We note that the OSC has proposed that only issuers that have been reporting issuers for not less than 12 months or that become reporting issuers by filing and obtaining a receipt for a prospectus will qualify to use the Existing Security Holder Prospectus Exemption. We note that the prospectus-like documents that issuers are required to prepare and file for a Qualifying Transaction (a "QT") or a Reverse Take-Over Bid (an "RTO") for TSX Venture would not qualify as prospectuses for the purpose of allowing an issuer to rely on the Existing Security Holder Prospectus Exemption prior to having been a reporting issuer for a year. We also note that this issuer qualification requirement would create a difference between the Existing Security Holder Prospectus Exemption and the exemption implemented by other members of the CSA. We strongly encourage harmonization of this exemption in order to facilitate and promote its use for capital raising.

However, in the alternative, we would request that the OSC allow issuers that have filed a prospectus-like disclosure document required by TSX Venture for either a QT or an RTO to use the Existing Security Holder Prospectus Exemption prior to having been a reporting issuer for a year.

Offering parameters

2) Do you agree that the offer must be made to all security holders and on a pro rata basis? Do you agree that these conditions support the fair treatment of all security holders?

We strongly support a harmonized Existing Security Holder Prospectus Exemption across all CSA jurisdictions to ensure that issuers and existing investors have the opportunity to use this capital raising tool in an efficient and effective way.

We have concerns that the requirement to offer to all security holders on a pro rata basis will materially increase the complexity and cost involved with issuing equity under this exemption. The proposed requirement that all security holders be able to participate in offerings on a pro rata basis would represent a significant departure from the manner in which listed issuers conduct private placements. Under the current private placement regime, there is no requirement dictating from whom and to what extent listed issuers can accept subscriptions, provided that a valid exemption under NI 45-106 is relied on

and, if applicable, that the private placement is compliant with the relevant stock exchange's requirements.

As we understand it, the proposed Existing Security Holder Prospectus Exemption is meant to liberalize the prospectus exemption regime so that, on the one hand, existing security holders can invest in reliance on the reporting issuer's existing disclosure record and have greater access to primary offers and, on the other hand, issuers can have access to a larger pool of investors and capital. We do not believe that the creation of a new, quasi-rights offering regime is required for these purposes. TMX Group has submitted proposals to improve the efficiency of the rights offering regime in Canada in order to make rights offerings more attractive and viable financing options for issuers and their security holders[1]. We note that, other than in the rights offering context, there are no CSA requirements for security holders to participate on a pro rata basis, even in a public offering where all existing security holders would be allowed to participate. We do not view the Existing Security Holder Prospectus Exemption as being an extension of the rights offering regime, instead, we see this proposed exemption as a valuable opportunity for issuers to raise capital and for existing security holders, likely smaller retail investors, to participate in the issuer's growth. As a result, we view the proposed exemption as being more akin to other exemptions available under NI 45-106, such as the accredited investor exemption under section 2.3. In the case of the Existing Security Holder Exemption, the familiarity of the investor with the issuer, its disclosure record and business stands as a reasonable proxy for the investor's knowledge and the individual investment limits, or suitability advice, serve to guard against unsuitable investments the loss of which the investor cannot bear.

In addition to our concerns about a lack of national harmonization, we believe that it would be very difficult to implement the pro rata requirement in the context of private placements since a significant number of security holders are objecting beneficial owners ("OBOs"). Given the current restrictions regarding listed issuers' ability to communicate directly with OBOs, or to obtain information on OBO's security holdings, it would be virtually impossible to undertake a private placement on a pro rata basis in a timely and cost-efficient manner based on a list of security holders as at the record date. In order to ascertain security ownership of OBOs, the issuer would have to navigate Canada's complex intermediary holding system which can be a costly and time-consuming endeavour.

In addition, we note that the requirement for pro ration, in combination with the $15,000 investment limit in the absence of suitability advice (which may be impractical and/or time consuming to obtain), may not support the fair treatment of all security holders, since security holders holding greater than $15,000 worth of securities prior to the time of the financing will be at a disadvantage compared to security holders holding less than that amount when it comes to retaining their pro-rata position in the issuer.

