IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED

AND IN THE MATTER OF TUCKAMORE CAPITAL MANAGEMENT INC.

AND IN THE MATTER OF A DECISION OF
THE TORONTO STOCK EXCHANGE

ACCESS HOLDINGS MANAGEMENT COMPANY LLC ("Access") REQUESTS A HEARING AND REVIEW by the Ontario Securities Commission (the "Commission") pursuant to section 21.7 of the Ontario *Securities Act* (the "Act"), at such time as the Commission may direct, of the decision made by the Toronto Stock Exchange (the "TSX") on August 1, 2014 (the "TSX Decision"), accepting notice of a private placement of common shares of Tuckamore Capital Management Inc. ("Tuckamore") to Orange Capital Master I, Ltd. (the "Private Placement"), without requiring that the Private Placement be approved by a vote of the shareholders of Tuckamore.

ACCESS, a shareholder of Tuckamore, is directly affected by the TSX Decision.

ACCESS further applies for an order pursuant to section 127(1) *2.* of the Act, to cease trade the Private Placement, subject to the terms described below.

ACCESS REQUESTS:

1. An Order pursuant to sections 8(3) and 21.7 of the Act setting aside the TSX Decision;

2. An Order pursuant to section 8(3) of the Act requiring Tuckamore to call and hold a meeting of its shareholders in order to obtain shareholder approval of the Private Placement;

3. Further or in the alternative, an order pursuant to section 127(1) *2.* of the Act, to cease trade the Private Placement, unless and until Tuckamore obtains a simple majority of the votes cast by Tuckamore shareholders entitled to vote at a duly convened meeting of its shareholders in favour of the Private Placement; and

4. Such further and other relief as counsel may advise and the Commission may deem just.

THE GROUNDS FOR THIS APPLICATION AND THIS REVIEW ARE AS FOLLOWS:

Overview

5. On July 25, 2014, Tuckamore announced that it had entered into a subscription agreement to sell $12.5 million in common shares of Tuckamore to Orange Capital Master I, Ltd. ("Orange") at a price per share which will not be less than $0.75, resulting in the issuance of approximately 17% of the Shares of Tuckamore following completion of the Private Placement.

6. While ostensibly designed to reduce outstanding indebtedness, for the reasons set out below, the Private Placement is an improper and tactical maneuver designed to further entrench the current management of Tuckamore.

7. The Private Placement follows a pattern of similar behaviour by Tuckamore and is inextricably tied to a failed management buy-out of Tuckamore, which failed as a result of Access's efforts to mobilize shareholder opposition. The Private Placement is unfair to Tuckamore's shareholders, contrary to the public interest, and detrimental to investor confidence in, and the integrity of, the Canadian capital markets.

8. Tuckamore had previously announced that it would seek approval of a proposed management buy-out of Tuckamore (the "MBO") at a special meeting in July 2014. The

background to the MBO indicates that management embarked on the MBO in response to overtures made by Access to partner with Tuckamore. Among other exceptional features, the structure of the MBO transaction included a 10% break fee, which effectively precluded Tuckamore's directors from considering other offers, and a 2.5 % fee if Tuckamore's shareholders voted against it.

9. Access led a substantial group of Tuckamore's shareholders – including institutional shareholders, former independent directors of Tuckamore, former CEOs of Tuckamore businesses, and even certain shareholders holding Shares through Newport Private Wealth Inc. ("Newport") who had taken the extraordinary step of revoking the discretion that Newport has over their Tuckamore shares – all of whom opposed the MBO. Tuckamore adjourned the special meeting at the last minute after it became apparent that the MBO would be rejected by its shareholders.

10. However, with knowledge that the MBO would be voted down, Tuckamore kept the MBO, with its preclusive break fee and other restrictive provisions, in place.

11. In order for Tuckamore management to even consider the Private Placement and "arrangement" fee payments to Orange (described below), it had to have received the consent of the MBO vehicle it controlled. The failure by Tuckamore to announce that it had sought and received such consent, while sheltering under the non-solicitation restrictions and break fee in the MBO agreement to the exclusion of parties such as Access and First Series of Halcyon Trading Fund LLC (the most obvious and interested investors), indicates that the objective of Tuckamore's management, with the acquiescence of the Board, was entrenchment by placing shares in the hands of a friendly party, using the MBO agreement as a temporary shield.

