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)

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17th Floor
Toronto, Ontario

--- Upon commencing at 9:38 a.m.

CHAIR: So good morning. This is the continuation of our continued comments on the Maple transaction. I think our first presenter is Doug Clark from ITG Canada. I see Doug there. Mr. Thadaney, is it? Thank you very much. I think we're ready to go. Okay. Let's begin. Thank you.

MR. THADANEY: Good morning. ITG Canada would like to thank Chairman Wetston, Vice-Chair Condon, Commissioner Kelly, and the OSC for the opportunity to comment on the proposed Maple group bid for the TMX Group.

We're extremely pleased that the commissions have chosen to solicit public consultation on such weighing matters that are not ordinarily in the purview of non-shareholders of a public company.

We believe it vitally important that the view of all key stakeholders be considered since the implications of Maple's ownership of the TSX, TSX Venture, Alpha, CDS, CDCC, ME, NGX, Shorcan, CanDeal, and other affiliates would be a dominant controlling interest across a majority of Canada's capital markets.

This new structure would result in almost a complete ownership of trading, settlements, and clearing of equity, options, futures, and fixed income securities in Canada. We feel it is important for anyone reviewing this deal to consider the totality of the structure of a proposed end entity and the sum of what the Maple group would control.

It is likely for these reasons that all of the independents, i.e. those not directly involved in Maple, who submitted comment letters as regarding this transaction spoke of serious concerns that they felt were important to remedy.

The comments and viewpoints we express today are intended to reflect upon the impact of the Maple bid on the integrity of Canada's capital markets. Our intention is not to push for either the approval or rejection of the proposed deal but rather to highlight the issues that we believe warrant the most attention and offer up the greatest potential for negative consequence, either unintended or otherwise.

We thought we would focus on the most salient issues surrounding this proposed transaction and have chosen to address the key broad issues raised and, in doing so, hope to address the true intent of the questions that were put forth.

We believe it important to carefully assess the value of the deal within the context of prior arrangements involving exchanges, as most of such arrangements trumpet synergies and a long list of benefits which are usually very difficult to realize.

One only has to consider the NY-Euronext merger of 2007 which promised huge cost synergies and increased cross border listings. Both elements failed to materialize. TSX ME merger of 2009 --

CHAIR: Mr. Thadaney, you really need to slow down.

MR. THADANEY: Okay.

CHAIR: We have a court reporter here, and I think she probably types at hundreds of words a minute. But boy, you're really breaking a record.

MR. THADANEY: I'll slow down.

CHAIR: Slow down. And I'll keep bothering you to slow down, and you won't consider it an inappropriate interruption because we want to have a record.

MR. THADANEY: No, I'll get excited to talk to you. That's great.

CHAIR: Let's have a chat. What do you want to talk about?

MR. THADANEY: Okay. TSX ME merger of 2009 also promised significant cost synergies with the retirement of one of the trading engines and streamlining the data and protocol regimes. Advent of multiple markets, data feeds have more than doubled. On the other hand, if we were here today to consider beneficial changes in our market structure, we would suggest that a move to a single regulator would benefit all market participants across risk and reward.

CHAIR: How did you get that one in?

MR. THADANEY: You asked me to slow down.

CHAIR: I asked for that.

MR. THADANEY: Now, let's turn our attention to the ownership group and the potential issues related to a much more concentrated ownership of the exchange. It has often been stated that the Canadian marketplace is one of the most concentrated markets in the world in terms of dealer flows.

This concentration has actually increased in recent years with the top ten dealers, including our firm, ITG Canada, accounting for almost 75 percent of the value traded in TSX listed stocks this year, up from approximately 60 percent in 2008.

With this increased concentration comes a greater need to ensure that the large dominant brokers are not able to act in a manner that limits and inhibits competition and further concentrates flow. Any such limitation of competitive forces is likely to negatively impact the retail investors.

This concern around dealer ownership of marketplaces has been highlighted many, many times. Most recently by Thomas Kloet in the speech he gave at the Canada Club of Toronto in December 2009. During his speech, Tom eloquently advocated for an independent exchange, free from the potential conflicts of interest that arose from dealers and brokerages owning the exchange, that the recent financial crisis taught us that the public exchanges with transparent rules and investor protection role and absolute neutrality provide a superior model.

Tom's prescient remark also highlighted that today we are stepping back to the days of Bay Street's old boy's club when trading venues and exchanges were owned by select participants with conflicted interests and an ability to work in concert.

Tom felt that left unchecked, the current trend may restrict the needed development of our markets and reinforce a perception by global investors that our markets are effectively closed to new participants. Exactly what we can't have if our capital markets are to compete for critical international investments, if they're going continue to be engines of economic prosperity.

While Mr. Kloet's comments were clearly directed at a competitor, he does raise several very relevant and interesting points. One of the most compelling concerns is that the group of dealers involved in the Maple may choose to work in concert.

This concern becomes all too real when one reads page 11 of the Maple group's June 13th, 2011, offer to purchase, which outlines the method in which Maple group clearly indicates that the dealers within the group will, as a collective, stop preferencing the Alpha market if they are unable to consummate a deal for Alpha for commercial reasons.

I'm not sure how clients, retail and institutions alike, would feel about this approach as it seems not to be acting in their best interest. Based on publicly available documents, it appears that the dealers involved in the proposed Maple bid have already started working together, if not in concert, then at least in a small ensemble, this -- the likely result of which will be less trading opportunities for the TMX's largest domestic competitor in the equity trading space.

The fact that the dealers involved in

the bid currently control 45 percent of the value traded on TSX listed issues and the two remaining Canadian banks controlling an additional approximately 18 percent of the value traded have been invited to join the group has demonstrated the ownership group can have tremendous sway over the potential success of any competitors and suggests a need to address their ability to work in concert going forward.

In order to better understand the sway this group can exercise, one need only look at the success Alpha Trading Systems has had relative to other alternative systems, despite arguably higher pricing and less advanced technology.

And again, the rapid success of Alpha IntraSpread relative to that of other dark pools, which have similar models and greater price improvement opportunities, demonstrates that the impact a dealer ownerships can have on a marketplace.

When considering this issue, we remind the Commission that the Maple ownership group will be unable to invest in any competing Canadian marketplaces for a period of five years. Without the support of this controlling group, competing marketplaces, both present and future, would be hard pressed to survive, let alone thrive, particularly if the regulators eventually address their real street concerns around monopolistic pricing of market data fees by the various marketplaces to captive customers.

Further reason to be concerned about the proposed ownership group has been raised in the TMX Group's May 30th, 2011, comment letter to the OSC regarding Alpha's application for exchange status, signed by Kevan Cowan.

The TMX stated:

"Alpha Group should be required to have a minimum of 50 percent independent representation on the Alpha exchange board of directors."

Mr. Cowan then proposes a cap on the ownership levels for any independent directors, arguing that any entity that is a customer of TMX and owns more than a minimal share of the company could use its ownership to influence decision making.

We submit that if an exchange executive with Mr. Cowan's depth of experience believes that any firm with a stake greater than 5 percent has the ability to influence marketplace decision making, then the Commission should carefully consider the remedies to ensure that those stakeholders do not influence the market in a manner that is detrimental to other participants or the marketplace as a whole.

In fact, we would go further and suggest that 1 percent ownership would be sufficient to disqualify one's impartiality, suggesting that the magnitude of the overall opportunity around Maple dwarfs that of the Alpha ATS alone.

