



October 18, 2021

VIA EMAIL

Canadian Securities Administrators
% The Secretary
Ontario Securities Commission
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal
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Dear Sirs/Mesdames,

Re: CSA Notice and Request for Comment - Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements

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 (“**TSXV**”) (each, an “**Exchange**” and collectively, the “**Exchanges**”) on the notice and request for comment published by the Canadian Securities Administrators (“**CSA**”) entitled *Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements* (the “**Request for Comments**”) that was published on August 12, 2021.

We appreciate the efforts taken by the CSA to introduce a harmonized approach to the interpretation of the Primary Business Requirements among CSA jurisdictions and to provide additional clarity regarding historical financial information required in an initial public offering prospectus.

TMX Group strongly supports the CSA’s efforts to provide clear and consistent guidance to issuers regarding when financial statements of acquired businesses have to be included in long form prospectuses (the “**Amendments**”). The Exchanges believe that the harmonization of what is currently a piecemeal framework of formal and informal processes, will significantly reduce the regulatory burden on issuers by eliminating the inconsistent interpretation of the Primary Business Requirements and providing certainty for issuers and their counsel approaching CSA regulators across Canada without compromising investor

protection.

We would like to offer the following specific comments regarding the Amendments:

1. The proposed new section 5.11 to 41-101CP is intended to apply specifically to mining assets. Consider whether similar guidance would be useful for oil and gas assets, as the business practices are similar to that of mining, particularly for exploration stage assets.
2. Similar to the point above, but more generally, consider whether it would be possible to expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors. For instance, where an acquisition may involve the purchase of only intellectual property or intangible assets, and potentially no other processes, might the CSA be able to offer guidance on circumstances that would be considered in the determination of whether such an acquisition represented a business requiring financial statements.
3. The proposed paragraph 5.11(b) states that “*no other liabilities*” will be assumed as part of the acquisition. We question whether the use of “*other*” may lead to some confusion. For instance, are there certain liabilities that could be assumed while still satisfying this condition? Or is the “*other*” intended to refer to anything beyond the consideration to be paid for the acquisition?
4. The proposed paragraph 5.3(3) states that “*Reporting issuers are reminded that an acquisition may constitute the acquisition of a business for securities legislation purposes, even if the acquired set of activities or assets does not meet the definition of a “business” for accounting purposes.*”

We also note that paragraph 1.3(3) of the existing 41-101CP states that “*The Instrument uses accounting terms that are defined or used in Canadian GAAP applicable to publicly accountable enterprises. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that NI 14-101 provides that a term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern prospectuses; or (b) the context otherwise requires.*”

While we recognize that the definition of “business” pursuant to IFRS 3 should not be used in the determination of what constitutes the acquisition of a business for securities legislation purposes, we note that there is no definition of the term “business” in NI 14-101 or NI 41-101. In order to further avoid confusion, and reinforce the reminder in 5.3(3), consider whether additional guidance would be useful regarding the meaning of the term “business” or “primary business” as applicable to NI 41-101 and Form 41-101F1.

We appreciate the opportunity to provide comments. Please do not hesitate to contact us if

you have any questions regarding our comments.

Respectfully submitted,

'Loui Anastasopoulos'

Loui Anastasopoulos
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TMX Group Limited