



January 20, 2014

DELIVERED BY EMAIL

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Dear Sirs/Mesdames:

Re: Multilateral CSA Notice 45-312 – Proposed Prospectus Exemption for Distributions to Existing Security Holders.

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 Multilateral CSA Notice 45-312 – *Proposed Prospectus Exemption for Distributions to Existing Security Holders* (the “**CSA Consultation**”) published by certain members of the CSA on November 21, 2013.

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

On a combined basis, the Exchanges have more than 3650 listed issuers and therefore are uniquely positioned to understand the current environment in which listed issuers are seeking to raise capital and to comment on the proposed prospectus exemption for distributions to existing security holders (the “**Proposed Exemption**”). The Exchanges have historically advocated for allowing existing security holders to participate in private placements and therefore strongly support the introduction of the Proposed Exemption. The Exchanges believe that the Proposed Exemption could result in tangible benefits to listed issuers and their security holders and ultimately, to the Canadian capital market, by fostering efficient capital raising.

The Exchanges continue to strongly support the harmonization of prospectus exemptions across all Canadian jurisdictions and are hopeful that the Proposed Exemption will benefit all market participants, regardless of the jurisdiction of their lead



regulator. We therefore welcome the Ontario Securities Commission's ("OSC") December 4, 2013 press release supporting the CSA Consultation and announcing that the OSC will consider the comments received through the CSA Consultation with the goal of substantial harmonization.

Both TSX and TSX Venture have rules, policies and review processes in place with respect to private placements that aim to protect investors and the integrity of the market. Many issuers rely heavily on private placements to raise capital and we believe that issuers listed on either of TSX or TSX Venture should be able to rely on the Proposed Exemption to facilitate capital raising. Further, we feel it would be inappropriate to restrict investor access to TSX listed private placements as this decision should be made by the investor.

You will find attached as Appendix A to this letter our responses to certain of the specific questions set out in the CSA Consultation.

We would like to take this opportunity to express how pleased we are to see the CSA Consultation. We believe that the Proposed Exemption will be well received by the market and applaud the CSA for moving forward with this initiative.

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

Yours truly,

A handwritten signature in black ink, appearing to read 'Ungad Chadda', written in a cursive style.

Ungad Chadda
Senior Vice President
Toronto Stock Exchange

A handwritten signature in black ink, appearing to read 'John McCoach', written in a cursive style.

John McCoach
President
TSX Venture Exchange



APPENDIX A
Responses to CSA Consultation Questions

1. If you are a TSXV issuer, will you use the proposed exemption?

Feedback received has confirmed that issuers are very supportive of the Proposed Exemption and that they would use the exemption if it were available. Several listed issuers noted that many of their current security holders cannot participate in certain of their financings because these security holders do not qualify under the current prospectus exemptions in National Instrument 45-106 – *Prospectus and Registration Exemptions* (“**NI 45-106**”).

To better gauge the views of market participants on the Proposed Exemption, TSX Venture is in the process of conducting a web-based survey of listed issuers and other market participants requesting that respondents confirm whether or not they support the Proposed Exemption and provide any comments or suggestions on the proposal. For your reference, the survey and accompanying letter are reproduced as Appendix C. With respect to the results of the survey, as at January 20, 2014, we had received a total of 318 responses with 302 of the respondents (95%) stating that they were in favour of the Proposed Exemption. We believe the responses to date serve as meaningful evidence that the Proposed Exemption is supported by market participants. We would be happy to share the full survey results, including any comments received, with the CSA. TSX will also be undertaking a similar survey of its listed issuers.

2. Should the proposed exemption be available to issuers listed on other Canadian markets?

We believe that the Proposed Exemption has potential benefits to listed issuers, their existing security holders and Canadian capital markets and that the Proposed Exemption should be available to listed issuers listed on both TSX and TSX Venture. We have set out certain factors in support of broadening the Proposed Exemption to TSX listed issuers below.

- a) The Exchanges provide policy frameworks and review processes that preserve the quality of the marketplace:

We understand that members of the CSA considered the additional safeguards provided by the rules and review processes contained in the TSX Venture Corporate Finance Manual when drafting the Proposed Exemption. These rules and review processes require TSX Venture companies to meet additional disclosure obligations and TSX



Venture has implemented a framework for the issuance of additional securities. These rules and policies aim to protect investors and the integrity of the market.

While not identical to the TSX Venture regime, the private placement rules in the TSX Company Manual similarly provide a framework for issuers to complete private placements with the aim of protecting the rights of existing security holders and preserving the integrity of the market place. For example, TSX regulates pricing discounts, dilution and insider participation and may require security holder approval in certain circumstances, all with a view to investor protection and market integrity.

Both Exchanges conduct suitability reviews on significant security holders, officers, directors and, in the case of TSX Venture, promoters, to ensure that issuers meet their continued listing requirements and to maintain the integrity of the stock list.