12. On July 25, 2014, Tuckamore concurrently announced, among other things: (i) the Private Placement with Orange, and (ii) the termination of the MBO and the cancellation of the special meeting.

13. In the same release, Tuckamore announced that the Board agreed to pay Orange an "arrangement" fee of up to $5.3 million. This represents an approximately 42% discount to the $12.5 million Private Placement (as announced on July 25, 2014). The structure of the Private Placement is such that that the real issue price, after accounting for the out-of-market and unnecessary restructuring fees (which will be in addition to any bond or debt placement fees) will be materially less than $0.75 per share. The quantum of the "arrangement" fee is to be determined in the future by the independent directors of Tuckamore – a feature of the Private Placement designed to pragmatically ensure that Orange will vote its shares in favour of the current board.

14. In light of the timing, size, price and other circumstances surrounding Tuckamore's decision to effect the Private Placement, Access submits that a key objective of the Private Placement, if not its primary or sole objective, is to entrench existing management at the cost of diluting shareholders at a price per share that the shareholders have recently determined to be too low.

15. Four times in the last two months Tuckamore's board has avoided a verdict from the company's shareholders: cancelling the required June AGM, postponing the MBO special meeting, cancelling the MBO special meeting, and now refusing to take this dilutive Private Placement to shareholders despite an overwhelming rejection by such shareholders of the MBO transaction at the same price at which the Private Placement was announced on July 25, 2014.

16. On July 28, 2014, Access requested that the TSX exercise its discretion and require that Tuckamore not complete the Private Placement until the Tuckamore shareholders have voted upon it.

17. On August 1, 2014, Access learned that the TSX had approved the Private Placement without requiring a shareholder vote. As of the date of this Application, the TSX has not yet provided reasons for the TSX Decision.

18. Access submits that the Commission should set aside the TSX Decision and impose a condition that Tuckamore call and hold a meeting of its shareholders in order to obtain shareholder approval of the Private Placement.

19. The quality of the marketplace provided by the TSX will be adversely affected by the TSX Decision, pursuant to which the Private Placement would be permitted to proceed without shareholder approval.

20. The public interest requires a vote to protect investor confidence and the quality and integrity of the Canadian capital markets.

The Parties

21. Access is a private investment firm. It focuses on identifying, investing in and unlocking deep value opportunities as a long-term active investor.

22. Access currently owns, directs or controls 1,057,000 Tuckamore Shares. Together with a group of holders of Tuckamore shares then representing, in the aggregate, 5.87% of the outstanding shares, Access has requisitioned a meeting for the election of directors of Tuckamore. Access has the support of this group in objecting to the Private Placement and other integrally related transactions between Tuckamore and Orange.

23. Tuckamore is a holding corporation governed by the OBCA with its head office in Toronto. The Tuckamore Shares trade on the TSX. Tuckamore has investments in seven businesses representing a diverse cross-section of the Canadian economy.

24. Tuckamore's largest shareholder is Newport, a wealth management firm. In its capacity as investment manager for discretionary client accounts, Newport exercised control or direction over 25,202,855 – approximately 31.4% – of the outstanding Tuckamore Shares before the Private Placement. As explained below, the relationship between Tuckamore and Newport is not arms-length.

The Management Buy-Out

25. On May 5, 2014, Tuckamore announced that it had entered into an arrangement agreement for the MBO, pursuant to which certain members of Tuckamore's senior management, along with the support of certain funds managed by Birch Hill Equity Partners ("Birch Hill"), had agreed to indirectly acquire, by way of a plan of arrangement under the OBCA, all of the outstanding Shares for cash consideration of $0.75 per Share.

26. The background to the MBO indicates that Tuckamore embarked on the MBO without a market check and despite overtures from Access to partner with Tuckamore, including with respect to a potential rights offering. Tuckamore refused to engage with Access in any meaningful manner and focused instead on a sale to management.

27. Among other unusual features in the unshopped MBO, the structure of the MBO transaction included a 10% break fee, which effectively foreclosed any other offers. Under the terms of the MBO, the directors of Tuckamore precluded themselves from considering any solutions that did not fall within a very narrowly defined band of proposals. This also appears to have been implemented to foreclose other solutions.

