

TSX CONSIDERING ADOPTION OF PRICING GUIDELINES FOR PROSPECTUS OFFERINGS

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On December 1, 2022, the Toronto Stock Exchange (the “**TSX**”) published [proposed amendments](#) (the “**Proposed Amendments**”) to Section 606 of the TSX Company Manual, which if adopted, would set standards to state clearly what constitutes a bona fide prospectus offering. The Proposed Amendments are expected to be effective in the first quarter of 2023 following a public comment period and approval by the Ontario Securities Commission (the “**OSC**”). **The comment period in respect of the Proposed Amendments ends on January 31, 2023.**

After consulting various market participants and reviewing its deal pricing data, the TSX identified the following key factors that it intends to consider when determining the nature of a proposed prospectus offering:

- 1. Broadly Marketed.** To be considered “*bona fide*”, a public offering must be broadly marketed. Under the Proposed Amendments, the term “broadly marketed” will be defined as an offering where the agent or underwriter either: (i) distributes the offered securities to at least 50 purchasers; or (ii) makes the offer known to the selling group and/or equity capital markets desks at all Canadian investment dealers.
- 2. Offering Price.** The TSX is generally of the view that deference should be given to an issuer’s board of directors when determining the price of securities to be distributed under a prospectus. As such, the TSX will generally accept the offering price of securities offered by way of a prospectus regardless of the discount price, assuming the prospectus offering is broadly marketed and there is no insider participation. Also, it should be noted that when calculating the discount for a prospectus offering, the TSX is proposing to use as a reference point the closing price of the most recently completed trading session of the issuer’s listed securities rather than a five-day VWAP of such securities.
- 3. Insider Participation.** If insiders of an issuer intend to participate in a prospectus offering under the Proposed Amendments, the TSX will review the offering as follows:
 - if the offering is “broadly marketed” and priced at or less than a 15% discount to the closing price of the offered securities, the TSX will accept insider participation to maintain their *pro rata* interest in the

issuer. Any insider participation beyond *pro rata* levels will be reviewed under the TSX's private placement rules; and

- if the offering is priced in excess of a 15% discount to the closing price of the offered securities, the TSX will review all insider participation by applying the TSX's private placement rules (which may require shareholder approval of the offering).

The TSX believes that the Proposed Amendments will provide clarity, predictability and greater transparency and, as such, reduce the burden for issuers and their underwriters when raising capital using a prospectus. If you have any comments with respect to the Proposed Amendments that you wish to bring to the attention of the TSX and the OSC, please contact any member of our Capital Markets group.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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