



December 21, 2023

VIA E-MAIL

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: OSC Notice 11-798 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025 (the “Request for Comments”)

TMX Group Limited (“**TMX**” or “**we**”) is an integrated, multi-asset class exchange group. TMX’s key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange (“**TSX**”), TSX Venture Exchange (“**TSXV**”), Alpha Exchange, The Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX companies provide securities listing markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

The Ontario Securities Commission's (the “**OSC**”) publishes its draft Statement of Priorities annually for public comment prior to finalizing its priorities in the annual Business Plan, which it submits to the Minister of Finance. TMX appreciates the transparency in government engendered through this process, and welcomes the opportunity to comment on the OSC’s Statement of Priorities for the fiscal year 2024-2025 (the “**SoP**”). The openness of this process is fundamental to the continued support that the OSC enjoys among its stakeholders. TMX views the OSC as a partner in creating the conditions that enable the capital markets in Canada to thrive. Below we set out general comments, providing a lens through which we believe regulatory priorities may be viewed, followed by our comments on certain key priorities.

All capitalized terms used but not defined in this letter have the meaning as set out in the Request for Comments.

A. General Comments

As stated in the Request for Comments, the SoP is aimed at supporting the OSC's commitment to be both effective and accountable in delivering on its mandate to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk. This mandate was expanded in 2021, when the Ontario government took the significant action of amending the OSC's legislative mandate to specifically include "fostering competitive capital markets and capital formation."¹ The OSC, in the SoP, recognizes this expanded mandate, stating that it is "committed to promoting fair, efficient and competitive capital markets in Ontario, a prerequisite for economic growth", and also states that "delivering strong investor protection remains a top priority in all initiatives and actions [it] undertake[s]." While TMX agrees that strong investor protection is the bedrock of a well-functioning capital market, the priorities must be addressed by actions and planned outcomes that are also adequately informed by the need to foster competitive capital markets and capital formation.

We believe that in implementing its expanded mandate, fostering competitiveness and capital formation considerations should be the prism through which all initiatives should be viewed, as well as a driver for formulating policy. Our comments on specific priorities included in the SoP are formulated with the competitiveness of the Canadian capital markets and fostering capital formation in mind. It is important that the Canadian capital markets continue to attract domestic and foreign investment. This means that we must be especially sensitive to whether our regulatory framework creates unnecessary obstacles to attracting investment. We believe that analyzing each of the actions in the SoP to determine the impact it will have on the overall competitiveness of the Canadian capital markets relative to other foreign jurisdictions that compete for investment capital, such as the U.S., is crucial. This is particularly true given the depth and liquidity of the U.S capital markets, and the connection between our markets, which is evidenced by the large number of interlisted issuers² and securities that trade in the U.S. over-the-counter markets.

Such analysis must take into account the particular differentiators of the Canadian market. Canada has a highly efficient capital market through which start-up companies can gain financing through offering their shares to the public, listing on venture exchanges and graduating to senior exchanges. Furthermore, regulatory proposals that focus on market structure must consider the impact on liquidity and ease of domestic and foreign access to our markets. As the expansion of the OSC's remit reminds us, we must keep in mind that strengthening the Canadian economy as a whole is the *raison d'être* of the capital markets.

¹ See [Capital Markets Modernization Taskforce: Final Report January 2021](#) and [Bill 269 - An Act to implement Budget measures and to enact and amend various statutes](#), which received Royal Assent on April 27, 2021.

² As at November 30, 2023, there were a total of 181 issuers listed on the TSX that were interlisted on New York Stock Exchange ("NYSE") or NASDAQ, and 23 issuers listed on TSXV that were interlisted on NYSE or NASDAQ. Source: TSX/TSXV Market Intelligence Group.

Although individual regulatory changes may appear to be benign, TMX is of the view that in their totality, regulation of the capital markets must support, and not inhibit, companies from going public, and strengthen the liquidity and depth of our markets. It is important to not lose sight of these fundamental necessities when considering the implementation of individual regulations. For this reason, TMX suggests that emphasis should be placed on undertaking cost/benefit analysis earlier in the process of considering rule changes intended to effect the SoP. This is a practical approach that enables the OSC to adequately consider the factors of competitiveness and fostering capital formation.