Mr. Cowan made a similar point in the TMX blog dated April 22nd, 2010, titled 'it matters'. In the post, Mr. Cowan stated:

"Today, the Canadian marketplace learned that an alternative trading system owned by a handful of Canadian financial institutions and security firms is applying for exchange status. They are currently executing trades on Canadian securities, and now they're asking for permission to list securities as well."

Listings is an important business for an exchange, but it also comes with great responsibility, a responsibility to set listing standards and to ensure listed issuers are compliant with important regulatory and disclosure requirements.

These efforts are critical to a quality market where investors can be confident that the securities they buy and sell have been held to a certain standard of compliance and disclosure. The possibility of an exchange with this level of responsibility owned by a small number of industry players presents potential conflicts that could threaten the reputation of Canada's public equity markets.

His concerns around Alpha exchange application would appear to exist with the Maple proposal as well. Given Mr. Cowan was slated to be the global head of listings in a combined LSE/TMX entity, we believe that he is knowledgeable on the issue and give great weight to his concern around the threat to the reputation of Canada's public equity markets.

Further, the Commission should give serious considerations to enterprise agreements, i.e. giving selected market participants preferential pricing on both trading and market data fees to create an unlevel playing field that allows the dealers within the Maple group to compete with pricing advantages over the non-Maple dealers.

A dominant marketplace controlling trading, settling, clearing of all securities should not be able to offer preferential treatment to certain clients, no matter its guise. Broker preferencing is a current such example.

If the deal is approved, we suggest that the Commission place strict limits on the enterprise deals and ensure that all pricing on all products and services is completely transparent to the entire marketplace. We feel the Maple group is appealing to historical traditional view of exchanges where -- which were run as public utilities for the benefit of investors and operate as clubs where ownership was held by the members -- I'm sorry -- by the members of the club.

However, that paradigm of the exchange changed forever when exchanges demutualized and became marketplaces, which operated as for-profit entities. By definition, as a for-profit entity, this new breed of exchange will act in the interests of its owners, not the public, and will seek to maximize profits, curtailed or restrained only by strong regulation.

Doug?

MR. CLARK: Thanks, Nick.

Moving on to the board of director issue, the board of directors are vital in that they provide the framework for the organization that will have monopoly over several business lines. Each of these business lines is extremely important to the economy of Canada, for it sustains funding and credibility for the Canadian capital markets.

As such, we want to offer some points

that we feel need to be considered. In the TMX comment letter regarding the Alpha application for exchange status, the TMX argued:

"Alpha Group should be required to have a minimum of 50 percent independent representation on the Alpha exchange board of directors. The definition of independence should include an ownership test of 5 percent because at that level, there is significant risk that such stakeholder, who may also be a customer, could use its ownership to influence decision-making."

Mr. Chairman, it is important that the TMX did not make exception for CPPIB or any other potential non-dealer owners. Yesterday, during the Maple presentation, it was articulated that the pension plans should be considered independent as they are not considered customers of the exchange.

But later, during testimony on the benefits of cross asset margining, both Mr. Bertrand and Mr. Kloet argued that the direct benefits of any capital relief will be largely accrued by Canada's large asset managers and pension plans.

Given the preferencing agreement currently in place and the history of a similar ownership model at Alpha acting in concert via the momentum strategy, we submit that an independent should have an ownership stake no greater than 1 percent of Maple.

We feel this is consistent with the material relationship test of section 1.4 of National Instrument 52-110. We would argue that the mere fact that several of the largest Maple owners have a -- have stated a desire to use equity accounting for this deal clearly demonstrates the significant influence they will already have over the resulting entity.

Further, we would argue for the set -- for set director term limits, and these limits should be staggered to avoid slate voting. This will force each nominated director to stand on his or her own merits.

We believe there needs to be a strong mechanism to allow small shareholders to participate in the nomination process. This eliminates the closed circle of board members.

Finally, we believe the independent directors should chair the critical committees for audit, compensation, risk management, clearing, and derivatives.

We move on to issues surrounding the purchase of Alpha. There are many market participants who have suggested that the Maple bid will result in a consolidated, less fragmented market structure, and that a return to fewer markets will be of great benefit to investors and market quality in general.

If one considers market structure prior to the advent of multiple -- of the multiple-market environment, it is true that all senior equities traded on the TSX and that that market was less fragmented in terms of market venues. We are sensitive to the sentiment, particularly if new entrants offer no innovation, and when, under our regulatory framework, participants are forced to connect to all its markets.

However, it is important to note that under the proposed Maple bid, the transaction does not, in fact, consolidate the combined marketplaces of the two entities. Maple group has clearly stated their desire to continue operation of all their equity venues, TSX, TSX Venture, Select, Alpha, and Alpha IntraSpread will continue -- and Alpha will also continue to charge separately for their market data.

The result will be the new consolidated exchange will -- will operate several separate trading books which trade the same issues, TSX, Select, Alpha, and IntraSpread, and will have approximately 85 percent share trading volumes in Canada.

Yesterday, we heard the chair ask the

group from Maple/TMX why the Alpha purchase needed to be a part of this deal. I'm not sure we heard an answer.

CHAIR: I don't remember asking the question.

MR. CLARK: I believe --

CHAIR: I'm sure I did.

MR. CLARK: Okay. I think, actually, Mr. Kelly did, but --

CHAIR: There you go. Thank you very much.

MR. CLARK: Instead, we were presented with a variety of arguments around the ongoing competition from other Canadian marketplaces, as well as the U.S. market. We feel these arguments have been significantly overstated.

Kevan Cowan noted that Chi-X has seen significant increase in the share of trades within the Canadian market over the last few months. During the AMF hearings last week, Mr. Bertrand noted that this increase has occurred since Chi-X had announced new international stakeholders, namely Bank of America, Morgan Stanley, and Goldman Sachs.

And while it is true that a higher percentage of trades have taken over -- have taken place on Chi-X in recent weeks, it is also true that their share of both volume and value traded has dipped slightly during that time frame. The increase in shares -- in share of printed trades does not necessarily reflect growth in real market shares.

Similarly, Mr. Cowan stated that Pure and Omega were very sustainable competitors, despite their limited market share. We would argue that when the regulators finally disallow the overcharging for market data by the various markets, this sustainability will be greatly tested.

Currently, both Alpha and Pure charge data fees that are more than twice those of the TMX, when normalized for either volume or value traded market share. Mr. Cowan correctly stated yesterday that the two competitors argued in their own comment letters that they had very sustainable businesses. We don't think they had any commercial choice but to make those arguments.

Mr. Cowan also stated on multiple occasions yesterday that Goldman Sachs's new Sigma X marketplace was a significant player and would pose serious competitive pressures. We would note that Sigma is a dark market, not a lit one, and as such is not protected. And after six weeks, less than eight dealers have openly traded on it.

Yesterday, they traded just less than 25,000 shares, slightly better than the 5-day average, and that compares to roughly 20-million shares traded today on Alpha's IntraSpread after it had been open a comparable length of time.

As to the arguments that U.S. markets pose competitive pricing pressures, we make the following ones. Firstly, as was clearly stated in TD Securities' excellent response to the recent CSA, IIROC dark pool proposals, the lack of trading fees in Canada -- lack of trading fee caps, rather, in Canada, alongside the significantly lower average stock price, has resulted in what TD, one of the Maple owners, referred to as "excessive pricing distortions between the Canadian and U.S. markets."