Despite the foregoing, if the OSC proceeds with the requirement for pro ration, we suggest that, in order to lessen the complexity of compliance, listed issuers should be able to rely on a written representation from the investor regarding the number of

[1] Please refer to letter from TMX Group Limited to the OSC dated March 6, 2014 RE: OSC Staff Consultation Paper 45-710- Considerations of New Capital Raising Prospectus Exemptions.

securities held as at the record date, similar to the confirmation being proposed regarding assurance that the investor is a security holder as at the record date. We also suggest that issuers should have the obligation to only issue securities offered pursuant to the Existing Security Holder Prospectus Exemption on a pro rata basis to the extent that the private placement is over-subscribed. This would accomplish the investor protection goal of making an offer to all existing security holders and allowing them the option to maintain their percentage ownership, while preserving efficiency in those instances where a financing is not over-subscribed and where every investor can take up the number of securities desired. We would also suggest implementing a 5 business day minimum period during which the offer should be open in order to ensure a more meaningful offer is made to all existing security holders.

We believe that issuers will use the Existing Security Holder Prospectus Exemption as one component of a larger private placement that is divided between an offer to existing security holders and an offer allocated to others, such as accredited investors. In this instance, the requirement for pro ration should apply only to the portion of the financing done in reliance on the Existing Security Holder Prospect Exemption, to the extent that portion is over-subscribed. However, the requirement to differentiate two portions of a private placement and to separate the subscriptions received under each separate exemption may deter issuers from using the Existing Security Holder Prospectus Exemption at all.

Regarding the proposed 100% dilution limit for offerings conducted in reliance on this exemption, TSX has rules in place regarding pricing discounts, insider participation limits and security holder approval where there is a material effect on control as a result of a private placement. For issuers listed on TSX, when dilution exceeds 25%, security holder approval is required (with certain limited exceptions). While TSX Venture does not have a general dilution threshold, TSX Venture listed issuers are subject to a comprehensive set of requirements, including security holder approval for any private placement involving the creation of a new control person. These rules support the fair treatment of security holders and support the quality of the Canadian market and are appropriate safeguards for financings conducted in reliance on other existing prospectus exemptions. We also note that no other prospectus exemption under NI 45-106 imposes a 100% dilution limit on reporting issuers. We respectfully submit that it would be duplicative and unnecessary for the OSC to adopt requirements regarding maximum dilution for the Existing Security Holder Prospectus Exemption.

We note that both the requirement for pro ration and a limit on dilution would make Ontario's Existing Security Holder Prospectus Exemption different from that of other CSA jurisdictions. We strongly support a harmonized exemption for the reasons stated above.

Additionally, in the event that the OSC were to require pro ration and to allow issuers to rely on an investor certificate representing the investor's security holdings as of the record date, we believe that the CP to NI 45-106 would require some additional language to exempt issuers from the obligation to perform diligence to ensure that an investor is qualified to rely on the Existing Security Holder Exemption.

We have concerns that the additional restrictions and differences imposed on the Existing Security Holder Prospectus Exemption in Ontario, as compared to the other CSA jurisdictions, may mean that issuers will not use this exemption.

3) Do you agree that it is not necessary to differentiate between a security holder that bought securities in the secondary market one day before the announcement of the offering and a security holder that bought the securities some longer period before the announcement of the offering?

We agree that it is not necessary to differentiate between security holders, provided that they hold securities at least one day prior to the announcement of any private placement relying on the Existing Security Holder Prospectus Exemption. A key element supporting the rationale for this exemption is that the investor must already be a security holder of the listed issuer. The Exchanges believe that an investor who is already a security holder of an issuer is well positioned to make an informed decision about an additional investment in the issuer. Although the continuous disclosure record of the issuer is publicly available to all investors, it is more likely that existing security holders who already have an economic interest in the issuer will have scrutinized the issuer's disclosure record. Furthermore, subject to the appropriate safeguards, the Exchanges share the view that all existing security holders should have the opportunity to participate in the future of the issuer that they have invested in.

Resale restrictions

4) Should securities distributed under the Existing Security Holder Prospectus Exemption be freely tradeable?

The Exchanges believe that a four month hold period is appropriate. The Exchanges anticipate that private placements will be subscribed for by a variety of investors that include accredited investors and non-accredited subscribers relying on the Existing Security Holder Prospectus Exemption. Within that context, the Exchanges believe that it is important to have a level playing field among subscribers to the private placement when it comes to hold periods.

Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

Crowdfunding Prospectus Exemption

Issuer qualification criteria

1) Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?

We believe that the Crowdfunding Prospectus Exemption should be available to both non-reporting and reporting issuers. We do not see the policy rationale for excluding reporting issuers that have a more substantive disclosure record and have to abide by an extensive set of regulatory requirements from this capital-raising opportunity. We should not penalize issuers for maintaining higher standards.

