



2023-0002

April 20, 2023

**Sections 606 & 607
Prospectus Offerings & Private Placements
Part I
"market price" definition
Listed Issuer Financing Exemption**

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

****This Staff Notice replaces TSX Staff Notice 2018-0003, which is repealed in its entirety.****

Toronto Stock Exchange ("TSX") is providing guidance with respect to pricing a prospectus offering or private placement where there has been recent disclosure of material information.

In its role of balancing the interests of security holders, listed issuers and other market participants, TSX reviews the price at which securities are issued from treasury for financings with reference to "market price" (the "Market Price") as defined by Part I of the *TSX Company Manual* (the "Manual").

TSX has previously provided guidance¹ that the Market Price of a financing 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.

As defined in the Manual, Market Price will normally be equal to the five day volume-weighted average trading price of the securities on TSX immediately preceding the relevant date (the "Five Day VWAP"). However, there may be exceptional circumstances where the Five Day VWAP is not appropriate as it may not accurately reflect the business and affairs of a listed issuer. This may occur where the Five Day VWAP would include trading days both before and after the dissemination of Material Information.

In cases where a listed issuer seeks to price a financing following the dissemination of Material Information, TSX will not include pre-dissemination trading in the calculation of Market Price. As a result, TSX will typically expect Market Price to be assessed based on (i) in respect of a prospectus offering, the closing price of the most recently completed trading session, and (ii) in respect of a private placement, the one day volume-weighted average trading price, in both cases reflecting one clear trading session post-dissemination of the Material Information. TSX may use discretion to determine an alternate formula in cases where the closing price or single day volume-

¹ Staff Notice 2016-0006 dated October 11, 2016.

weighted average price, respectively, does not appear appropriate, such as where the stock does not appear sufficiently liquid.

For example: If material information is released pre-market on Monday, the Monday closing price may be used. If material information is released Monday at 11am EST, the Tuesday closing price may be used.

In cases where a listed issuer seeks to price a financing in the normal course, absent recent dissemination of Material Information, TSX will typically expect Market Price to be assessed based on, (i) in respect of a prospectus offering, the closing price of the most recently completed trading session, and (ii) in respect of a private placement, the Five Day VWAP.

The Listed Issuer Financing Exemption

Consistent with TSX Staff Notice 2022-0003, TSX will continue to review applications relying on the Listed Issuer Financing Exemption as a prospectus offering under Section 606 of the Manual. Absent exceptional circumstances, TSX will deem the use of the Listed Issuer Financing Exemption to be a bona fide public offering.

If you have any questions about this Staff Notice, please contact (i) Anne Child (Managing Director, TSX Listings) at anne.child@tmx.com; or (ii) Selma Thaver (Managing Director, TSX Listings) at selma.thaver@tmx.com.