28. Access, together with a large group of Tuckamore's shareholders – including institutional shareholders, former directors of Tuckamore, former CEOs of Tuckamore businesses, and shareholders holding Shares through Newport – opposed the MBO.

29. Access filed a dissident information circular (the "Dissident Circular") and form of proxy ("Dissident Proxy") on SEDAR for the purpose of soliciting votes against the MBO. In its materials, Access stated its intention to propose a new board in order to realize greater value for shareholders.

30. Access opposed the MBO for numerous reasons, including that the MBO was proposed without conducting any bidding process, without a valuation at the time of recommendation, and without the benefit of independent financial or legal advisors, and it included outlandish deal protection measures. In this respect, among others, Tuckamore's corporate governance practices are vastly deficient.

31. In addition, Access's view, as well as the publicly disclosed views of many other sophisticated investors, including Canso Investment Counsel Ltd. and JC Clark Ltd. who together hold over 20% of the outstanding Tuckamore shares, was that the MBO at a per-share price of $0.75 very significantly undervalued Tuckamore.

32. As part of the proxy solicitation process, Access received inquiries from certain Newport clients who were opposed to the MBO and wanted to vote against it using the Dissident Proxy but were unable to do so because Newport had not provided the Dissident Circular or the Dissident Proxy to them. Newport did not provide the Dissident Proxy – or a voteable form thereof – to its clients, other than to a very limited number of its clients and only after such clients had made numerous requests to Newport. Newport did not provide the Dissident Circular to such clients – even upon request. Access understands that some

Newport clients complained to the OSC about their ability to obtain the dissident materials from Newport.

33. As noted above, the relationship between Tuckamore and Newport is not arms-length. They have a variety of ties, including:

(a) In December 2010, Tuckamore's predecessor (Newport Partners Income Fund) spun out Newport to Newport's current partners, apparently without the benefit of any sale process and at a value that was less than what Tuckamore's predecessor had initially paid to acquire Newport.

(b) Two of Newport's current partners and key principals – Mr. Douglas Brown (Newport's founder and president) and Mr. Mark Kinney (Newport's founder and chief investment officer) – are designated as independent directors of Tuckamore, but have been considered to be non-independent directors of Tuckamore in Tuckamore's proxy circulars for its annual meetings of shareholders. Mr. Brown and Mr. Kinney each receive $250,000 annually from Tuckamore for performance of activities related to the management of Tuckamore.

(c) According to Tuckamore, Newport has some members of Tuckamore's management as clients. Of the Tuckamore Shares under Newport's management, 3,361,893 are beneficially owned or controlled by directors or officers of Tuckamore.

(d) Newport and Tuckamore share the same business address.

(e) The March 23, 2011 secured trust indenture between Newport Partners Income Fund (the predecessor to Tuckamore) and the debenture trustee (the "Debenture")

contains an unusual exception to the typical provisions for acceleration of payment upon a change of control. For purposes of determining whether a person or group of persons has acquired more than 50% of the outstanding securities so as to trigger a change of control, the Debenture excludes from the holdings of such person or group of persons any direct or indirect holdings by not only members of the then entire senior management of the holding company of Tuckamore, but also the three principal founders of Newport who purchased the Newport business from Tuckamore the previous December: Mr. Brown, Mr. Kinney and Mr. David T. Lloyd.

34. Tuckamore had originally scheduled a special meeting of shareholders (the "Special Meeting") to vote on the MBO, to be held on July 15, 2015. Tuckamore adjourned the Special Meeting at the last minute after it became apparent that the MBO would be rejected by Tuckamore shareholders. Tuckamore did not terminate the MBO at that time.

35. Instead, for no legitimate business reason, Tuckamore kept the MBO, with its preclusive break fee, restrictive ordinary course covenants and non-solicitation covenant, in place for 10 more days until July 25, 2014, when Tuckamore concurrently announced: (i) the Private Placement; and (ii) the termination of the MBO and cancellation of the Special Meeting.

36. It appears that Tuckamore kept the MBO in place, even in the face of obvious defeat, to prevent alternative transactions while management sought other means to further entrench themselves, all the while not disclosing any of these matters.

