

ONTARIO SECURITIES COMMISSION POLICY HEARING ON THE
MAPLE GROUP ACQUISITION CORPORATION APPLICATION TO
ACQUIRE TMX GROUP INC., ALPHA TRADING SYSTEMS LIMITED
PARTNERSHIP, ALPHA TRADING SYSTEMS INC., THE CANADIAN
DEPOSITORY FOR SECURITIES LIMITED AND, INDIRECTLY, CDS
CLEARING AND DEPOSITORY SERVICES INC.

H. I. WETSTON (Chair)

M. G. CONDON (Vice-Chair)

K. J. KELLY (Commissioner)

HELD ON: December 1, 2011

HELD AT: Ontario Securities Commission
20 Queen Street West
17th Floor
Toronto, Ontario

--- Upon commencing at 9:32 a.m.

CHAIR: Good morning, everyone.

Welcome to the Ontario Securities Commission. My name is Howard Wetston. On my left is Kevin Kelly, who is a Commissioner at the Ontario Securities Commission and he's the lead director of the Board of Directors of the OSC. And on my right is Mary Condon, who is the Vice Chair, one of our two vice chairs at the Ontario Securities Commission.

And I'm just going to briefly indicate why we're here. I'm sure most of you know. If you don't know, you're in the wrong place. I'll give you about two minutes to leave if you like. So we're here. This is a bit of a formal introduction, but I think it's important for the record.

Maple Group Acquisition Corporation has commenced a two-step integrated transaction to acquire 100 percent of the outstanding shares of TMX Group Inc., TMX Group. Maple has also proposed that currently or following the acquisition of the TMX Group, Maple will acquire Alpha Trading Systems Limited Partnership and Alpha Trading Systems Inc., collectively together with any successors thereto.

I'm reading from your application, so I get it right. And the Canadian Depository for

Securities Limited, CDS, collectively CDS. And together with the Maple acquisition, entirely called the transactions.

I think most of you are familiar with that, but at least that introduces why we're here. Let me just indicate at the outset this is not an adjudicative hearing. This is a policy hearing. I call it that in public law terms. It's a policy proceeding.

And what it is -- it is an extension of the comment process related to the proposed acquisition by Maple Group Acquisition Corporation. And the reason that we're calling this a policy proceeding and the reason why we're holding this proceeding is because it is in furtherance of the gathering of information with respect to the comment process associated with any recognition order or orders that might be issued by the OSC in the public interest in relation to the Maple acquisition corporation transactions.

So let me also indicate that we do have here some representatives from the securities commissions across the country. I think the BC Commission is represented. I think the AMF from Quebec also has representation here.

And you should also realize, as many of

you do, that the regulation of the exchanges and the infrastructure is multi-faceted. We have a number of regulators who have similar but somewhat different responsibilities, depending on the lead relationship role that they have with respect to the infrastructure that is being regulated.

Let me also remind everyone -- I think you are well aware of that -- that that involves regulation of the infrastructure in British Columbia, in Alberta, in Ontario, and as well as in Quebec. And let me also remind you that the Bank of Canada has a very important role with respect to systemically important infrastructure, namely CDS. And they have an important oversight role with respect to CDS. So let us not fail to remember that that responsibility does exist with the Bank of Canada.

Now, we also had the benefit of the proceeding last week in Montreal. We obviously examined the issues there, and we are aware of the important proceeding that occurred before the AMF last week. And I think representatives, obviously, are here again to continue the comment process with respect to this matter.

Now, I have some opening remarks because I want to frame the discussion that we have

today with respect to the matters that this Commission needs to deal with with respect to Ontario's capital markets. And let me focus on the following areas. I'm going to talk about the role of the exchange and clearing agencies in our capital markets.

I hope you learn something from this. How these entities are evolving in the global context. And I'm also going to talk about the framework for our consideration, that is, how we are going to consider this application.

Now, both exchanges and clearing agencies play a fundamental role in the efficient and safe operation of the capital markets. And in Canada, exchanges facilitate the efficient raising of capital by providing liquidity and price discovery. They support investment allocation decisions by their provision of trading platforms.

Exchanges may also carry out regulatory responsibilities by setting standards for the listing of securities and by imposing ongoing requirements on listed issuers. Clearing agencies, which include entities providing clearing, settlement, and depository services, ensure the safe and efficient clearing and settlement of markets, of market participants' obligations, and mitigate risks for participants. They

provide critical protection against counterparties and systemic risk and ensure that transactions are effected in a safe and efficient manner.

Now, the mandate of the OSC, you all are aware of, or many of you are, is to provide protection to investors and to foster fair and efficient capital markets and confidence in those markets. I want to underline confidence. It is in the context of this mandate that we oversee marketplaces, including exchanges and clearing agencies.

Regulatory oversight is critical to maintaining confidence in the market as a whole and specifically in the operations of exchanges. Oversight also ensures that exchanges conduct their business in a manner that supports overall market quality and integrity. Indeed, the backbone of any economy is a liquid, transparent, and a well-regulated capital market.

Now, oversight of clearing agencies ensures fair access to clearing, settlement, and depository services, which are often seen as essential services in ensuring appropriate management of risks in the settlement system. It's apparent that both exchanges and clearing agencies are critical to the proper functioning of our capital markets.

Changes to their structure or operations have the potential to affect the efficiencies in our markets and the confidence in those markets. That is why the OSC believes that it is critically important to conduct a thorough examination of the proposed Maple acquisition of TMX Group and its subsidiaries, including Alpha and CDS.

