



McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Michael Eldridge
Partner
T: 416-601-8979
E: meldridge@mccarthy.ca

Jonathan Leung
Associate
T: 416-601-8186
E: jleung@mccarthy.ca

January 31, 2023

Delivered By Email: tsxrequestforcomments@tsx.com, CC: marketregulation@osc.gov.on.ca

Toronto Stock Exchange
CC: Ontario Securities Commission

Attention:

Danielle Mayhew
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
100 Adelaide Street West, Suite 300
Toronto, Ontario M5H 1S3

CC: Susan Greenglass
Director, Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8

Dear Mesdames:

**RE: TSX Request for Comments
Proposed Amendments to the TSX Company Manual – Section 606 – Prospectus Offerings**

We are pleased to provide comments in response to the Proposed Amendments outlined in the Toronto Stock Exchange (the “**TSX**”) Request for Comments published on December 1, 2022 (the “**Request**”) concerning amendments to Section 606 – *Prospectus Offerings* of the TSX Company Manual (the “**Manual**”).

Capitalized terms used in this letter that are not otherwise defined herein have the meanings given to them in the Request. This letter is submitted on behalf of and contains comments of certain members of our Capital Markets Practice Group. Our comments are submitted without prejudice to any position that has been or may be taken by our Firm, whether on behalf of any client of our Firm or otherwise.

General Comments on the Proposed Amendments

We welcome the Proposed Amendments and applaud the TSX for undertaking this initiative. Specifically, we believe the Proposed Amendments are most constructive in the following ways:

1. *The Proposed Amendments would help Section 606 of the Manual keep pace with the realities of contemporary market practice and provide greater execution certainty and efficiency.*

Based on our experience, we share the TSX's view that the Canadian senior market has evolved such that the majority of prospectus offerings today are executed by way of a bought deal offer by Canadian investment dealers as opposed to being marketed. We make similar observations that there is a practice shift toward bought deals and overnight marketed deals resulting in deals being completed over a shorter timeframe which requires greater execution certainty and affords less opportunity for "pre-clearance" discussions with the TSX.

2. *Deference should be afforded to issuer boards as they discharge their fiduciary duties in deciding the appropriate price for securities to be distributed pursuant to a prospectus.*

We concur with the TSX that deference should generally be given to boards in deciding the appropriate offering price. We also believe the Proposed Amendments install adequate measures—by assessing whether an offer is broadly marketed and the extent of insider participation—that militate against further need to curtail the board's business judgment.

3. *The Proposed Amendments would deliver the welcome benefit of conferring capital market participants with greater certainty as to what constitutes a bona fide public offering.*

The Proposed Amendments will replace an at times unclear standard of what constitutes a *bona fide* public offering with a standard that is easy to apply. For market participants using the TSX for their capital raising needs, we believe this will also be a positive change.

Points to Clarify

The Proposed Amendments mention that if implemented, the TSX contemplates also amending TSX Staff Notice 2018-0003 ("**Staff Notice**") to reflect that after one full day of trading, a valid reference price (i.e. Closing Price) can be used.

We interpret that a consequence flowing from this Staff Notice change would be that if material information is disseminated before markets open on the morning of a TSX trading day (say at 8:00 a.m. or 9:20 a.m., for example), then the Closing Price at 4:00 p.m. on that same trading day can serve as a valid reference price for an issue.

We believe that it will be helpful for market participants if the TSX clarifies this is a correct reading, and if the TSX can clarify what would be the morning cut-off time for material information to be disseminated.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. We would be happy to discuss any of the above with you further. If you have any questions, please do not hesitate to contact the undersigned at the contact information above or either of Andrew Parker (T: 416-601-7939; E: AParker@McCarthy.ca) or Patrick Boucher (T: 514-397-4237; E: PBoucher@McCarthy.ca).

Yours truly,

McCarthy Tétrault LLP

Per: *(Signed) "Michael Eldridge"*

(Signed) "Jonathan Leung"