37. The MBO agreement precluded Tuckamore from authorizing, agreeing, resolving or committing to a long list of actions and steps including the issuance of shares and the

entering into of material agreements without the prior written consent of the management-controlled buy-out vehicle. In order for Tuckamore management to even consider the Private Placement and debt restructuring fee payments to Orange (discussed below), it had to have received the consent of the vehicle it controlled. The failure by Tuckamore to announce that it had sought or received consent to negotiate an alternative transaction with Orange, which ensured that the negotiations with a friendly party would not be disrupted by competing offers, indicates that Tuckamore's management and Board are continuing to pursue their singular objective of entrenchment.

Access Requisitions a Shareholder Meeting to Elect Directors

38. At the time that Tuckamore announced the proposed MBO, Tuckamore postponed indefinitely its annual general meeting, which Tuckamore had previously called for June 26, 2014.

39. Tuckamore is currently refusing to give effect to a shareholder requisition (the "Requisition") which Access caused to be delivered to Tuckamore on July 23, 2014, requiring Tuckamore to call a meeting of shareholders at the earliest possible date to, among other things, remove from office all of the current directors of Tuckamore and elect six new directors until the next annual general meeting.

40. Instead, after receiving the Requisition, the Board called Tuckamore's annual general meeting ("AGM") to be held on September 16, 2014. The Board has refused to confirm that it will transact the business set out in the Requisition at the AGM or even to include the requisitioning group's nominees in Tuckamore's form of proxy to be sent to shareholders in connection with the AGM in accordance with law, good governance and practice in the market.

41. However, the Board announced a record date of August 8, 2014. This record date appears to have been set to ensure that the shares issued to Orange under the Private Placement will be voted at the meeting.

42. On July 31, 2014, Access commenced an application in the Ontario Superior Court of Justice seeking, among other things, an order confirming that the Requisition is valid and proper.

43. Tuckamore's decision to refuse to give effect to the Requisition has been taken for the purpose of calling a meeting to elect directors without including Access's nominees in the Tuckamore circular or form of proxy. Such tactics are contrary to corporate law and good governance practice.

Tuckamore Announces the Private Placement

44. On July 25, 2014, two days after receipt of the Requisition, Tuckamore issued a press release that concurrently announced that Tuckamore had, among other things:

(a) terminated the MBO ahead of the contested vote and cancelled the Special Meeting;

(b) entered into a subscription agreement with Orange for the Private Placement;

(c) agreed to use Orange's services to assist Tuckamore in the identification of one or more transactions to refinance Tuckamore's existing debentures. Upon successful completion, Orange may receive a back-end "arrangement" fee in the amount of up to 3% of debt, which (considering the current indebtedness of Tuckamore) can result in the payment of $5.3 million. This represents an approximately 42% discount to the $12.5 million Private Placement;

(d) proposed to appoint a nominee of Orange to the board;

(e) rejected the shareholder Requisition; and

(f) called its long-delayed AGM to be held on September 16, 2014, setting a record date for that meeting of August 8, 2014.

45. Although Tuckamore's July 25, 2014 press release stated that there is no agreement or commitment, either explicit or implicit, that Orange Capital will vote according to management's recommendations and Tuckamore's next AGM, the timing, quantum and identity of the private placee were carefully chosen by Tuckamore for the purpose of increasing the number of shares and votes in the hands of a parties favourably-disposed towards management.

46. The Private Placement does not meaningfully address the capital structure issues of Tuckamore. While at some point it would be prudent for Tuckamore to raise equity, there is no urgent need for such dilutive equity to be raised **without any proper market check**.

47. Instead, it provides additional control to the MBO management team who already has options to buy 10,500,000 Tuckamore shares, or approximately 10% of the outstanding Tuckamore shares, at strike prices set at near the all-time low trading price, and thereby cause additional dilution to the rest of Tuckamore's shareholders.

48. The structure of the Private Placement is such that that the real issue price, after accounting for the out-of-market and unnecessary restructuring fees (which will be in addition to any bond or debt placement fees) may be materially less than either $0.75 per share (as it was announced) or $0.80 per share (as the Private Placement closed).

49. The Private Placement is designed, with back-end and unnecessary out-of-market fees (the payment of which is dependent on the management-sourced directors and current management maintaining their positions), to economically compel Orange to vote in only one manner – for the management-favoured slate of directors.