These distortions are true during normal CLOB trading, but are even more severe during the market on open and market on close, when TMX pricing is more than three times higher than either the NYSE or the NASDAQ.

To date, the only Canadian market to attempt to compete for either the market on open or market on close trades has been Alpha.

Secondly, while a large portion of the

volume and/or value traded in Canada is on interlisted stocks, the importance of this flow is greatly overstated by the volume inflation caused by interlisted arbitrage strategies.

According to a BMO study done in 2009 -- and full disclosure, I was coauthor on that study -- interlisted arbitrage resulted in a volume rise of roughly 16 percent. Thus, the volume and value traded in these names is significantly overstated. At ITG, we have monitored this trade and believe the BMO numbers still to be valid.

And thirdly, Maple and the TMX have routinely mentioned the need to repatriate market share to Canada. While we are all in favour of a robust and competitive Canadian marketplace, we highlight the impact that excessive intermediation has had on U.S. volumes and suggest we need to look at market share of natural investor flow rather than trade numbers, remembering that high frequency trading accounts for something roughly equal to 65 percent of U.S. volumes and something closer to 30 percent of Canadian volumes, depending on the various sources you use.

Much of Alpha's success in recent years has been attributable to the flow from its ownership dealers, a point that both Mr. Kloet and Mr. Cowan have made often. This fully explains the relative quick success of Alpha and IntraSpread compared to any other Canadian ATS, including TMX Select. The dealer's support has also allowed Alpha to offer odd lot trading, a feature that has often been undervalued by other lit Canadian markets.

Contrary to what Mr. Cowan said yesterday, the state of smart order routing in Canada is not very advanced. One need only look at the lack of trading during the TMX outage this Wednesday for evidence of this.

Many brokers don't have the ability to easily parse odd lot and mixed lot flow from other orders, and thus must rest all passive orders on a marketplace that offers odd lot trading.

This is the key reason that I and others pushed Alpha so hard to create the odd lot program. Without sponsoring brokers willing to underwrite the risk of odd lot market making, the remaining Canadian visible markets operate at a significant competitive disadvantage.

Eliminating Alpha removes a single vehicle that competes for much of the retail passive flow, market-on-open orders, and potentially market-on-close orders. Beyond that, it also removes the maverick disrupter from the scene. One need only look at the TMX trading fee changes since 2007 to note the strong correlation in both timing and scope with fee changes by Alpha. Notably, TMX does not tend to react to pricing changes from Omega, Chi-X, or Pure nearly as often nor as aggressively.

Finally, we're going to speak briefly about the matters around the CDS purchase. On the CDS front, we believe it is useful to state -- to start by considering the opinions expressed in the 1974 review committee on CDS, who stated:

"If any one element of the financial community were in full ownership and control of the depository, the other groups would have concern about its financial integrity and responsibility, fear and losing control of the manner and methods of achieving objectives and misgivings that important parts of their business may be taken over on a rate cutting competitor basis by the depository."

CHAIR: What year was that?

MR. CLARK: 1974.

CHAIR: Thank you.

MR. CLARK: Over the past several years, we have seen significant efficiencies from CDS, resulting in some of the lowest equity clearing prices in the world. We note that Mr. Bertrand's suggestion yesterday that this was a result of pricing pressures from DTCC makes little sense, given the cost recovery model at CDS.

Over the same time frame, we have not seen the same efficiencies from the for-profit CDCC. And we note that the much vaunted CDCC repo initiative is well behind schedule, despite a significantly reduced scope. While we are in favour of free markets and profits, there is a strong argument to be made that CDS has significantly outperformed CDCC over the past several years.

We would also like to restate the Commission question from yesterday, why were the very banks that are now pushing to integrate CDS with the exchange unwilling to do so for the past several years?

Cross asset margining has always been of great potential benefit, but it would appear that this benefit is only now worth pursuing. With this in mind, we would strongly suggest the following requirements to allow the CDS integration.

Firstly, fair treatment of all dealers and marketplaces.

Two, fair pricing of each service offered, to ensure that excess margins in monopoly offerings don't cross subsidize ultra competitive pricing in other areas.

Three, fair and transparent allocation of costs amongst asset classes.

Four, a board of directors for the clearing house that is empowered to protect the needs of the market as a whole, including those dealers and exchanges that may compete with the Maple exchange and its dealer owners.

This will entail directors who are not just independent in name, but are truly independent of the exchange and its larger owners.

We note that the proposal would see the board move from two TMX representatives to five Maple representatives. Clearly, this is a move towards fewer independent directors at the very time that more independence is likely required.

Five, fair treatment of competing marketplaces. Mr. Chairman, we find it interesting to note, over the last half dozen years, as new markets have begun to compete in the Canadian equity space as well as in the international derivatives markets, not a single new market has sprung up to trade Canadian derivatives.

While this can't be fully attributed to

the exchange's own derivative clearing corporation, it does drive home the need for a clearing corporation to work in a manner that is inviting to new marketplaces.

Six, profits are derived from achieving efficiencies rather than ratcheting up prices on monopoly products. While we understand the regulators have traditionally been reluctant to regulate fees, we would suggest that uncapped CDS fees within a for-profit structure are likely to result in the same monopolistic fees that many of the Maple dealers are actively fighting on the data side.

Seven, changes to the technology or capital requirements on participating dealers for markets are carefully considered and are not an attempt to crowd out the smaller players. This is particularly relevant given the attempt to drastically increase dealer margin requirements in the early part of this century, the impact of which would have been extremely negative on smaller dealers.

Eighth and last, an elimination of targeted enterprise agreements. Yesterday, Mr. Kloet argued the cross-subsidization does not exist. We believe that were the OSC to examine all the enterprise proposals that the TMX has presented to dealers in the last three years, they would see significant potential for cross-subsidization. We strongly urge the OSC to ask the exchange and dealer community to examine such recent proposals.

Finally on clearing, we found it interesting yesterday to hear the Maple group quote the idea of a fee schedule that would be included in the recognition order. We also like the notion of a user advisory group with direct access to the OSC.

However, we were disappointed they would model the original fee schedule without first creating that advisory group. We suggest they reconsider the order of these steps.

And then I'll give it back to Nick for our collusion.

MR. THADANEY: Thanks, Doug. In conclusion, as we wrote in our submission, we feel the proposed Maple deal will result in a for-profit entity with great influence in a variety of verticals across the entire investment spectrum, including equity listings, equity trading, equity clearing, fixed income trading, fixed income clearing, derivative trading, derivative clearing, energy trading, and financial information dissemination.

In allowing a single entity to influence so many verticals, we need to ensure that it is not working just in the interests of its shareholders, but also in the interests of all stakeholders, including dealers, investors, and issuers.

In order to ensure these stakeholders are treated equitably, they will need to have loud, strong voices at the table and have avenues for appeal where needed.

Captive consumers will need to be protected from any monopolistic pricing practices. Competing dealers will need to be assured of fair and level playing fields, devoid of enterprise agreements, cross-subsidization, and favoritism.

Competing marketplaces will require fair and level access to clearing operations and the information processor. Only when consumers and competitors are assured of equal access and level playing fields can investors and issuers be confident that the marketplace will be both fair and efficient.

