



August 13, 2019

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
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comments@osc.gov.on.ca

Me Anne-Marie Beaudoin/
Corporate Secretary
Autorité des marchés financiers
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consultation-en-cours@lauthorite.qc.ca

Dear Sirs/Mesdames,

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 44-102 *Shelf Distributions* and Change to Companion Policy 44-102CP *Shelf Distributions* relating to At-the-Market Distributions

Toronto Stock Exchange (the “**Exchange**”, “**TSX**” or “**we**”) welcomes the opportunity to provide comments on the Canadian Securities Administrators’ (the “**CSA**”) proposed amendments to National Instrument 44-102 *Shelf Distributions* and changes to Companion Policy 44-102CP *Shelf Distributions* related to at-the-market (“**ATM**”) distributions (the “**Proposed Amendments**”). The Exchange strongly supports the CSA’s efforts to further streamline the process for ATM distributions by reporting issuers. We believe that the Proposed Amendments balance the need to reduce the regulatory burden for issuers who wish to conduct ATM distributions, without compromising investor protection.

Toronto Stock Exchange

The Exchange is part of TMX Group Limited, a company that is strongly focused on supporting and promoting capital formation, innovation, good governance and financial markets in Canada and globally through its world class exchanges, including TSX and TSX Venture Exchange (“**TSXV**”) for equities, and Montreal Exchange for financial derivatives. TSX is a globally recognized, robust stock exchange that lists growth-oriented companies with strong performance track records and is a top-ranked destination for global capital. TSXV is Canada’s leading global capital formation platform for growth stage companies looking to access public venture capital to facilitate their growth, and is an important part of Canada’s vibrant and unique capital markets continuum.

TSX Supports the Proposed Amendments

We strongly support the CSA’s efforts to streamline the process for ATM distributions by codifying the exemptive relief typically granted by the CSA for these distributions. In particular, we support an exemption for the underwriter from the requirement to deliver a prospectus to purchasers of securities in an ATM distribution and an exemption for the issuer and underwriter from certain of the prospectus form requirements, including a relaxation of the form of statement of rights. Our understanding is that this exemptive relief has been granted by the CSA as a matter of course in connection with ATM distributions. Therefore, codifying these exemptions will eliminate the expense issuers incur to prepare exemptive relief applications, which will meaningfully reduce the regulatory burden on issuers.

We note that ATM distributions are not as common in Canada as they are in the U.S. Feedback from our stakeholders indicates that issuers have the perception that ATM distributions are more complicated to undertake in Canada, which leads many interlisted issuers to pursue an ATM distribution only in the U.S. Therefore we believe it is important for the CSA to align rules regarding ATM distributions with those in the U.S. due to the interplay between the Canadian and U.S. capital markets and to foster capital formation activity in Canada. Therefore, we support the CSA’s proposal to remove the restriction that the market value of equity securities distributed under a single ATM distribution prospectus supplement may not exceed 10% of the aggregate market value of the issuer’s outstanding equity securities of the same class. We believe that the removal of this cap will create more alignment between the U.S. and Canadian rules regarding ATM distributions.

TSX Supports Removal of Liquidity Requirements

The Exchange supports the CSA proposal to not impose any liquidity requirements in order for an issuer to conduct an ATM distribution. Based on feedback from our stakeholders, our understanding is that limiting the aggregate number of securities distributed under an ATM distribution on any day to 25% of the trading volume of the securities on all marketplaces on that day is a meaningful impediment to issuers pursuing ATM distributions in Canada. Our understanding is that neither this 25% daily cap nor a “highly liquid securities” test apply to ATM distributions in the U.S. Therefore, the 25% daily cap contributes to the perception that ATM distributions are more complicated to conduct in Canada, which leads issuers to pursue an ATM distribution only in the U.S. and bypass Canada. The Exchange believes that aligning Canada’s rules in this regard with the U.S. rules will address this perception and will increase the availability of ATM distributions to Canadian investors.

The Exchange believes that removing the 25% daily cap will not result in ATM distributions having a material impact on the price of the securities being distributed. As the CSA notes, issuers are already incentivized not to conduct ATM distributions that will have a material impact on the market price of their securities. Similarly, investment dealers are involved in facilitating ATM distributions onto a marketplace. Investment dealers have their own regulatory requirements to not engage in conduct that may disrupt a fair and orderly market, and have expertise in managing orders to limit the negative impact of an ATM distribution on market price. Based on feedback from our stakeholders, the Exchange understands that due to this market discipline, ATM distributions do not typically have a material impact on the price of securities in the U.S., and we expect that the result would be similar in Canada.

TSX Guidance regarding ATM Distributions

Finally, we note that ATM distributions, as distributions of a listed class of securities, require TSX approval according to the TSX Company Manual. TSX expects that ATM distributions will become more common in Canada as a result of the Proposed Amendments. Therefore, TSX is considering issuing guidance to the market in the form of a staff notice regarding how TSX rules apply to ATM distributions in order to offer clarity to the market and help streamline the process for TSX approval of such distributions. TSX believes this will support the CSA's initiative to reduce the regulatory burden associated with ATM distributions in Canada.

The Exchange appreciates the opportunity to provide comments with respect to the CSA's Proposed Amendments regarding ATM distributions. We look forward to continuing a dialogue with the CSA on this issue. We appreciate your consideration of our comments and suggestions, and we would be happy to discuss these at greater length with the appropriate CSA representatives. Please do not hesitate to contact us if you have any questions regarding our comments.

Respectfully submitted,

"Loui Anastasopoulos"

Loui Anastasopoulos
President, Capital Formation & TSX Trust