Access and Halcyon's Superior Proposal

50. First Series of Halcyon Trading Fund LLC ("Halcyon") beneficially owns, controls or directs 1,796,800 Tuckamore Shares and $2,352,000 aggregate principal amount of Secured Debentures. Halcyon is a managed fund client of a wholly-owned subsidiary of Halcyon Asset Management LLC, which, together with its affiliates, is a global investment firm with approximately $12.6 billion in assets under management.

51. On July 28, 2014, Access and Halcyon made a superior shareholder-friendly offer (the "Superior Alternative") to make an additional investment in Tuckamore, without any highly costly and unnecessary back-end fees. Moreover, the Superior Alternative offer, a rights offering at a superior price of $0.80 per share – a premium to the current share price and to the Private Placement as announced on July 25, 2014 – was structured so that all Tuckamore shareholders could participate thereby avoiding dilution and in a way that does not create one highly concentrated block that materially affects control of Tuckamore.

52. Access and Halcyon did not receive any response from Tuckamore – not even an invitation to discuss the Superior Alternative or any amendments the Board may have desired. This is fully consistent with a Board and management that have one objective: entrenchment.

The TSX's Discretion to Require a Shareholder Vote

53. Under section 603 of the TSX Company Manual, the TSX has the discretion to impose conditions on a transaction, including requiring a listed issuer to hold a shareholder vote.

54. In exercising this discretion, the TSX must consider a variety of factors including:

    (a) the involvement of insiders or other related parties of the listed issuer in the transaction;

    (b) the material effect on control of the listed issuer;

    (c) the listed issuer's corporate governance practices; and

    (d) the listed issuer's disclosure practices;

55. The TSX was also required to consider the fair treatment of shareholders of Tuckamore.

56. All of these factors are engaged in these circumstances, and all of them militate in favour of a shareholder vote on the Private Placement.

Involvement of Insiders or Other Related Parties of Tuckamore

57. The entirety of the Private Placement has been sourced with a single party, Orange, without approaching other investors, such as Access, which had previously expressed a strong and continued interest in acquiring equity in Tuckamore, and which promptly following Tuckamore's announcement offered to effect a superior and more shareholder-friendly investment transaction.

58. As described above, the Private Placement was designed to create a structural imperative for Orange to vote the Private Placement shares in favour of the existing Board.

The Private Placement will have a Material Effect on the Control of Tuckamore

59. The Private Placement involves the issuance of a large number of shares, representing 17% of the outstanding shares of Tuckamore, to a third party. Standing alone, that is sufficient to materially affect control of Tuckamore.

60. Directors and executive officers of Tuckamore hold 5,544,212 shares and directors and senior management have substantially in-the-money options to acquire an additional 11,500,000 shares. Assuming the exercise of such options and the completion of the Private Placement on the terms announced, directors, management and Orange Capital would collectively hold approximately 31% of the shares outstanding after the Private Placement.

61. As explained above, Orange has an economic incentive to support management, baked into the terms of the Private Placement, in order to garner its debt arrangement fee. In particular, the back-end "arrangement" fees – the payment of which is dependent on the management-sourced directors and current management maintaining their positions – will economically result in Orange rationally voting in only one manner: for the management-favoured slate of directors.

62. Further, Newport, which based on public disclosures currently has discretionary authority over approximately 21,840,962 shares in addition to shares it holds on behalf of Tuckamore directors or management, may be acting jointly or in concert with Tuckamore management. The aggregate number of shares that would be held by directors, management, Orange and Newport assuming the exercise of options and closing of the Private placement would represent more than 50% of the number of shares which would then be outstanding.

Tuckamore's Disclosure Practices

63. Tuckamore's consistently lax disclosure practices merit the exercise of discretion to require prior shareholder approval of the Private Placement:

(a) In the fall of 2013, all of Tuckamore's independent directors – who constituted the entirety of its audit committee – resigned. Neither that fact, nor the appointment by the non-independent directors of the replacement directors, was press released by Tuckamore. To Access's knowledge, no substantive information about the replacement directors was disclosed until March 2014 in Tuckamore's AIF.

(b) The costs of the failed MBO have not been disclosed to shareholders. However, Tuckamore announced that it would pay management for expenses that management incurred in pursuing the MBO (on their own behalf), even though the MBO did not come to a shareholder vote. Notwithstanding that, Tuckamore paid the management buyout team the maximum expenses possible under the MBO agreement after itself using extensive Tuckamore cash resources directly promoting the MBO to shareholders. The cost to Tuckamore of the MBO, prior to any public opposition by shareholders, was estimated at $5.7 million in its proxy circular. The costs of the failed MBO and the Board's continuing efforts to support Tuckamore management in the face of such obvious opposition have not been disclosed.