Eligibility to rely on the Proposed Exemption should be extended to TSX listed issuers on the basis that TSX issuers are subject to extensive requirements and reviews which are comparable to those applicable to TSX Venture listed issuers. The policy frameworks of both Exchanges play an important role in raising capital and providing a fair and orderly market place.

b) Informed Decisions and Continuous Disclosure:

The Proposed Exemption is predicated on the idea that existing security holders have already made an informed investment decision about the issuer at the time of first becoming a security holder. If the original investment was made as a result of a purchase on the secondary market, that security holder has most likely already relied on the issuer's continuous disclosure record and an existing security holder is more likely to track the issuer's continuous disclosure and performance.

The continuous disclosure requirements of TSX listed issuers are similar to that of TSX Venture listed companies. TSX listed companies have the additional requirement of filing an Annual Information Form that provides additional information to security holders. Since existing security holders of both TSX and TSX Venture listed issuers have already made an informed decision to purchase securities of these issuers and have access to a comparable continuous disclosure record, the Proposed Exemption should also be available to TSX listed issuers.

c) Both TSX Venture and TSX issuers rely heavily on private placements to raise capital:



Both TSX Venture and TSX listed issuers rely heavily on private placements as a source of financing. Appendix B to this letter sets out financing statistics for issuers listed on each of TSX Venture and TSX for 2012 and 2013. These statistics show that 1,958 (or 84%) of the 2,327 financings completed by issuers listed on TSX Venture and TSX in 2012 were private placements. For 2013, the percentage of capital raises completed by way of private placement amounted to 85% of the total number of financings completed.

The Exchanges list a wide variety of issuers but have developed a niche for listing small and medium enterprises (“SMEs”). SMEs are more likely to raise money by way of private placement than larger, more established issuers. Due to the importance of private placements for SMEs in capital raising activities, the Exchanges believe that it would be beneficial to the Canadian capital markets to allow issuers on both Exchanges to rely on the Proposed Exemption. The Exchanges also note that facilitating capital raising from existing security holders through private placements may be attractive and beneficial to issuers of all sizes.

- d) Securities issued pursuant to a private placement are often offered on more advantageous terms than securities available on the secondary market:

In our experience, securities offered under a private placement are often issued at a discount to market price or with a ‘sweetener’, such as a warrant, in accordance with applicable Exchange rules. The Exchanges believe that existing security holders of TSX listed issuers should also have the opportunity to rely on the Proposed Exemption which would permit the purchase of securities on potentially more advantageous terms than on the secondary market, without the security holder having to pay a commission.

3. Investors will only be able to invest \$15,000 in a 12-month period unless they obtain advice from a registered investment dealer. Is \$15,000 the right investment limit?

The Exchanges believe that the \$15,000 annual limit per issuer is reasonable, although we would be open to considering a higher limit. For example, \$20,000.

4. In what circumstances would it be suitable for an investor that is a retail security holder to invest more than \$15,000 in a TSXV issuer?

We take no issue with the proposal to allow security holders to exceed the \$15,000 limit in cases where the security holder obtains advice from a registered investment dealer.



6. Do you agree that being a current security holder of an issuer enables an investor to make a more informed investment decision in that issuer?

We agree that an investor who is already a security holder of a listed 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 previously scrutinized and relied on the issuer's continuous disclosure record. Furthermore, subject to the appropriate safeguards, the Exchanges are of the view that existing security holders should have the opportunity to participate in the future of the issuer they have invested in and not risk potential dilution because a prospectus exemption was not available to them.

7. What is the appropriate record date for the exemption? Should it be one day before the announcement of the offering or should it be a more extended period? If you think it should be a more extended period, what would be the appropriate period of time?

A key element supporting the rationale for the Proposed Exemption is that the investor must already be a security holder of the issuer at the time of the announcement of the proposed private placement in order to rely on the Proposed Exemption. A record date that is at least one day prior to the announcement of any private placement satisfies that rationale.

8. We are currently proposing that the exemption be subject to the same resale restrictions as most other capital raising exemptions (i.e., a four month restricted period). However, there are some similarities between the proposed exemption and the rights offering exemption, which is only subject to a seasoning period.

a. Do you agree that a four month hold period is appropriate for this exemption?

The Exchanges agree that the four month hold period is appropriate. The Exchanges anticipate that issuer private placements will be subscribed for by a variety of investors that include accredited investors and non-accredited subscribers relying on the Proposed 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. The Exchanges also believe that the four month hold period provides protection to the secondary market.



b. Should we require issuers to provide additional continuous disclosure, such as an annual information form?

The Exchanges are of the view that the existing continuous disclosure regimes applicable to TSX Venture and TSX listed issuers provide adequate disclosure to support the Proposed Exemption. The existing continuous disclosure regime, together with the Exchanges' rules and policies governing private placements, provide sufficient information for current shareholders to make an informed investment decision. We believe that the continuous disclosure regime balances the issuers' ability to access capital in an efficient manner while providing investor protection.

c. If we were to consider a seasoning period for this exemption, should we consider some of the restrictions that apply under a prospectus-exempt rights offering, such as "claw-backs" limiting insider participation?

