

## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.2 Marketplaces

#### 13.2.1 TSX Inc. and TSX Venture Exchange Inc. – Notice of Proposed Program and Request for Comments

TSX INC.

AND

TSX VENTURE EXCHANGE INC.

#### NOTICE OF PROPOSED PROGRAM AND REQUEST FOR COMMENTS

TSX Inc. (“**TSX**”) is publishing this Notice of Proposed Program and Request for Comments in accordance with the “Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto”.

TSX Venture Exchange Inc. (“**TSXV**”, and together with TSX, the “**Exchanges**”) is publishing this Notice of Proposed Program and Request for Comments. The Proposed Program (as defined below) will be implemented following receipt of approval by the British Columbia Securities Commission (the “**BCSC**”) and Alberta Securities Commissions (the “**ASC**”) following public notice and comment.

Market participants are invited to provide comments on the Proposed Program. Comments should be in writing and delivered by December 14, 2020 to:

Denno Chen  
Director, Regulatory Affairs  
TMX Group  
100 Adelaide Street West, Suite 300  
Toronto, Ontario M5H 1S3  
Email: [tsxrequestforcomments@tsx.com](mailto:tsxrequestforcomments@tsx.com)

A copy should also be provided to:

Market Regulation Branch  
Ontario Securities Commission  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by staff at the Ontario Securities Commission (“**OSC**”), BCSC and ASC, and in the absence of any regulatory concerns, a notice will be published to confirm the approval by each of the OSC, BCSC and ASC.

#### Background

The Exchanges are proposing the introduction of an optional program setting a monthly flat fee for clients (the “**Distributors**”) who purchase Data (as defined below) to provide to their Wealth Clients (as defined below) for his or her own personal investment, trading or financial planning (the “**Proposed Program**”). The following data is eligible for the Proposed Program: TSX Level 1 data, TSX Level 2 data, TSX Venture Level 1, TSX Venture Level 2 data, Real Time Index (TXI) values, and/or Canadian Exchange Group (CEG) Level 1 and Level 2 data outside of Canada (collectively, the “**Data**”).

The Proposed Program will only be available for Distributors who have elected to participate in the TSX and TSX Venture Non-Professional Enterprise Fee Program implemented by the Exchanges (the “**Enterprise Non-Pro Program**”).

The Proposed Program aims to provide Distributors the option to implement a monthly flat fee for all their Wealth Clients, which would give the Distributors the option to simply treat Wealth Clients as non professional subscribers by paying an additional monthly flat fee. A “**Wealth Client**” is any client of a Distributor who: (i) opens a discount brokerage account or retail account; and (ii) utilizes such discount brokerage account or retail account, and who receives Data for the purpose of his or her own

personal investment, trading or financial planning. Wealth Clients do not include any individual using the Data for the purpose of buying, selling and or analyzing TSX or TSXV securities as part of his or her employment.

In 2018, the Exchanges began discussions with a collective group representing most of the Distributors regarding the challenges they faced in the context of data consumption. The Proposed Program was then created after extensive consultation with Distributors and other industry participants. It was during these various meetings that the foundational elements of the Proposed Program were developed, with the interested parties in the room and providing feedback. The Proposed Program is completely optional for Distributors, and was created taking into account the concerns raised by Distributors, and seeks to improve the Exchanges' clients' experience.

The Exchanges believe that the Proposed Program, in conjunction with the Enterprise Non-Pro Program, is a great benefit to Distributors as well as the Canadian capital markets as it encourages accessibility of real time data to a broader number of Canadian investors.

### **Details of Proposed Program**

The Proposed Program will have two tiers:

	<b>Monthly Fee</b>
Tier 1 - Distributors with 10,000 or more Non-Professional Subscribers	\$9,500
Tier 2 - Distributors with 9,999 or fewer Non-Professional Subscribers	\$4,500

The available discount tiers are based on the Non-Professional Subscribers that a Distributor has. For the purposes of the Proposed Program, a **"Non-Professional Subscriber"** is defined as an individual who is not a securities professional and who is acting in his/her personal capacity and not as a principal, officer, partner, employee nor agent of any business nor on behalf of any individual. A Non-Professional Subscriber does not include: (i) brokers, dealers, investment advisors or persons otherwise employed by organization conducting professional activities involving the buying and selling of instruments, such as stocks, bonds, options, futures contracts and other trading vehicles; (ii) persons engaged as consultants, independent contractors, software developers and others that use market information for any purpose for profit other than the trading of that person's personal account; and (iii) an individual in receipt of Data from a Distributor where the Distributor reports usage for such individual on a per quote basis.

Distributors may elect to enroll in the Proposed Program at any time from the effective date of regulatory approval for the Proposed Program. If a Distributor enrolls in the Proposed Program, the Proposed Program will be effective on the later of: (i) the date of approval of the Proposed Program by the regulators; and (ii) the date the Proposed Program is executed the applicable agreement by the Distributor and TSX. In all cases, a Distributor's participation in the Proposed Program will expire immediately upon the expiration of such Distributor's Enterprise Non-Pro Program, so that Proposed Program and the Enterprise Non-Pro Program become coterminous. If applicable, the Proposed Program may be renewed by each Distributor contemporaneously with, and subject to the renewal term, as set out in such Distributor's Non-Pro Program.