We very much thank the regulators for giving us this opportunity to speak today on the proposed action and hope that our comments have been found useful. We look forward to answering any questions you may have of us. Thank you.

CHAIR: Thank you very much. So we'll

have some questions for you. I think we'll have a number of questions for you. Thanks, Mr. Clark, for providing some comment on some other matters that we've been giving a lot of thought to but that you indirectly managed to get into your remarks. We appreciate that.

MR. CLARK: We're pretty good at that. Thank you.

CHAIR: No shortage of things to consider, obviously. Thank you for your remarks. So just to set the stage here for your comments, describe, I think, for the panel and for the participants exactly what ITG does.

MR. THADANEY: Want me to describe that? Sure.

CHAIR: I mean, I know what it does, obviously, but --

MR. THADANEY: Sure. ITG is a 25-year old firm based in New York. We have a hundred people locally in Toronto. Our business primarily is around the business of trading. We grew out of -- I'll give you a quick anecdote.

Call it six or seven clients sitting around a dark table back in 1987 with our founder. We're trying to solve a problem. And that problem was every time they went to trade or transact in GE, the company, they found that, you know, they went to trade a large block of securities, and the transaction would move against them.

So what they all realized is, well, you know, you're Putnam, and you're Fidelity, and I'm Wells Fargo. I trust you. You trust me. Why don't we trade with each other? So what actually sprung out of that was the world's first dark pool, called Posit, okay? So the firm started from that philosophy of solving customer problems.

We built from there, creating a DMA business, which is direct market access, so clients can trade direct with markets, and an analytics business that would allow clients to assess their -- the efficiency of their own execution, as well as that of their providers. So we are a trading house with tools and analytics.

CHAIR: And are you a specific competitor of the TSX?

MR. THADANEY: I wouldn't say specific, but there is elements of our business that, in fact, do. We run in a separate business under the banner Triact.

CHAIR: Right.

MR. THADANEY: Which -- the actual

business name or the product's called Match Now. It's a dark trading engine or dark pool, and it has about 2.3 or 2.4 percent market share. It's been operating since 2007, and unlike many of the examples that we cited, the growth to 2.7 -- or sorry, 2.4 percent market share has been a slow and arduous task.

CHAIR: So are you a competitor of Alpha?

MR. THADANEY: I guess in the interest spread product, potentially.

CHAIR: Right. In the undisplayed liquidity?

MR. THADANEY: Yes, in dark. For sure. Yeah.

CHAIR: So I just want to understand the framework, and also understand the context of your remarks. Thanks for that. Did you want to begin?

COMMISSIONER CONDON: Thank you. You mention in your letter the issue of -- you raised the specter of preferential treatment of owners if the Maple pool is -- it proceeds, and in your remarks today, you gave us a few examples: preferential pricing, broker preferencing, and then most recently, cross margining. And I just wanted to ask a few questions related to those examples. First of all, I guess -- there would be a question about are there other examples of preferential treatment that you would worry about in the context of the Maple transaction proceeding?

On the cross margining point, is your suggestion that the owners of Maple who are -- the investor owners of Maple can benefit more from the cross margining opportunity than other investors out there in the marketplace?

And then in relation to your comments about fair pricing, can you just say a bit more about what exactly you're contemplating there? You raise it across the spectrum of trading and clearing, and obviously you anticipate some role for the regulators in that regard. Can you say more about what it is you would -- how you would get to a fair pricing model and what it would look like in terms of the regulation of that?

MR. THADANEY: On the fair pricing comment, are you specifically -- is that a general statement across the entire --

COMMISSIONER CONDON: Well, I'm asking you.

MR. THADANEY: Okay. Fair enough.

COMMISSIONER CONDON: Are you making --

you know, are you making an argument that the regulators should start regulating across the whole spectrum with respect to fair pricing, or are you limiting it to the CDS area or to the clearing area or, indeed, to the trading platforms?

MR. THADANEY: Maybe we'll start with that one. That all right?

COMMISSIONER CONDON: Sure.

MR. THADANEY: Work our way backward. So fair pricing, I think we highlighted a couple times in our discussion the notion of cross-subsidization, and I think the fear there -- and you know, we could point to the transaction business, we could point to the market data business, we could point to the CDS business.

And pretty much all places, you would have the same concern in that if there is preferential treatment for certain client segments, it makes it difficult to compete on a level playing field, okay? When we think of CDS, one such example -- and you know, one of the things -- I've talked to Peter Vervilis about this point a few times -- is that it works on a cost recovery model, but there's really no -- there's very little clarity as to how that operates.

I'll give you one example. So you've

got the majority of dealers that operate in the Canadian marketplace. Call it 200 or so dealers that are registered. Maybe there's more. I don't even know. But most of them operate in the field of equities, okay?

So the notion of a cost recovery model where there is an equity segment and a fixed income segment in CDS, like how do you divide that? And the question is, today there's not a ton of clarity around that. And even the board of that entity today, it's not -- it's not a situation where I could say, you know, Mr. Wetston, you know, I have an issue with this. You know, please address this. It doesn't really -- it's not as simple to deal with.

CHAIR: Let me interrupt there for a second.

MR. THADANEY: Sure.

CHAIR: I know where you're going, and the question is a good question, obviously, but they're proposing to put out a pricing model. So a pricing model, I suspect that's going to be public.

MR. THADANEY: Okay.

CHAIR: If it's not public, then I think that that would be a challenge, obviously, given what Maple is suggesting.

MR. THADANEY: Hundred percent.

CHAIR: So if there's a message in this to Maple, obviously that would have to be public.

MR. THADANEY: Sure. Absolutely.

CHAIR: Having said that, though, obviously, we recognize the whole issue here of cost allocation and the judgment that's required. And I think we all understand that there are important professional responsibilities in making those decisions. And I think all you're simply saying is you don't have enough information about it to be able to determine from your own perspective whether it's fair or reasonable.

MR. THADANEY: And very little mechanism to actually lobby around that. So that's the other issue.

MR. CLARK: And I think, Mr. Chairman, that was our point, that we think it would be great to adopt the user advisory panel now and to make sure that the likes of Peter Virvilis and others are in on the modelling instead of modelling a price that works for the 13 Maple owners.

MR. THADANEY: And then you start getting into, you know, transactional data costs, so the actual -- sorry, transactional costs. Where, you know, if you could structure -- and this hasn't -- it's not that this hasn't happened in the past where there is price breaks based on size. So again, you have a tiered system.

CHAIR: So let me just take you a step further on this question. So normally, when I think about cross-subsidization, I think about it in two areas.

I think about cross-subsidies across lines of business, and I think about cross-subsidies from the point of view of competitive versus noncompetitive businesses, monopoly services or near monopoly services -- I don't even know if you use the language near monopoly anymore, but you know what I'm getting at.

And secondly, whether or not you have a competitive business. And the opportunities that exist within an organization to move the costs around appropriately would create issues of cross-subsidies. It often occurs in these environments.

So when you're talking about this issue here, what are you getting at here? Are you concerned about cross-subsidies as between trading and clearing, or are you thinking about cross-subsidies within trading, or are you thinking about cross-subsidies within clearing, or are you thinking about it just generally? What are you getting at?

MR. THADANEY: I would say generally, unless you have --

MR. CLARK: I think generally, in that we're concerned that several of the Maple group presentations to the various boards during the whole process, they have talked about the right to continue to have enterprise agreements that are not public.