2) The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?

> We believe that issuers relying on the Crowdfunding Prospectus Exemption should be permitted to have a majority of directors resident in either Canada or the United States and that these issuers should be permitted to be incorporated in either Canada or the United States.

Offering parameters

3) The Crowdfunding Prospectus Exemption would impose a $1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is $1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? Is the 12 month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?

> The Exchanges believe that the $1.5 million limit per annum and the 12 month period are reasonable. We are concerned, however, that applying the $1.5 million limit to all affiliated issuers, in the aggregate, may unnecessarily restrict or limit a number of smaller companies with common control, but otherwise independent operations, from being able to rely upon the exemption due to the unrelated financing activities of another issuer.

4) Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?

> We believe that it should be acceptable to allow for an extension of the time the distribution is open, subject to allowing early investors to either re-confirm or withdraw their investment upon the extension of the original timeframe.

Investment limits

5) The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than $2,500 in a single investment under the exemption and more than $10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

> The limits for individual investors appear reasonable. We believe that accredited investors should be permitted to subscribe for an unlimited amount of securities on the portal.

Statutory or contractual rights in the event of a misrepresentation

6) The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?

> We believe that accountability and accuracy are important hallmarks of an equity Crowdfunding regime and we believe that a contractual right of action for rescission or damages should arise in the case of a misrepresentation.

Provision of ongoing disclosure

7) How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?

> We are supportive of the proposed approach in which offering materials and other disclosure is generally made available only on a registered Crowdfunding Portal, with copies to the applicable regulatory authority.

8) Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?

> We appreciate that the OSC must balance investor protection (achieved in part through fulsome issuer disclosure) and the cost to issuers. We believe that it is appropriate to have some form of independent source verify an issuer's financial information. However, we believe that the audit threshold is too onerous for early stage companies, especially given the issuer and investor limits in the proposal which offer a different and balancing form of protection.

9) The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

> We propose that the financial threshold after which the issuer's financial statements should be audited should be raised from $500,000 to $1,000,000 of proceeds raised by the issuer using the Crowdfunding Prospectus Exemption or any other prospectus exemption since its formation. We also propose raising the amount that the issuer has expended, in cash, since that time from $150,000 to $500,000.

Other

10) Are there other requirements that should be imposed to protect investors?

In light of the annual maximum $2,500 individual investment limit and issuers being permitted to raise up to $1.5 million, companies could potentially distribute securities to 600 security holders each year which would be difficult to track accurately without a transfer agent. We therefore believe that companies relying on the Crowdfunding Prospectus Exemption should be required to retain and disclose the name of a transfer agent and registrar for the benefit of security holders, particularly after a critical threshold of the number of security holders is reached.

Crowdfunding Portal Requirements

Additional portal obligations

11) Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

We believe portals should perform background checks on all of these parties. As the operators of stock exchanges, we recognize that management is a key asset of issuers, particularly early stage issuers. Background checks will help determine whether the business of the issuer will be conducted with integrity and in the best interests of the company and its security holders and whether the issuer and its management have a track record of complying with the requirements of all regulations and regulatory bodies. In our experience, performing background checks is the initial process in determining the suitability of an individual to be involved in a marketplace. It would be helpful to understand whether the OSC is seeking full disclosure of the results of these background checks or whether the OSC expects the Portal to undertake individual suitability reviews based on the information uncovered in the background checks and ultimately make decisions regarding the suitability of those individuals to be associated with that issuer.

Prohibited activities

12) The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?

We believe this is an appropriate restriction and will not unduly impact a portal's business operations.

Other

13) Are there other requirements that should be imposed on portals to protect the interests of investors?

We do not believe that any further requirements should be imposed at this time.

14) Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?

In order for companies to successfully raise the capital they need, it is likely that they will rely on various prospectus exemptions to distribute their securities. To have the Crowdfunding Exemption operating in a separate silo from other available prospectus exemptions may be problematic and complicated. As such, we believe that allowing an EMD and a Crowdfunding Portal to work together to assist issuers in distributing securities for example, to accredited investors, may facilitate and promote more efficient capital raising.

Also, in light of our understanding that a lack of liquidity is one of the most significant risks borne by crowdfuding investors, we are unclear as to the policy reasons supporting the prohibition on Crowdfunding Portals facilitating trading in the secondary market.

We believe that additional clarity regarding how investor subscription limits will be properly monitored in the event that multiple Crowdfunding Portals are used by an investor will be important guidance for participants in the crowdfunding market.