(c) As noted above, in order for Tuckamore management to even consider the Private Placement and back-end "arrangement" fee payments to Orange, it had to have received the consent of the MBO vehicle it controlled. The failure by Tuckamore

to announce that it had sought or received such consent, while sheltering under the restrictions and break fee in the MBO agreement to the exclusion of parties such as Access and Halcyon (the most obvious and interested investors), indicates that the objective of Tuckamore's management, with the acquiescence of the Board, is entrenchment, using the MBO agreement as a shield.

(d) The Private Placement price was first announced to be "not less than $0.75 per share". This price of $0.75 per share was the value ascribed to the shares in the failed MBO, which shareholders opposed because the price undervalued Tuckamore. No public disclosure was made by Tuckamore of the degree of shareholder opposition to the MBO, although Tuckamore would have been well aware that a majority of the votes at the special meeting would have been voted against the transaction.

(e) The final price of the Private Placement was increased to $0.80 per share on or prior to July 31, 2014, directly as a result of the Access/Halcyon offer; yet the changed price was not announced nor were Access and Halcyon even contacted to discuss the offer or whether there were circumstances under which they were prepared to provide a higher backstop price, despite the obvious leverage the Access/Halcyon offer had already provided.

(f) The Company did not file its by-laws on SEDAR as required under NI 51-102, until Access demanded in July 2014 that Tuckamore do so.

(g) Tuckamore adopted a shareholder rights plan earlier this year shortly after an approach from Access, and during a time when the Board was aware that management was actively seeking to undertake an MBO. Although Tuckamore

publicly represented that this plan was similar to plans adopted by other Canadian companies, it contained highly unusual and unprecedented provisions to the effect that it would have been triggered if persons who collectively owned more than 20% of the voting shares acted jointly or in concert in a proxy contest. Access understands that, after discussion with Staff of the Commission, Tuckamore amended the plan to remove the offending provisions.

(h) Further, although Tuckamore had indicated it would submit the shareholder rights plan to shareholders for approval at its next annual and special meeting, it decided not to proceed with the annual meeting it had called for June 26, 2014 and it did not include the shareholder rights plan on the agenda for its now cancelled special meeting of shareholders.

(i) Tuckamore made no announcement before its concurrent announcement of the Private Placement on July 25, 2014 that a special committee of the Board had been formed or that independent counsel to that committee had been retained.

Tuckamore's Governance Practices

64. Access relies upon all of the allegations concerning Tuckamore's governance practices contained herein.

65. There has been an extraordinary level of turnover on the Tuckamore Board, with at least 16 directors having served on the Board over the last five years.

66. The three current independent directors were appointed last fall after the resignation of the then-serving three independent directors. The replacement directors were appointed by the non-independent directors and have never been elected by shareholders.

67. The two remaining non-management directors are Newport executives who have strong ties to current management and are not independent by their own admission.

The Effective Price of the Private Placement is at a Discount in Excess of 20%

68. The back-end fees for Orange associated with the Private Placement could effectively reduce the Private Placement issue price and make the discount to the market price greater than 20%, thus requiring a shareholder vote.

69. To understand the substantive economics of the Private Placement, the Commission must consider the proposed success fee for the contemporaneous retainer of Orange with respect to the refinancing of the company's existing secured debentures. The success fee could result in a payment of up to $5.3 million, which would represent an approximately 42% discount to the $12.5 million Private Placement (as it was announced on July 25, 2014) or an approximately 40% discount to the $13.3 million placement (as it closed on August 1, 2014).

70. Orange does not appear to be acting as a broker or agent. Access is not aware of, nor has Tuckamore disclosed, any evidence of particular experience or qualifications possessed by Orange in arranging material debt financings. Further, even if Orange is qualified to assist in arranging the refinancing for Tuckamore, the up-to-3% "arrangement" fee which the Board has agreed to pay Orange is above-market by any measure.