As mentioned under our response to question 8 a. above, we are of the view that it is appropriate for securities issued under the Proposed Exemption to be subject to a four month hold period.

d. If securities offered under the exemption were only subject to a seasoning period, would there be a greater need to ensure investors are made aware of and have an opportunity to participate in the offering?

We believe that the four month hold period should apply to the Proposed Exemption. However, we believe that ensuring existing security holders are made aware of the issuer's intention to proceed with a private placement is essential to the Proposed Exemption. The proposed requirement for the issuer to publish a news release disclosing certain details about the offering satisfies this principle.

9. We have not proposed any conditions regarding the structure of the financing, i.e., minimum or maximum price, maximum dilution, or period in which an offering must be completed. We contemplate that the proposed financing would be conducted under the standard private placement rules of the TSXV which, among other things, allow pricing at a discount to market price. Is this appropriate or are there structural requirements that we should make a condition of the exemption?

Provided that issuers relying on the Proposed Exemption will be conducting financings in accordance with applicable TSX Venture policies or TSX rules on private placements and subject to the review of the Exchanges, we believe that no additional conditions regarding the structure of such financings are required. We reiterate our view that the private placement policies and procedures of the Exchanges, together with applicable



securities law, provide sufficient safeguards and strike the proper balance between capital raising opportunities for listed issuers and investor protection.



APPENDIX B
Financing Statistics

TSX Venture Financings (other than IPOs)

2012	Prospectus	Private Placements	Total
Number of financings	65	1,654	1,719
\$ raised in millions	1,826	3,985	5,811
2013			
Number of financings	57	1,473	1,530
\$ raised in millions	866	2,780	3,646

TSX Financings (other than IPOs)

2012	Prospectus	Private Placements	Total
Number of financings	304	304	608
\$ raised in millions	38,718	7,586	46,304
2013			
Number of financings	243	260	503
\$ raised in millions	30,125	4,280	34,405



APPENDIX C
TSX Venture Survey Letter and Questions

TSXV Customer Survey
Subject: Prospectus Exemptions
January 2014

Subject: Brief Survey Regarding Proposed Prospectus Exemption (45-312)

Late last year, I wrote to you about a number of updates regarding Canada's public venture capital markets and our Exchange. I hope you found the update to be helpful and encouraging.

Today, I want to again highlight one item in particular. A proposed new prospectus exemption was published by the CSA in November and is open for comment until Monday, January 20. The exemption would, subject to certain conditions, allow TSX Venture Exchange (TSXV) listed companies to raise money by distributing securities to their existing shareholders. We have been advocating for this exemption and believe it would be a substantial benefit to listed companies who are raising capital. Equally as important, the proposed prospectus exemption will allow existing retail shareholders the opportunity to participate in financings that may not have otherwise been available to them.

To provide more depth to our response to the proposal, we are hoping to collect reactions to the proposed exemption from the venture community. To this end, we would appreciate your feedback through a brief – three question – online survey.

Please [click here](#) to complete the survey now.

While the full notice is available [here](#), a brief summary is below.

The key conditions to the proposed prospectus exemption are:

- The issuer must be up-to-date on its continuous disclosure obligations;
- The offering can only consist of the class of equity securities the issuer has listed on TSXV or units consisting of the listed security and warrants to acquire the listed security;
- The issuer must issue a news release disclosing the terms of the offering, including use of proceeds;
- Each investor must confirm in writing that, at the record date, the investor held the class of listed security that the investor is acquiring;



- The maximum aggregate amount the investor can acquire under the exemption in a 12 month period is \$15,000, unless the investor has acquired advice regarding the suitability of the investment from a registered investment dealer;
- The investor must be provided with certain rights of action in the event of a misrepresentation in the issuer's continuous disclosure record; and
- Similar to most other capital raising exemptions, certificates for securities issued under the proposed exemption would contain a legend and be restricted from trading for 4 months and a day after issuance.

As a valued participant of Canada's public venture capital marketplace, your input helps guide the regulations and policies under which securities are issued across Canada. Thank you, in advance, for completing the [brief survey](#). We also encourage market participants to share their views directly with the commissions participating in this proposal.

Your attention to this important matter is appreciated. In closing, please accept our best wishes to you and your team for a successful and prosperous year.

Sincerely,

John McCoach
President, TSX Venture Exchange

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Survey questions:

Proposed Prospectus Exemption for Distributions to Existing Security Holders
(Multilateral CSA Notice 45-312)

1. Generally speaking, are you in support of the proposed exemption?

- Yes*
- No*
- Undecided*

2. Please share any comments or suggestions regarding the proposed exemption.

3. Which segment of the community do you represent?

- Listed Companies*
- Investment Banking*
- Legal*
- Other*