We would not be thrilled to be competing with Maple owners who are our direct competitors in the trading landscape if they had pricing that was far better than ours. That's the cross-subsidization that concerns me most.

CHAIR: So taking it a step further, if they were not made public, you would say to regulators, you would need to ensure that these don't encourage cross-subsidization to the disadvantage of the market?

MR. CLARK: Exactly.

CHAIR: And there was a lot of questions there for you --

MR. THADANEY: Yeah. So does that cover the fair pricing or --

COMMISSIONER CONDON: That's fine.

COMMISSIONER KELLY: Maybe on the topic

of pricing if you wouldn't mind -- in your presentation, you mentioned Alpha. And I think I wrote down higher pricing and inferior technology. Can you just elaborate on that a bit --

MR. THADANEY: Sure.

COMMISSIONER KELLY: -- for us? I know you mentioned the data fee side. Is that what you meant or --

MR. THADANEY: Well, you mean in terms of my data comments?

COMMISSIONER KELLY: Well, in terms of higher pricing.

MR. THADANEY: Yeah. So on the higher pricing and call it less than superior technology, we generally look at the number of providers in terms of the lit market competitors. And, you know, there's one particular group in the room today that has a very superior trading engine. And, you know, we've looked at that in terms of speed, in terms of reaction, and a number of other metrics.

And while the technology and the pricing -- you would stand to reason that that would be key determinants in how you actually protect your routing. That wasn't actually the case in terms of the way Alpha was made successful. Want to elaborate further?

MR. CLARK: Yeah, I think Mr. Kelly or Commissioner Kelly, in early 2008, when all these marketplaces opened, if you were to compare the Alpha pricing model with, for example, Chi-X, who will be speaking next, the Chi-X pricing model had a tighter spread and a much lower active fee. They had superior pricing across the board.

Now, the pricing models of the various markets have gone down the way of cell phone type pricing where they've made it impossible to compare because everybody's -- there's no apples to apples anymore. Everybody's got different breakdowns.

But in the early days, it was very easy to compare pricing. Chi-X had significantly better pricing for the dealer community. They had a better trading engine, as Nick suggests, significantly faster -- significantly smaller tails and variance of reaction time. They did not have superior market share. So Alpha came out of the gates much stronger, despite worse pricing and worse technology.

COMMISSIONER KELLY: So again, to stay on -- when you talk about market on open, market on close, how it's much more expensive here -- I think you said three times?

MR. CLARK: Yes.

COMMISSIONER KELLY: Tell me a bit about that.

MR. CLARK: TMX on the market on close product currently charges 30 mils per side. The NYSE charges 8 and a half mils per side for the first, I believe, 24-million shares you trade a month, and then charges 5 and a half mils. NASDAQ has a high rate of 10 mils per side, and it goes down, I believe, also in tiers. So it's three times more than the NYSE rate.

And that's because everybody is captive to the clearing price of the TMX. So all the index providers, the mutual funds have to use that as the price at which they set their now.

We would also note that on the market on open, currently, if you go onto any of the big banks' discount brokerage web sites, when you look at the opening price, they will give you the TSX opening price. When you look at the closing price, they'll give you the TSX closing price.

And during most of the day, the last price they would give you would be the TSX price. You can, in many cases, not see a price on Chi-X or Pure. As a result, the retail client expects that price, which makes it very difficult for Chi-X, Pure, Omega to compete on the market on close.

CHAIR: So how do you get best execution that way?

MR. CLARK: As a dealer, we're going to look at all prices. But if the retail investor wants that price, that becomes the benchmark. They basically have a monopoly on the benchmark.

Further, I would go and say that on the listing side, while some have argued that CNSX will be able to compete on listings, for similar reasons, because you can't see quotes on CNSX stocks on most of the bank web sites, the stocks are nonexistent as far as most retail investors are concerned, making it very difficult for CNSX to compete heads up against the TMX group for listings.

CHAIR: But you're saying the dealer meets their best execution obligations by the benchmark?

MR. CLARK: No, I'm saying what the --

CHAIR: I hope you're not saying that.

MR. CLARK: No, I'm not saying that. No. What I'm saying is the client expects the benchmark. So during the trading from -- call it 9:31 to 3:59 -- you're going for the best price. And if price is equal on all, then every dealer has their own way of doing about it. We look at what the adverse selection is and what the actual reaction is when we trade on various markets. We have, you know, a set of algorithms to determine what market is best to trade on in case of a tie.

But at 4 o'clock, I have to submit my order before the close to say, here's where I want to close. I have no idea which one's going to have the better pricing. If my client is tied to the TSX benchmark for index reasons, for NAV reasons, whatever, they're going to want my order to be on that market. And if they control closing price, they're going to control closing flow.

MR. THADANEY: In fairness, that reference predominantly relates to institutions. Okay?

CHAIR: Right. I understand. But, you know, in the world that you live in, to create the opportunities for investors to invest, whether they're institutional or individual retail investors, you got to translate this to what it means to them.

So what does it mean to the institutional investor, and what does it mean to the individual investor who looks at their retirement portfolio and says, I really want 5,000 shares in "X" company? What price am I going to get? How does all this affect that? We have that obligation here as well. We need to translate all this.

MR. CLARK: Yes.

CHAIR: Your algorithms, your market on opening, your market on closing into what somebody is going to invest in.

MR. CLARK: Yeah.

CHAIR: I think that's the purpose of the capital markets, in part.

MR. THADANEY: Yeah.

CHAIR: Tell me about that.

MR. CLARK: It's becoming increasingly more complex, as I think we can all agree. On the -- you know, at the close, if the investor's only able to see one traded price, that's the price they're going to want.

So if the Maple dealers are only putting up a TMX quote onto their web site, they're not going to be looking for a trade on Chi-X, even though that might be the superior price. They're going to want to make sure that -- they ask for the closing price. They're going to want to make sure they get that TMX closing price.

During the regular day, I think the fact that they can't see trades happening on other marketplaces, Pure, Chi-X, it hurts the confidence that retail investors have in those marketplaces. If they can't see their trade, they don't understand how their trade took place.

CHAIR: And institutional investors will have other alternatives.

MR. CLARK: Yes. Yes. They have their Bloomberg terminals and all those various higher --

CHAIR: They also have opportunities for internalization. They have alternatives for undisplayed liquidity. They have other potential sources of being able to make a trade, differently than, I think, a retail investor would. Would you agree --

MR. CLARK: Yes.

MR. THADANEY: But to your point, Chairman, you mentioned -- you made the statement, how does best execution actually -- how does that appear? How does that come? How does that happen? So I would say while the institutions may have obvious alternatives -- you've mentioned dark -- why shouldn't retail?

CHAIR: Well, it's a good question. We're not going to try and answer.

MR. THADANEY: Fair enough.

CHAIR: But I do want to take you a step further. How does the Maple transaction, in your opinion, affect that? That's really what I'm trying to get at here. We have this proposed transaction. How does it affect that?

MR. CLARK: I think it's going to make it very difficult for the -- if Alpha is taken in-house, it's going to make it very difficult for the Chi-X, Pure, and Omega type exchanges to compete. They're going to have efficiencies of scale. They're going to have a single platform with single protocols. And therefore, when they're looking to approach the stat. arb. and high-frequency players looking to trade across multiple markets, they're going to be in more attractable -- fundable marketplaces.