The Proposed Program will terminate on December 31, 2025, subject to the applicable regulators' approval of any extension to the Proposed Program.

Please see Appendix A for the fee schedule for Proposed Program.

### **Rationale and Analysis**

The Exchanges understand that, under the current system, Distributors undergo a labour intensive process that is aimed at determining whether their end user client is a "professional" or a "non-professional". This places an unnecessary administrative burden on Distributors; particularly in instances where an individual uses a corporate email address to register for his or her own personal investment, trading or financial planning. The Exchanges have been made aware of this process, and have proactively developed the Proposed Program as an innovative way for Distributors to reduce the administrative burden. Rather than undergo the administrative task of auditing each end user client, the Exchanges are providing Distributors with the option to estimate the number of Wealth Clients, and pay a flat monthly rate.

### **Expected Date of Implementation**

The Proposed Program is expected to be implemented following receipt of regulatory approval, and is anticipated to be implemented no earlier than December 1, 2020.

### **Expected Impact**

There will be no impact on market structure or issuers. The Exchanges believe that any impact on members or investors will be positive as the Proposed Program is aimed to reduce the overall cost of Data for Distributors (as it pertains to Wealth Clients), and provide investors with greater access to the Data. The Proposed Program may result in Distributors providing the Data to a larger subset of their retail client base. The Exchanges do not anticipate that any market participant will be negatively impacted by the Proposed Program.

### **Expected Impact of Proposed Program on the Exchanges' Compliance with Applicable Securities Law**

The Proposed Program is in compliance with applicable securities laws and does not impact fair access to markets or the maintenance of fair and orderly markets. Specifically in the context of fair access requirements, the Proposed Program is available to all Distributors who have elected to participate in the Non-Pro Program. The Proposed Program is also reasonable as it is completely optional and Distributors can make their own determination regarding whether the Proposed Program aligns with their business objectives and assess the commercial viability of the Proposed Program for their organization.

### **Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Proposed Program**

Distributors who elect to enroll in the Proposed Program do not need to make any changes to accommodate the Proposed Program. The Exchanges will incorporate the terms of the Proposed Program into its billing system so that the invoices reflect the terms of the Proposed Program. In addition, the Proposed Program may ease any current strain on Distributors' systems as it aims to reduce the unnecessary administrative burden on Distributors associated with determining whether their end user client is a "professional" or a "non-professional".

### **Does the Proposed Program Currently Exist in Other Markets or Jurisdictions**

The Exchanges are not aware of any other market or jurisdiction utilizing a flat fee similar to the Proposed Program. The Exchanges continuously work with their clients to find innovative solutions that improve their experience with the Exchanges. The Exchanges understand that Distributors may be burdened by the administrative task of determining whether a client is a Wealth Client, and the Exchanges are proactively taking steps to assist Distributors in alleviating some of this burden.

## APPENDIX A

# TSX & TSX Venture Wealth Client Fee Cap<sup>(2), (3), (4), (5)</sup>

## Discount Tiers

## Enterprise Price

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Tier 1 – Large Wealth Client Distributors <sup>(6)</sup>	\$9,500.00 <sup>(1)</sup> / month
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Tier 2 – Medium Wealth Client Distributors <sup>(7)</sup>	\$4,500.00 <sup>(1)</sup> / month
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**Notes:**

(1) Applicable taxes will be added to the amount payable. Eligible Distributors must execute the applicable agreement with TSX Inc. (the “Agreement”).

(2) The TSX & TSX Wealth Client Fee Cap (the “Program”) is available to Distributors who (a) have subscribed for Data (as defined below) for a period of at least 12 months prior to the effective date of the applicable initial term of the Program; and (b) are enrolled in the TSX and TSX Venture Non-Professional Enterprise Fee Program. The Program provides a monthly flat fee for Distributors who subscribe for Data to distribute to their Wealth Clients (as defined in the Agreement).

(3) The Data received under the Program must not be provided by Distributors to professionals including individuals or entities that provide investment services, trading services, financial planning or similar services. Participation in the Program is voluntary, and Distributors may elect to continue to pay applicable professional fees.

(4) The following data is eligible for the Program: TSX Level 1 data, TSX Level 2 data, TSX Venture Level 1, TSX Venture Level 2 data, Real Time Index (TXI) values, and/or Canadian Exchange Group (CEG) Level 1 and Level 2 data outside of Canada (collectively, the “Data”).

(5) The Program terminates December 31, 2025, subject to the applicable regulators’ approval of any extension to the Program. In the event of any inconsistencies between this fee schedule and the Agreement, the terms of the Agreement shall govern.

(6) Tier 1 is applicable for Distributors who have 10,000 or more Non-Professional Subscribers (as defined in the Agreement).

(7) Tier 2 is applicable for Distributors who have fewer than 9,999 or fewer Non-Professional Subscribers.

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