71. In any case, in Access's view, skilled management does not need any such outside services and certainly would not pay that price. The Orange fee simply serves as an effective discount to the Private Placement price. Apart from the dilution to shareholder value in which shareholders were not offered any opportunity to participate, the terms of the Private Placement and the "arrangement" fee appear to be structured for the primary

purpose of ensuring a vote by Orange in the short term, with a view to entrenching management. It has that effect in that, if the slate of directors proposed by Access is elected, Orange knows that it will not receive the "arrangement" fee, as its services will be entirely unnecessary. As part of the Superior Alternative, Access and Halcyon proposed to work with Tuckamore to address Tuckamore's capital structure without receiving any fees. Access and Halcyon have a highly sophisticated team with a track record of success at refinancing capital structures and creating shareholder value. This approach would result in potential savings of up to $5.3 million that Tuckamore otherwise would provide to Orange.

The TSX Declines to Exercise its Discretion to Require a Shareholder Vote

72. On July 28, 2014, Access requested that the TSX exercise its discretion to require that Tuckamore not complete the Private Placement until the Tuckamore shareholders have voted on it. Access made several written submissions by letter to the TSX.

73. On August 1, 2014, Access learned that the TSX had approved the Private Placement without imposing any conditions.

74. The TSX has not yet provided reasons for the TSX Decision. Access requests and requires the TSX's reasons in order to proceed with this Application.

The Private Placement Closes

75. On August 1, 2014, Tuckamore announced that it had closed the Private Placement and issued 16,666,667 shares of Tuckamore to Orange.

76. Prior to closing the Private Placement, also on August 1, 2014, Tuckamore gave a series of undertakings to the Commission, including that if this Application is successful,

Tuckamore will completely and retroactively rescind the Private Placement, cancel all shares issued to Orange under the Private Placement, and will not permit those shares to be voted at any shareholder meeting after the date of the TSX Decision. Tuckamore gave these undertakings to avoid a temporary cease-trade order, which Vice-Chair Turner indicated at the conclusion of Access's application for such an order he would have granted in the absence of the specified undertakings.

The TSX Erred in the TSX Decision

77. The TSX Decision is a "direction, decision, order or ruling" made by a "recognized stock exchange" and is subject to review by the Commission.

78. Under sections 8(3) and 21.7 of the Act, the Commission has the power to set aside the TSX Decision and make such other decision as the Commission considers proper.

79. The TSX erred in approving the Private Placement in light of the circumstances demonstrating that it is intended to entrench management and the Board.

80. In any event, the TSX erred in failing to require Tuckamore, as a condition of the TSX's approval of the issuance of Tuckamore shares in connection with the Private Placement, to call and hold a meeting of its shareholders in order to obtain shareholder approval of the Private Placement.

81. The Commission should set aside the TSX Decision and impose a condition that shareholder approval be obtained because:

(a) the TSX erred in failing to properly exercise its discretion under sections 603 or 604 of the TSX Company Manual to require that Tuckamore obtain shareholder

approval of the Private Placement as a condition of the listing of the additional Shares to be issued in connection with the Private Placement;

(b) The TSX erred in failing to properly consider that the effective price of the Private Placement was in excess of a 20% discount so as to require shareholder approval under section 607(e) of the TSX Company Manual;

(c) the TSX erred in failing to conclude that the Transaction would materially affect control of Tuckamore within the meaning of section 604 of the TSX Company Manual; and

(d) the TSX erred in failing to recognize that in the circumstances of this case, the protection of the public interest, and in particular investor confidence and the quality and integrity of the marketplace, requires shareholder approval of the Private Placement.

82. Tuckamore's management and Board have singularly pursued transactions, first the MBO, and now the Private Placement, without checking the market and by actively discouraging the alternatives that Tuckamore is now allegedly pursuing. This latest development requires that the Commission protect shareholders by requiring a shareholder vote on the Private Placement. If the transaction is as favourable for Tuckamore as its management and Board assert, they should have nothing to fear from such a vote.

83. Access also relies on such further or other grounds as counsel may advise and the Commission may allow. Access expects to deliver a fresh as amended Application following receipt of the record of and reasons for the TSX Decision.

ACCESS INTENDS TO RELY ON, among other things, the evidence of Kevin McAllister, to be filed before the hearing of this matter.

August 4, 2014

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20 Queen Street West, 20th Floor
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Attention: Secretary to the Commission
Katie Daniels

AND TO: **Toronto Stock Exchange**
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Attention: Jennifer Wall
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