CHAIR: I guess what I'm getting at, Mr. Clark, is what happens to the benchmark? Is the benchmark now a bigger benchmark? That's what I'm trying to understand. What is that benchmark going to look like?

MR. CLARK: The benchmark is monopolized by the TMX as it is. There has been no fragmentation of that benchmark. And as a result, that's why that pricing has gone that way. You know --

MR. THADANEY: It just gets

exacerbated. That's -- you know, that's the end result.

CHAIR: And I apologize for my interjections.

COMMISSIONER CONDON: That's okay. Can we just get back to the cross-margining point, just to --

MR. CLARK: Right. So the -- on the cross-margining -- and we believe that there are benefits that can come out of the cross-margining. We're hopeful that they will be realized. The question was: Do we think the Maple group will realize more of them? We don't.

I don't think that any of the pension plans in the Maple group will realize greater benefits than the likes of an OMERS or a BCIM, pension plans that are not in the Maple group.

We just were intrigued yesterday that the gentleman from Ontario Teachers had suggested they were not a client. But later on, Mr. Bertrand and Mr. Kloet said that they will recognize the greatest benefit from the cross-margining.

COMMISSIONER CONDON: Thank you.

MR. CLARK: And then I think the other question you had was what other -- are there any other examples of benefits that owning the business would have. And I think that the -- if we look at Alpha, which has the closest ownership structure to what Maple has. Included there are differences. It is not for public use, fully owned by dealers and pension plans instead of 65 percent owned by dealers and pension plans.

But if we look at some of the things that they have done over the last couple of years, they have clearly catered towards their ownership group, not surprisingly. And so we have seen products that the OSC have thankfully denied like uCross that have been developed strictly for their client base.

The first couple of iterations of IntraSpread were very unpopular with many dealers on the street but were clearly aimed towards the ownership base of the Alpha Group. We would be concerned that similar type of catering towards the owners may happen with the Maple group.

MR. THADANEY: I would add one more point on the -- I mean, when you look at the concentration in the fixed income market, I mean, today, the dominance in the fixed income market is pretty much, you know, the six large banks.

And when you think of the construction

of that market, you've got the dealers, as I've just described. You got the interdealers. And the two prominent interdealers would be Shorcan and Freedom. And then you've got CanDeal, which is one of the other mechanisms in terms of -- that deals directly with the end client. There is one other one, C-bid.

But when you think of the totality of the market shift where you have the dealers still controlling what they control today. You have the TMX-owned Shorcan. The dealers own 30 percent of Freedom. So, I mean, that segment gets sliced. And you have CanDeal, which is 50 percent -- roughly 50/50 between the dealers and the exchange. So --

CHAIR: It is a highly concentrated market; would you agree with that?

MR. THADANEY: Very. Highly.

COMMISSIONER CONDON: That's fine. Thank you.

COMMISSIONER KELLY: I think it was CNSX yesterday in the presentation talked about Alpha and the momentum strategy. You mentioned it this morning as well. Can you just elaborate on that a bit for me and exactly how you see that --

MR. THADANEY: Behavior?

COMMISSIONER KELLY: Yes.

MR. CLARK: Sure. I was -- I was working for one of the Alpha owners at the time of the momentum strategy, so I'm fairly aware of what happened. The momentum strategy was a decision amongst many of the Alpha owners to pick select issues, Bombardier, XIU, and some others.

And on set days, they would start sending significant passive flow and preferencing that marketplace with their active flow where they were tied for best price or best price to try and achieve critical mass in those names.

If you watched their market share over -- even today, you will see that while they have 22 or 23 percent market share on any given day, it is highly concentrated still around the ETFs, all of which were part of the momentum strategy, and the handful of names like Bombardier. To it was a group of owners acting in concert to try and create competition to the TMX.

MR. THADANEY: Now, in fairness, others were invited into this initiative. We were one of them. We chose not to after consulting with both compliance as well as, you know, our management team. It just didn't -- it didn't -- it didn't make sense for us, so we didn't do that. So just -- we don't want it to come --

CHAIR: That's helpful. Thank you.

COMMISSIONER KELLY: You talk -- everybody seems to point to cross asset margining as the one benefit that everybody would agree on. Can you give me some sense of just the degree of that benefit? You know, I look at this, and I see capital supporting a derivatives position, capital supporting a cash margin position, whatever.

We have the ability now to -- I guess what's happening now currently is there's an impression that there's more capital supporting those positions than is required. So by cross-margining, the obvious conclusion is that we're going to have less capital supporting the same positions.

MR. THADANEY: Mm-hm.

COMMISSIONER KELLY: Should that make me nervous? And how big a delta are we talking about?

MR. THADANEY: So, I mean, we -- I guess at first glance -- I mean, I wouldn't pretend to call myself an expert in cross margin -- cross asset margining. But what I would say is when you think of the major beneficiaries of that outcome -- I'm going to assume it's going to be the folks with the largest assets. Right? It only stands to reason.

So for many firms that operate on, you know -- for instance -- for many firms that transact every day on the TSX, a lot of them don't have a lot in the way of assets that they hold. They're just merely transacting as agent.

So I wonder whether, you know -- I would guess that there's probably a tiered benefit to those that have lots of assets versus those that are merely transacting on behalf of people who have assets. So that would be my first -- my first assumption. I don't know if you have anything else to add.

MR. CLARK: Yeah, I'll take that in two parts. One, should we be concerned? And B, what is the delta? Should you be concerned? I think if it's set up correctly and there are tight controls over correlation, there shouldn't be great concern. If an ETF market maker is long significant in XIUs, for example, and short the 60 index futures to have some sort of capital relief, those are very tightly correlated products --

COMMISSIONER KELLY: I guess that's the essence of my question. Because what we've learned from past experience is we've assumed a high correlation in some situations. And in practice, it didn't actually exist.

MR. CLARK: Yeah, I think it has to be a fundamentally understood correlation. The correlation between a cash basket and a future on that exact same basket -- there is a fundamental understanding of that correlation. When you look at something that just has a high data and therefore has traditionally had a high correlation but could become dislocated, you have to have greater margins around that.

I think the second question you asked is what is the delta. And you have to remember that most of the people that are putting up margin on these products are doing so with either T-bills or other treasury or fixed income products. They already own and already plan to own. As a result, it's just a case of where are my housing my fixed income products.

So I think there is some delta. I think it's probably overstated, you know, in that they're already going to own these products. Can they get something out of lending the products? Perhaps. But it's overstated by some.

COMMISSIONER KELLY: I have one final question. I was just simply -- you mentioned in your presentation a 1 percent threshold as the definition of independence, I think. And I was just wondering how you got there. That seems to be the most extreme one we've heard yet, so --

MR. CLARK: I guess we wanted to be extreme. We just felt that if you look at the number of firms that could act in concert if you put 1 percents together, you still ended up with something probably south of 10 percent.

We thought that the one comment by Mr. Cowan that anybody owning over 5 percent would have great influence on the marketplace suggested it had to be south of that number. 1 percent -- there's no hard math. I'm not going to tell you that we have a formula and a white board.

COMMISSIONER KELLY: Just as a point of clarification, if you're using -- and thank you for that. When you're using the T-bills setup to margin these positions, are you getting 100 percent value on those?

