



2016-0006

October 11, 2016

**Sections 606, 607 and 611
Prospectus Offerings, Private Placements &
Concurrent Acquisitions**

**Part 1
"market price" definition**

**Section 355
Stock Symbol Reservations**

**STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND
PARTICIPATING ORGANIZATIONS**

Toronto Stock Exchange ("TSX") is providing (i) guidance with respect to pricing a prospectus offering or private placement where there is undisclosed material information, and (ii) an update to Staff Notice 2016-0003 dated April 26, 2016 with respect to the adoption of root symbols that consist of four letters of the alphabet ("four letter symbols").

1. Prospectus Offerings, Private Placements & Concurrent Acquisitions

In order to balance the interests of security holders, listed issuers and other market participants, TSX reviews the price at which securities are issued from treasury for financings, taking into account relevant factors such as liquidity, trading activity and any material events, changes or announcements, as provided under the definition of "market price" (the "Market Price") found in Part I of the TSX Company Manual (the "Manual").

Subsection 607(e) of the Manual requires that the price per listed security issued by way of private placement must not be lower than the Market Price less applicable allowable discounts. Subsection 606(b) of the Manual provides that TSX may review a prospectus offering under the provisions of Section 607 (Private Placements) having regard to a number of factors, including the offering price and economic dilution. Accordingly, TSX expects that listed issuers proposing a prospectus offering or a private placement will price their offerings in the context of the market with reference to the Market Price. Generally, when pricing a financing, the Market Price should reflect all material events, changes or announcements (collectively, "Material Information"). Factors to consider when determining whether an event is material are discussed under the TSX Timely Disclosure Policy set out in Part IV of the Manual, and more specifically, Section 410 of the Manual provides examples of developments likely to be considered material.

It is the responsibility of each listed issuer to determine what information is material, in compliance with the TSX Timely Disclosure Policy and applicable laws. Where an undisclosed event is non-material, the pricing of a financing will generally not raise concerns in respect to the Market Price. However, listed issuers should consult with TSX or IIROC if there is any question about whether an event is material.

Where there is undisclosed Material Information, it is not appropriate to price a financing prior to dissemination of the Material Information, as the Market Price of the securities may not accurately reflect the business and affairs of the listed issuer. However, TSX has historically allowed an exception to pricing a financing where there is undisclosed Material Information if the event would not otherwise occur without a financing agreement (the "Pricing Exception").

The most common occurrence of this fact pattern is an offering of securities such as common shares or subscription receipts where the proceeds are used to fund an acquisition. Typically, the principal terms of the financing (including the price) are announced concurrently with the acquisition. Accordingly, the financing is priced prior to the acquisition being disclosed to the public. TSX will generally accept pricing of such financings in this manner, provided that it is satisfied that the acquisition would not otherwise have been approved by the board of directors, but for a financing agreement. To support the Pricing Exception, TSX will generally require an officer's certificate confirming that the board of directors of the listed issuer would not have entered into the acquisition agreement without also having entered into the financing agreement. An example of an officer's certificate is attached as Appendix A to this Staff Notice.

Listed issuers unable to provide the officer's certificate should consider announcing the Material Information and pricing their financing after dissemination of the Material Information, based on the post announcement Market Price. In exceptional circumstances, TSX may accept alternative submissions in support of the Pricing Exception. Listed issuers and their advisors should discuss such submissions well in advance of any contemplated financing.

Nevertheless, TSX may have concerns about allowing the Pricing Exception for financings in the following circumstances:

1. *The net proceeds of the financing significantly exceed the cash consideration of the acquisition (plus reasonable capital expenditures or similar expenses related to the acquisition).* The proceeds raised as a result of the Pricing Exception should not be used beyond the purpose of funding the acquisition and related expenditures. Where the proceeds significantly exceed the cash consideration plus related expenditures, TSX may conclude that the dependency of the acquisition on the financing is not sufficiently strong to support the Pricing Exception. In such instance, TSX may require that the issuer: i) reduce of the gross proceeds of the financing relying on the Pricing Exception so that the acquisition and financing are more clearly aligned and the Pricing Exception is not being misused; ii) set the price of the financing after the acquisition has been disclosed; or iii) obtain security holder approval as a condition of the financing as the price may be at a significant discount to the market price, had the acquisition been announced in isolation. TSX will generally consider a financing to significantly exceed the cash consideration plus related expenditures where the financing raises 30% or more in excess of the cash consideration plus related expenses.
2. *The financing provides for significant insider participation.* TSX will review insider participation for private placements and prospectus offerings under Subsections 607(g)(ii) and 606(b) of the Manual, respectively. For prospectus offerings, consistent with current practices, TSX will generally permit insider participation up to pro rata holdings. However, significant insider participation by officers, directors and significant shareholders may provide or appear to provide insiders with an economic advantage not generally available to the investing public, which may lead to the perception that the affairs of the issuer are not conducted in the best interests of its security holders. Accordingly, listed issuers and

their advisors should carefully consider the appropriateness of permitting insider participation while relying on the Pricing Exception.

2. Four Letter Symbols

(Section repealed January 10, 2024)

If you have any questions about this Staff Notice, please contact your listed issuer services manager. Contact information for your Listed Issuer Services Manager is available at the following [link](#).

Appendix A
Example of Officer's Certificate

OFFICER'S CERTIFICATE

TO: Toronto Stock Exchange

DATE: [January 1, 2017]

RE: [ABC Company Ltd.] (“[ABC]”) – [Bought Deal Prospectus] Offering & Acquisition of [XYZ]

[recitals]

The undersigned hereby certifies on behalf of [ABC], in his capacity as an officer of [ABC] and not in his personal capacity, that [ABC] would not have entered into the proposed acquisition of [XYZ] without entering into the agreement for the concurrent [bought deal prospectus] offering financing arrangement and the proceeds of such financing are intended to be used primarily in connection therewith.

[ABC Company Ltd.]

Name: [John Smith]

Title: [Chief Financial Officer]