Although cost/benefit analysis is already part of the OSC's rule-making process,³ we urge the OSC to undertake this analysis early in a proposal's development process, taking into account a holistic consideration of its mandate.⁴ Robust qualitative and quantitative analysis of the anticipated costs and benefits of various alternatives should be undertaken and guide the formulation of any proposal well before a specific proposal takes shape. We suggest a preliminary cost/benefit analysis be completed at the consultation paper stage when conceptual proposals are being presented, prior to proposed rule amendments. Note we are not suggesting that this would replace producing a more refined cost/benefit analysis relevant to specific proposed rule changes. However, thoroughly weighing options at an early stage and including identified costs and benefits within the consultation would allow market participants to also consider them, offer feedback, and highlight additional externalities. Doing so will only improve the OSC's already robust policy-making process and resulting outcomes for our capital markets.

B. Specific Priorities

1. Advance work on environmental, social and governance (“ESG”) disclosures for reporting issuers

As part of this priority, the OSC plans to continue development of a revised climate-related rule for reporting issuers (other than investment fund issuers), based on the ISSB Standards with any modifications considered necessary and appropriate in the Canadian context. TMX is generally

³ In this regard, section 143.2(2)(7) of the *Securities Act* (Ontario) requires “a qualitative and quantitative analysis of the anticipated costs and benefits of [a] proposed rule.” This is in accordance with the position of the Ontario government, which in its 2019 budget at page 230, stated:

Rule- making must weigh the economic costs against benefits to stakeholders. It is crucial when introducing rules that a robust impact analysis be conducted. Qualitative and quantitative analysis of the anticipated costs and benefits of a proposed rule would be provided within the OSC's rule publications and shared as part of the consultations on the proposal to better inform public comments and the rule- making process. This approach would enhance transparency and appropriately inform stakeholders of the impacts of new rules.

⁴ Although not applicable to provincial securities regulators, the Canadian government publishes a cost-benefit analysis guide for regulatory proposals. See Canada's [Cost-Benefit Analysis Guide for Regulatory Proposals](#). Furthermore, the U.S. Securities and Exchange Commission has long recognized that a rule's potential benefits and costs should be considered in making a reasoned determination that adopting a rule is in the public interest. See [Current Guidance on Economic Analysis in SEC Rulemakings](#).

supportive of regulatory initiatives that facilitate a global baseline of sustainability-related disclosures that are decision-useful, comparable and robust to investors and other stakeholders.⁵ We do, however, encourage regulators to ensure that the volume and complexity of any new disclosure requirements do not impose unreasonable costs and burdens, in particular on small and medium enterprises, which make up the majority of companies listed on TMX exchanges.⁶ Furthermore, such analysis should appropriately consider the effect on the competitiveness of our capital markets relative to other jurisdictions, such as the U.S.

Our two-tiered public markets provide an avenue for very small companies to go public at a relatively early stage.⁷ Many venture issuers go on to graduate from TSXV to TSX⁸, and in fact, for many companies, the primary route to listing on TSX, Canada's senior market, is through first listing on TSXV. However, for this critical aspect of the Canadian public market ecosystem to function and help grow the economy, it is imperative that climate, and other sustainability-related, disclosure requirements are appropriately calibrated for each segment of the market. Appropriate cost/benefit analysis of the application of such requirements must consider the relative burden on our smaller companies, and be weighed against other factors, such as investor demand, which tends to differ among market segments. In light of the realities of our market, certain tiers of issuers, such as venture, should be excluded from the application of the ISSB Standards. Furthermore, we also encourage modified or delayed compliance timelines for smaller non-venture companies to allow for sufficient capacity to build up. Such calibrations are appropriate in the Canadian context, and are consistent with ISSB guidance.⁹

We look forward to continuing to work with the OSC, the broader CSA, and other stakeholders on helping to adapt the proposed ISSB Standards such that they appropriately consider the needs of the Canadian market.

2. Consider broader diversity on boards and in executive roles at reporting issuers

TMX acknowledges the OSC (and the CSA) for its continued work in the area of diversity on boards and executive roles at reporting issuers in Canada. We believe diversity in board composition is critical for constructive discussion and effective decision-making and that diversity in board composition is a matter of good governance and enhances corporate performance. As indicated in our comment letter to the CSA's diversity disclosure consultation, after weighing the costs and benefits of the two approaches put forward by the CSA and after consultation with our

⁵ See the TMX comment letter on the ISSB Standards [here](#), and on proposed NI 51-107 [here](#).

⁶ The Organisation for Economic Co-operation and Development defines small and medium sized enterprises ("SMEs") as enterprises that employ fewer than 250 people (see definition [here](#)). Based on that definition, 18% of corporate issuers listed on TSX, and 89% of issuers listed on TSXV, are SMEs, representing a majority (65%) of total corporate listings as at March 31, 2023. Source: TSX/TSXV Market Intelligence Group and S&P Capital IQ.

