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SENT BY ELECTRONIC MAIL

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Dear Sirs/Mesdames:

Re: Request for Comment – Amendments to Toronto Stock Exchange Company Manual – Prospectus Offerings

This letter is provided to you in response to the Toronto Stock Exchange ("**TSX**") Request for Comment regarding proposed amendments to the TSX Company Manual in respect of Prospectus Offerings issued on December 1, 2022 (the "**Request for Comment**"). Following our initial comments we will respond to specific questions set out in the Request for Comment. We appreciate the opportunity to provide this comment letter and hope that our submissions will be of assistance.

We are very supportive of the TSX's proposed amendments to reduce the burden faced by issuers and dealers when raising capital and to provide market participants with greater clarity, predictability and transparency in respect of TSX policies. We believe that issuers and their boards of directors are generally in the best position to determine pricing of an offering in the context of their circumstances and market conditions.

We have the following two general comments on the proposed amendments.

First, in circumstances where the discount is less than 15%, we believe the requirement that insider participation be limited to maintaining pro rata interest is unduly restrictive. While this has been a long existing administrative policy of the TSX, in practice this can be difficult to confirm and/or enforce, particularly for issuers that have a significant number of insiders (in some cases, hundreds or more, given the definition of insider, which is broader than reporting insider). In the case of arm's length 10% shareholder insiders, for instance, there is no way for the issuer to legally enforce the requirement that the shareholder limit their subscription in the offering to that required to maintain their pro rata interest, absent an agreement between the issuer and the shareholder, which the shareholder has no obligation to enter into.

We are unsure why the TSX would be concerned if an employee who is legally an insider but otherwise has no involvement in the offering (e.g., not involved in planning or structuring)

purchases shares through their broker where such purchase could increase the individual's position beyond pro rata. In many cases, such individual is likely to have a minimal ownership position in the issuer. More importantly, if the insider was not involved in structuring the offering, there should be no policy concern with the issuer benefitting from purchasing shares at an excessive discount and increasing their position beyond pro rata.

Alternative ways of satisfying the insider requirement could involve:

- changing the requirement so that it applies only to participation by insiders with knowledge of the proposed offering;
- changing the requirement so that it applies only to participation by "reporting insiders" rather than "insiders";
- applying the requirements only to insiders holding 1% or more of the issuer's outstanding common shares (or some other threshold that doesn't inadvertently capture those shareholders with minimal ownership);
- the issuer confirming that there is no "president's list" or similar list providing for insider participation in the offering, as a president's list is within the control of management (as opposed to purchases by the insider made independently through their broker), or if there is such a list, participation is limited to pro rata; or
- allowing the issuer to knowledge-qualify any representation that insider participation will be limited to maintaining pro rata interest.

Second, in respect of the definition of Broadly Marketed proposed in the Request for Comment, we believe TSX should consider certain revisions. In particular, while we understand that it is a common practice on the vast majority of deals for an equity capital markets team to broadly notify IIROC-registered investment dealers, we have some concern around the requirement for "all Canadian investment dealers" to be made aware of the offering given the risk of inadvertent breach. Instead, we propose that the definition require that the agent or underwriter "makes the offer known to the selling group and/or equity capital markets desks at Canadian investment dealers in accordance with customary practice".

With respect to the specific questions contained in the Request for Comment:

1. *Do you agree with TSX's overall approach with respect to how it proposes to view public offerings under Section 606 of the Manual as described herein?*

   Subject to our comments above, we are supportive of the proposed approach.

2. *In determining what level of discount exists, where insiders receive standby or commitment fees, or do not purchase via underwriters and subsequently the issuer does not pay the underwriting fee on the insiders' purchase, TSX intends to consider the net proceeds received by the issuer from the prospectus offering, rather than the discounted price paid by the subscriber. Pursuant to this proposed approach, TSX would require disclosure by the issuer of the actual proceeds paid by subscribers benefiting from receiving fees or who are exempt from underwriting fees. Note that where the net proceeds received by the issuer from insiders are, in fact, less than other subscribers, TSX would take the view that this is a different purchase price and therefore would apply the Private Placement Rules to the insider purchase, rather than regard it as part of the prospectus offering. Is this approach appropriate? Are there concerns with the perception that insiders are offered securities at a lower price than other subscribers?*

   We have no concerns with the perception that insiders are offered securities at a lower price than other subscribers provided that the effective price is disclosed. We are also unclear as to whether this is a practical issue since, if an insider is purchasing pursuant to the public offering, it would in our experience be unusual for there to be any commitment or other fee payable to the insider. Commitment fees tend to be paid when there are investors purchasing in a concurrent private placement, rather than the public offering itself. As such, the private placement rules would apply to such investor purchases in any event.

3. *With respect to pricing a prospectus offering where there is material undisclosed information, the Staff Notice states that TSX typically views five days as an appropriate benchmark for the dissemination of material information. However, where an abbreviated period of time is required by an issuer, TSX will take into consideration certain factors as set out in this Staff Notice. Given the speed and manner in which market information is now disseminated and TSX's desire to: (i) decrease the burden of TSX pre-clearance; and (ii) increase transparency and predictability of our policies, TSX is considering reducing the number of days required for the dissemination of Material Information (as defined in the Staff Notice) from five days to one day. Does this approach raise any concerns?*

   We are very supportive of reducing the number of days required for dissemination of Material Information. We believe that a requirement for five trading days is excessive. We also believe that issuers and underwriters are aligned in terms of wanting there to be sufficient time for information to "season" in the market, and that there should be deference to issuers and their management teams and boards in terms of determining how long is appropriate.

4. *The Proposed Amendments introduce a definition for "Broadly Marketed". Is the proposed definition appropriate? Are there other measures that TSX should*

consider? Is "Broadly Marketed" a reasonable standard for public offerings that are led by investment dealers outside of Canada?

Subject to our comments above, we are supportive of the proposed approach.

We would be happy to discuss our comments with you; please direct any inquiries to Desmond Lee (dlee@osler.com or 416.862.5945) or James R. Brown (jbrown@osler.com or 416.862.6647).

Yours very truly,

Osler, Hoskin & Harcourt LLP

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