As part of this proposal, we need to understand the evolution of exchanges and clearing agencies in a global context. Exchanges, not just in Canada, but globally have undergone significant changes in recent years. Exchanges have demutualized, moving from a member-owned to shareholder-owned entity.

They've gone public. They've listed their own securities. Exchanges are subject to competition from alternative trading venues and have seen a decrease in market share as a result.

Clearing agencies, on the other hand, have generally not been subject to competition, although this has changed to some extent in some jurisdictions. Clearing agencies that are part of a vertical structure often operate on a for-profit basis, whereas those that are not operate on a cost recovery basis.

Many exchanges that compete have

positioned themselves by merging and consolidating with other exchanges and/or clearing agencies. This consolidation is creating huge exchange clearing groups whose intention is to take advantage of economies of scale and scope to better compete in a complex and evolving global landscape.

In Canada, we've experienced some of these trends. Some of you were part of this, obviously. The TSX demutualized in 2000. It became self-listed in 2002. The framework for competition between marketplaces was introduced in 2001, and marketplace competition began in 2005.

And in the context of this application, we are now examining issues surrounding the consolidation of clearing and trading into a vertically integrated model. As such, we have been immersed in market structure issues for over ten years.

While consolidation is occurring in different jurisdictions, each model must be evaluated in the context of the market within which it is occurring. The market structure of the jurisdiction itself impacts greatly on the issues that are raised. I cannot emphasize that too much.

Among the key questions that need to be addressed here are: Is there competition in the

provision of trading or clearing services? Who are the owners of the exchanges? Is there concentration of trading in a few firms? Are there fair access requirements imposed on exchanges or clearing agencies? What are the market structure rules underlying the trading in the market? What is the impact of a particular structure on investors?

The answers to these and other questions help shape the public interest resolution to the complex and novel issues that are raised by the consolidation of marketplaces, clearing agencies, or, in our case, both.

So in Canada, we have before us an application that raises many faceted issues for our capital markets. The infrastructure that is under consideration in this transaction is critical to our markets.

The Canadian market structure has been evolving over the past few years, but the one constant has been a clearing agency that has been user-owned, user-governed, and operates on a not-for-profit basis. It has provided access to all marketplaces as we have developed a multiple marketplace environment.

We have multiple marketplaces trading the same securities, but offering different services.

We have a very concentrated market where a small number of players are responsible for the majority of the order flow. The Maple proposal may result in the consolidation of some of the trading venues that have been introduced over the past several years.

We have participated in the global trends, and yet we also are unique. While the U.S. and Europe have a multiple marketplace environment, their structure is different from ours. In some jurisdictions that have vertically integrated models, there's no competition for trading.

Specifically with respect to clearing and settlement, some view their clearing agencies as essential services, and therefore, competition is restricted. The Europeans have competition in clearing, whereas the U.S. and Canada largely each have a monopoly. There are fair access requirements for trading and clearing currently in place in Canada, whereas they do not apply in other jurisdictions, or at least not to the same extent.

When you look at the characteristics of the Canadian capital market, they are unique. We can't just follow what others have done. Our focus has to be the best interest of the Canadian capital markets as a whole and take into account the interests of all key

groups of stakeholders in the markets, including investors.

I'd like to emphasize investors. We seem to leave them out of the equation and not talk about investors very often. Perhaps we'll address that issue.

It cannot be about what is good for a particular segment of the market. We are talking about the future of the Canadian trading and clearing and settlement infrastructure for securities and derivatives. The nature of these markets is global. They are not entirely local.

This transaction will have an impact on our competitiveness globally, and we need to make sure that we get it right. So how are we going to examine this transaction that is by its very nature local but will impact our status on the global stage?

Our review is guided by the Securities Act that provides that an exchange or clearing agency may be recognized if the Commission is satisfied that to do would be in the public interest. The public interest is considered in the context of our legislative mandate, which includes providing protection to investors, fostering fair and efficient capital markets and confidence in those markets.

This would include looking at the impact on the structure of the capital market, for example, competition and innovation, access to the services by market participants, the efficiency of trading, clearing, and settlement processes, the operations of the key infrastructures and services to the Canadian markets, especially during periods of extreme market stress.

Issues raised by the Maple proposal include those that affect the Canadian market structure as a whole and those that are specific to Maple's ownership and governance model. They relate to, among other things, vertical versus horizontal models of clearing, competition for and concentration of order flow, the governance and ownership structure, the management of conflict of interest through independent directors and other means and fair access.

These issues have been highlighted in the notice that was published with respect to the Maple application. In order to determine if issuing the relevant recognition orders is in the public interest, we believe, among other things, the following questions are critical.

Should there be a return to significant dealer ownership and governance and control in the

exchange context? Should there be a vertically integrated model for trading, clearing, and settlement? Should there be a for-profit model for clearing? How will conflicts of interest be managed?

Is the context of an exchange and its public interest mandate so different from the standard corporate context of certain types of entities that would otherwise be considered independent when considering the appointment of independent directors should be excluded in the exchange context?

What does the multiple regulator model mean for the efficiency and effectiveness of regulation in our capital markets?

To answer these questions, we are thoroughly analyzing the proposed transaction and the comments we have received. It's important to emphasize that this hearing constitutes, as I indicated previously, a continuation of the comment process, and a decision relating to this matter will be made by the Commission.

So I would now like to invite Maple and TMX Group to make their presentation to us this morning. I remind everyone that this hearing is being simultaneously translated, and I may have already broken the first rule, which is I needed to speak

clearly and slowly. So if I haven't, I'll ask for your forgiveness, and you can put that on the record.