

Goodmans^{LLP} Update

TSX Provides Additional Guidance on Pricing Prospectus Offerings and Private Placements

On May 10, 2018, the Toronto Stock Exchange (TSX) issued *TSX Staff Notice 2018-003* providing guidance on pricing prospectus offerings and private placements where there has been recent disclosure of material information.

The TSX generally requires private placements and prospectus offerings to be priced at “market price” less an allowable discount. The TSX defines “market price” as the five day volume-weighted average trading price of the securities on the TSX immediately preceding the relevant date. In its recent guidance, the TSX noted there may be circumstances where the five day volume-weighted average trading price is not appropriate – particularly where it would include trading days both before and after material information is disseminated. Accordingly, the TSX will generally expect market price to be calculated based on five *clear* trading days after any material information is released.

The TSX may allow issuers to use an abbreviated time period for calculating market price, considering relevant factors such as (i) the liquidity and volatility of the issuer’s securities, both before and after the material information is announced; (ii) the time period proposed to be used as a reference for market price; (iii) the rationale for pricing a financing immediately after the material information is disseminated; and (iv) insider participation in the financing. TSX-listed issuers and their advisors are encouraged to contact the TSX where an abbreviated time period is proposed to be used for calculating market price, as the availability of this exception is expected to be limited.

The TSX will also still allow an exception to the pricing restrictions where an undisclosed event would not occur without a financing agreement, such as where financing proceeds are used to fund an acquisition and the key terms of the financing, including the price, are announced concurrently with the acquisition. The availability of this exception is subject to certain conditions, as detailed in our October 13, 2016 Update, *TSX Provides Guidance on Pricing Prospectus Offerings and Private Placements*.

This most recent TSX staff notice highlights the importance of considering disclosure matters well before pricing and announcing a financing.

Please contact any member of our Corporate Securities Group for further information.

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