⁷ As at November 30, 2023, the median market cap for TSXV corporate issuers was \$8,596,862. Source: TSX/TSXV Market Intelligence Group.

⁸ TSXV graduates represented 59% of new TSX corporate listings in 2022. Source: TSX/TSXV Market Intelligence Group.

⁹ See Paragraphs 39 to 41 of the [ISSB Adoption Guide Overview](#).

issuer community, we encouraged the CSA to take a principles-based approach to diversity disclosure.

In the SoP, the OSC indicates that it will consider the feedback received on its recent request for comment¹⁰ relating to board nominations, board renewal and diversity, and consider the approaches taken by other regulators with the goal of minimizing market fragmentation in this area. Despite the differences in preferences of one proposal over the other expressed by the participating CSA jurisdictions in the request for comment, we reiterate the importance of the CSA adopting a single and uniform proposal for the Canadian capital markets to prevent fragmented requirements. We are pleased that the OSC's aims appear to be aligned with this result. We also applaud the OSC for including execution of its own inclusion and diversity strategy as one of its key priorities for 2024-2025.

3. Advance initiatives to strengthen the short selling framework

TMX supports the undertaking by the CSA and CIRO of this initiative. TMX believes that the practice of short selling has a role in the vibrancy of the Canadian capital markets by enhancing market liquidity, transparency and price discovery. However, we are also aware that negative perceptions about short selling exist, and that certain stakeholders have observed that the regulatory framework for short selling in Canada is not as robust as in other jurisdictions, including the U.S. Regardless of the view that one takes, the regulatory framework must address potential abusive practices while being appropriate for our market. We support modifications to the existing regulatory framework proposed by the CSA and CIRO that will increase investor confidence and ensure fairness to all participants in Canada's capital markets, without hampering legitimate short sale activities.

The OSC, together with the CSA and CIRO, will continue its efforts to determine whether any changes, including the introduction of a mandatory buy-in requirement and enhanced fail to deliver reporting, may be appropriate in the Canadian context. TMX understands that any policy proposals that result from this will be published in a request for comment in the normal course, and TMX would welcome the opportunity to provide its comments.

4. Advance cooperation with Indigenous Peoples and work to understand and integrate their perspectives and interests

The SoP includes, as a priority of the OSC, to continue to work collaboratively with Indigenous Peoples and organizations and develop an action plan for truth and reconciliation. We applaud the OSC's efforts and continued work in this very important area. We firmly believe that the development of an action plan for Truth and Reconciliation is a meaningful step that the OSC can take in demonstrating leadership in this space with positive impacts for the regulatory and business community.

¹⁰ See CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines found [here](#).

Recognizing that Indigenous Peoples have persistently faced barriers that impede their ability to participate in our country's capital market ecosystem, TMX and the broader Canadian corporate community have an important role to play in eliminating these barriers to enable growth and opportunity for Indigenous Peoples and a more prosperous future. TMX began its own journey to Indigenous Reconciliation in 2021, leading us to become a member of the Canadian Council for Aboriginal Business and commit to its Progressive Aboriginal Relations ("**PAR**") certification program. In 2023, we achieved level 2 of the PAR certification program recognizing the commitment to building relationships and engaging with Indigenous organizations. In 2024, we will be working towards the development of a longer term Reconciliation Action Plan supportive of the PAR program implementation.

TMX is committed to finding real-world, long-term solutions to bring more investment to Indigenous-owned businesses, lower barriers for companies to become publicly traded, and make it easier for investors to find companies that uphold reconciliation within their corporate practices. We look forward to sharing mutual learnings and working together for the establishment of more inclusive capital markets.

Furthermore, in relation to the discussion on advancing ESG disclosure above, we support the OSC's efforts to develop a better understanding of the needs of, and the regulatory impacts on, Indigenous Peoples in relation to its climate-related disclosures initiative. TMX believes that engaging with Indigenous Peoples and organizations is necessary in order to develop revised climate-disclosure standards that are truly reflective of the Canadian context.

5. Enhance information sharing with the Canadian Public Accountability Board

While this priority is focused on exploring opportunities to improve information sharing practices between the OSC and CPAB, TMX encourages the OSC (and the CSA more broadly) and CPAB to consider ways to continue to support the Canadian public accounting industry, in order to ensure the long-term availability of quality audit services to Canadian public companies, particularly venture issuers.

6. Modernize delivery options of regulatory and continuous disclosure filings for issuers

As part of this priority, the OSC stated that it will consider stakeholder feedback in the development of (i) the final amendments to implement an access model for corporate finance reporting issuers; and (ii) a proposed access model for investment funds. TMX shares the OSC's view that electronic access to documents facilitates more efficient communication with investors, reduces regulatory burden for issuers, and modernizes the way documents are made available for the benefit of investors and issuers.