MR. CLARK: You're getting 90 something percent. Not 100 percent. But it's not far. It depends on the term of the T-bill. And yeah, if it's a Canadian T-bill, 90 odd percent. If it's a corporate bond, it's significantly lower.

COMMISSIONER KELLY: Thanks.

CHAIR: Can you describe the

cross-margining issue as between the integration of CDS and CDCC and/or the issue as between the trading -- that is the trading platforms and CDS? Can you -- do you see those as raising different issues, or are they comparable?

MR. CLARK: Are you talking about how it would all come together?

CHAIR: Yeah.

MR. CLARK: I think, you know, Nick made the point that we've been promised benefits before, for example, the merger between the TMX and the ME. We were promised that we would have one united trading engine with one data protocol and one order input protocol.

It never happened because it's a far more advanced problem than we thought going in. We're definitely going to have some hiccups. I don't think either one of us can speak authoritatively about how easy or how difficult that process is.

But history suggests that it's not going to be as easy as we're being led to believe. But I think that the point that was made yesterday -- I believe by you, Mr. Chairman -- about the fact that they're doing this in the U.S. Yes, it was a gainful process. Yes, it took longer, and there were some hiccups. But it has been done in the U.S. without them being owned by the same entity -- was a valid point.

MR. THADANEY: Actually, I guess the other thing is -- you know, we have a clearing end of our business. And no one's been screaming for cross asset margining. And I would -- I would actually encourage a survey of all the dealers and their departments as to, you know, what's your number 1 task right now. I don't think that's one of the ones that probably meets the board. I think there are a lot of other ones that --

CHAIR: I think the issue has really come up in the context of the potential clearing of very, very significant OTC derivatives that would become exchange traded and then cleared, and we're still working on that. As you know, some of the banks are now clearing in LCH as participants. Lots of discussion around the benefits of that which might occur in that environment. It's still an environment under development. And so when you talked about no new real derivative products in --

MR. CLARK: What we talked about -- sorry -- was no derivative exchanges. So there's been plenty -- some might say too many new derivative products, if I can be so bold, but no exchanges on which they can trade.

CHAIR: Right. And, of course, part of that -- to you, that seems to be coming out of the environment for exchange traded OTC derivatives, will likely find its home in marketplaces, as opposed to necessarily a new exchange. But call them what you wish, at this stage, that's still under consideration. But how do you see that evolving?

MR. CLARK: I suspect those marketplaces will look more like a printing facility, for example, the so-called Markit with a K-I-T in Europe. I don't think that you're going to see people actively quoting what tend to be customized default swap contracts or other over the counter --

MR. THADANEY: Unless they're standardized.

MR. CLARK: Yeah. And, you know, the great benefit of most of these contracts is they're not standardized for a reason. They're tailored to meet a specific client need. So I suspect that the vast majority of volume and value traded will just simply be a printing facility. And really, the true benefit of the clearing is greater transparency for regulators like yourself and also for the Bank of Canada to understand the totality.

If we think about the Lehman example back in 2008, the issue wasn't so much the default swaps themselves. It was the fact that nobody understood how many billions of dollars of default swaps there were on a company that had significantly less in actual fixed income --

CHAIR: Well, the reason for the trade repository, which I think is very important in that regard --

MR. CLARK: Yes.

CHAIR: I mean, that's the important tool there to be able to look into the market and see the risk and exposures that might exist.

MR. CLARK: Yeah. I don't think we're looking for a trading venue for price discovery. I think we're looking for a transparency option.

MR. THADANEY: Chairman, you highlighted that the big beneficiary here is in the OTC space around cross-asset margining. I would just remind you that there aren't a lot of players in that space in this country. There might be six.

CHAIR: We understand the magnitude, and the banks are the major participants, certainly in the interest swap space, and of course there's a significant market of that in Ontario for obvious reasons, and so a lot of that market activity in that space occurs here. And we're still working on the trade repository clearing challenges associated with, you know, those requirements that flow out of G20.

I wanted to -- I guess I'm being told that we should move on. And I won't show you that note because it is -- but having said that, it's --

MR. THADANEY: Will it be in the record, in the transcript?

COMMISSIONER CONDON: I don't think so.

CHAIR: I think that's -- any further questions?

COMMISSIONER KELLY: Good presentation.

CHAIR: Well, thank you so much for coming today, and we appreciate your presentation.

MR. THADANEY: Thank you very much.

CHAIR: Okay. I think we -- we need a break? I guess we need a break. Should take a short break? Why don't we take a short break, give you a rest. We'll be back. Ten minutes?

--- Recess at 10:41 a.m.

--- On resuming at 10:54 a.m.

CHAIR: Morning. I guess we should begin. I don't see the registrar here, but we'll begin. Mr. Thomson, Mr. Kessous?

MR. KESSOUS: Good morning, Mr. Chairman.

CHAIR: Is it Chi-X or Chi-X?

MR. KESSOUS: Technically, it's Chi-X. The Greek letter that stands for the X, and the crossing is our business -- we cross -- we match shares. So we've trying to call ourselves Chi-X for the longest time, but our customers keep calling us Chi-X, so we listen to customers and call ourselves Chi-X as well. So we'll go with Chi-X.

And if you don't mind, I have a quick question before I get started and dive into my remarks. Is ITG going to get fined for talking too fast, or was it just a warning you gave them?

CHAIR: We don't levy administrative penalties for fast talking.

MR. KESSOUS: I ask because I have a tendency to talk fast as well, and normally you have to bear with me, but my accent as well might be an issue but --

COMMISSIONER KELLY: A benevolent regulator.

CHAIR: I think we can follow you, Mr. Kessous, so a good pace is what we all desire.

MR. KESSOUS: Thank you. On behalf of

Chi-X Canada, I would like to thank the OSC for holding these public hearings and giving us the opportunity to be here today. I also would like to congratulate the OSC for a very thorough analysis of the Maple group proposal. This was truly a great piece of work. Not that the other ones were not, but this was really outstanding.

I also would like to thank my good friend Doug Clark for complimenting us on the performance of Chi-X. We don't hear that often, so I'd like to have that on the public record.

It is important to recognize the significant changes that the acquisition will introduce to the Canadian capital markets. Maple will be controlling the majority of trading and all clearing and settlement for equities and derivatives in Canada.

And before I begin discussing the Maple proposal itself, I would like to give a brief history of Chi-X Canada. Chi-X Canada is a high-performance alternative trading system or ATS, or marketplace, in other terms. We trade TSX and TSX Venture securities, provide several advanced order types, and reputable -- (inaudible) -- service. Since our launch in early 2008, we have been a marketplace known for its innovation in product and services.

We are part of the Chi-X group organization, which also operates Chi-X Japan, Chi-X Australia, and the Chi-X Chi-East joint venture with the Singapore Exchange. We are close to 10 percent market share, measured by volume, and about 20 percent measured by trades.

In this presentation, we will focus on three areas, governance, Alpha, and CDS. On governance, the composition of the board is an important issue. The governance standards adopted by Maple should follow best practices.

Although Maple has proposed to adopt the TMX Group's governance framework, several points differ from existing practice today. Today, the TMX governance committee makes recommendation of candidates to the board. No shareholder or stakeholder is entitled to nominate candidates.

The nomination agreement referenced in the Maple application will give 8 Maple investors the right to nominate one board member. This deviates from current practice, but may also undermine the objective of fair, meaningful, and diverse representation.