TMX believes that the access equals delivery model (where adopted by issuers) will help reduce the regulatory burden and costs borne by issuers, facilitate the timely disclosure of information to investors, and provide an environmentally friendly manner of communicating information to investors.

7. Facilitate financial innovation

TMX is pleased that this priority is informed by the OSC's aim to foster innovative and globally competitive capital markets in Ontario. TMX is focused on supporting and promoting innovation in Canada and globally, and we share the OSC's view that innovation offers economic opportunities and choice for investors. In this regard, it is essential that policymakers continuously review their regulatory frameworks and adapt regulation to changing market dynamics so that they remain relevant in the context of future innovation and achieve their objectives without inhibiting competition and innovation. As such, TMX is supportive of the OSC engaging with stakeholders for input on how it can support innovation and modernize its regulations.

8. Further initiatives that promote capital formation and foster competition

TMX applauds the OSC for its focus on initiatives that promote capital formation and foster competition. We support efforts to make Canada's capital and financial markets more efficient and competitive. As mentioned in our general comments above, we believe that in implementing its expanded mandate, fostering competitiveness and capital formation should be a driver for formulating specific policies, and also an important lens through which all other OSC initiatives should be viewed, in addition to longstanding aspects of the OSC's mandate, such as investor protection. Furthermore, and as expressed above, in analyzing whether specific policy initiatives foster competitive capital markets, the focus should be on the overall impact on the competitiveness of the Canadian capital markets relative to foreign jurisdictions, given the global nature of these markets. Recognizing global competitive pressure and the dynamic nature of capital markets, foreign regulators, such as the Financial Conduct Authority (FCA), have been focusing on increasing the competitiveness of their capital markets in recent proposed reforms.¹¹

While regulation is important to protect against negative externalities that may be left unaddressed by market forces, it must be careful to not have the unintended consequences of being overly intrusive on, or discouraging, capital formation, innovation or competition in the Canadian marketplace. TMX supports efficient and intelligent regulation that helps ensure the global competitiveness of our capital markets, and achieves the right balance between investor protection and regulatory burden. For example, while TMX supports the OSC's priority relating to strengthening oversight and enforcement in the crypto asset sector to protect investors, it is important that crypto trading platforms operate with the appropriate regulatory oversight that supports novel businesses, and fosters innovation and competitive markets.

TMX is particularly interested in two action items relating to the capital formation and competition priority. As part of this priority, the OSC will consider: (i) reducing the length of the hold period applicable to securities distributed under the accredited investor exemption by seasoned reporting issuers; and (ii) taking steps to allow exempt market dealers to participate as selling group members in prospectus offerings and be sponsors of reverse-takeover transactions, subject to conditions. Without seeing the particular details of these proposals, we are of the preliminary

¹¹ FCA Consultation Paper CP23/31*** *Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms.*

view that these proposals, if implemented, could have the desired effect of promoting capital formation. We encourage the OSC to continue its analysis of these two proposals, and we would welcome the opportunity to provide our comments on formal policy proposals published in the future.

The OSC will also finalize recommendations for policy changes, based on the feedback obtained in response to CSA Consultation Paper 21-403 *Access to Real-Time Market Data*. We emphasize the comments in our response¹² to the consultation paper. In particular, we agree that issues related to RTMD should be examined, and that there is room for enhancements to the current framework. However, we believe that the approach to these issues must be nuanced, recognizing that for many, the use of market data is more a commercial consideration. TMX endorses a nuanced approach to RTMD regulation that reflects the diverse needs and interests of different types of market participants and RTMD consumers, rather than a one-size-fits-all model. Furthermore, proposals to substantially alter the current arrangements must be grounded in a robust analysis of the cost and benefits of the proposal, and such analysis should be performed early in the process in order to avoid outcomes with problematic unintended consequences. Finally, TMX is of the view that the formation of an advisory panel composed of industry experts to consider and provide advice to the CSA on these issues in the first instance is required. We look forward to working collaboratively with other stakeholders to continue to improve the regime for Canadian RTMD.

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We appreciate the opportunity to respond to the Request for Comments. We would be pleased to discuss any of our comments on the SoP in more detail at your convenience.

Sincerely,

“Rajeeve Thakur”

Rajeeve Thakur
Vice President, Regulatory Affairs and Enterprise Compliance
TMX Group Limited

¹² Please see the TMX comment letter found [here](#).