In addition, as currently proposed, Maple would be able to influence the selection of nine of 15 directors, more than a majority. Also, given the six-year term of the nomination agreement, this influence will be exercised over more than one election period.

Given the potential conflicts of interest, we recommend, at the very least, that the current best practice continue. However, if a deviation is permitted, we suggest that only five of the Maple investors be given the entitlement to nominate a board member so that the total Maple influence is less than a minority -- than a majority -- sorry. We also suggest that the term of the agreement only apply to the first election period.

Conflicts of interest also need to be looked at. While they might not be acting jointly or in concert, it is important to recognize that in practice, the interest of the banks will be aligned.

Maple's proposed measures to mitigate potential conflicts of interest heavily rely on governance standards. As mentioned previously, the nomination agreement goes against these standards. We support the OSC's suggestion to identify and manage conflicts of interest. Requiring enhanced conflict of interest policies, not only at the exchange level, but also at the individual dealer level, will help give investor confidence that these conflicts are being addressed.

We suggest that both exchange and dealer policies and procedures for conflicts be required and that they be posted on the exchange and dealer web sites. Lastly, dealer owners of Maple should provide transparency to their clients as to how routing decisions are made. This will assist clients in assessing best execution.

I'd like to move on to the topic of Alpha now. Maple hasn't clearly indicated how Alpha will operate or if it will continue to operate at all. They have left the door open for either possibility.

Should Alpha continue to exist, Maple will own three venues for equity trading, allowing them to target three market segments. Since our launch in 2008, we have been proponents of innovation and competition for the benefit of investors.

We are therefore not opposed to Maple owning three marketplaces, as long as competitors are not restricted from operating more than one venue as well. If Maple decides to cease operations at Alpha, we do not think it will have a significant impact on competition or market quality, although one would think that a combining -- that combining 60 and 20 percent of the market may lead to unfair pricing power.

Quite the contrary, we think there will be still demand for competition and alternatives in Canada. We see it as an opportunity to better compete based on products and services.

When we launched, we were up against the TSX with more than 90 percent in market share. It didn't prevent us from growing to close to 10 percent today. We have been a significant competitor of both the TMX and Alpha, and we will continue to compete whether Alpha is integrated or left alone.

On the issue of CDS, moving from a cost recovery utility to a for-profit entity will shift shareholder objectives from cost saving to profit generation. Ultimately, the monopoly situation will be used to benefit shareholders at the expense of users.

Maple puts forward the arguments of efficiencies and cost synergies, but no further details have been provided. There certainly are efficiencies to be achieved by combining CDS, but, you know, we have yet to see any evidence or any plan of the synergies.

Maple has talked about competition in clearing services. It is not realistic to say there could be competition in that space in Canada, given the high barriers of -- clearing outside of Canada is also not realistic. Only a minority of securities are interlisted, and most Canadian listed companies would have a hard time getting listed on the U.S. exchanges.

User fees at CDS is an important issue. As per its nonprofit model, CDS returns excess cash to its members in the form of rebates and fee cuts. They return $40-million in 2010 in the form of rebates. CDS has been cutting fees and is well positioned to continue to do so, given the nature of its business. It is a volume business with relatively fixed costs.

A recent study ranked CDS pricing the cheapest after DTCC. DTCC also operates, as you know, on a cost recovery basis.

If Maple claims they won't raise fees simply by not paying a rebate or not cutting fees further, both will result in fee increases to the participants.

Maple offers to benchmark themselves against global players, but we already know the costs are higher globally compared to CDS and DTCC. For example, Deutsche Boerse 's Clearstream is hundreds of times more expensive than CDS for the same services. What we propose is a formula based fee setting process and also a requirement for regulatory approval combined with public comment period.

The other topic of interest in the CDS

portion of the Maple proposal is access to competing marketplace. And we are a marketplace that access CDS today and submit our trades on behalf of our participants.

Currently, the marketplace only pays for connectivity. It doesn't pay for an access fee or any other fee. This practice should continue, and pricing should be consistent with comparable connectivity services. We propose that there be a marketplace representation on the clearing board of CDS. Although not directors, will facilitate clearing for participants.

Chi-X is the largest ATS in number of trades and often presents close to 50 percent of TSX trades. By that measure, we are the biggest -- one of the biggest ATS in terms of trades that we submit to CDS on behalf of our customers.

We also have concerns with cross-subsidy. Maple could be tempted to subsidize trading with clearing and settlement revenues. Also, allocation of costs is a concern in a vertically integrated organization.

We would like to bring your attention to a confidentiality issue as well. TMX would potentially be able to access information regarding trading activity on other marketplaces and urge -- and we urge the OSC to place proper walls between the clearing house and the exchange.

Lastly, given our global presence, we have come across vertical integrated exchange and clearing models on several occasions throughout the globe. We would like to share with you our experience through two examples.

The first example is the ASX, the Australian Stock Exchange. We launched a marketplace in Australia on October 31st. The ASX recently opened access to its clearing services to Chi-X Australia. Let me give you some numbers, and I hope this will not give Maple any ideas.

Chi-X Australia pays $275,000 a year to the ASX as a service fee. And that's in addition to their connectivity fees that they have to cover themselves. This was for a five-year commitment because it was the cheaper option. On a three-year commitment, it would have been $450,000. On a one-year, it would have been 1-and-a-quarter-million dollars. Thus we got a great deal. The second example comes from Europe.

COMMISSIONER KELLY: I'm sorry, Mr. Kessous. Just for clarification, you said that was a service fee?

MR. KESSOUS: Yes.

COMMISSIONER KELLY: Not an access fee?

MR. KESSOUS: They call it a service fee. That's correct.

COMMISSIONER KELLY: What is the service provided?

MR. KESSOUS: Access. That's why I said they call it service fee. On their web site, this is public information. They call it -- with pricing as well. I encourage everybody to go and look at it. They call it a service fee, but it is essentially providing access to the clearing facility.

The connectivity fees that we pay today as a marketplace is about $3,000 a month. Chi-X Australia has to pay the connectivity fees out of pocket like we do, but they also have to pay this fee.

CHAIR: And what are those fees? 3,000? Or is that here?

MR. KESSOUS: 3,000 is here. It's comparable in Australia as well.

The second example I'd like to mention comes from Europe. Spain's BME exchange has been forcing clearing on its trade -- clearing of its trades -- sorry -- on its clearing facility and has refused to open up to competing clearers until recently.

As a result, MTX, multi -- facilities, according to ATSs here, their penetration in Spanish stock has been very limited. Chi-X's Europe market share in Spanish stock is in the low single digits, compared to over 20 percent market share in other European stocks.

Finally, you might recall that when the European Commission reviewed and subsequently denied the proposed merger between the Deutsche Boerse and the LSE in 2005, a main issue -- cited was that the Deutsche Boerse could force all clearing done on the LSE Exchange to go through a single clearing agency.

This conclude our remarks. Again, thank you for allowing us to comment and participate in this public hearing, and thank you all for listening. We'll be happy to answer any questions you may have.

CHAIR: Okay. Thank you very much. Sure.

COMMISSIONER KELLY: You mentioned that if Maple's allowed to own more than one platform, then competitors should also be allowed to do that also. What were you thinking there?

MR. KESSOUS: I was thinking of us

others be able to have more than one trading venue so we can compete on different market segments. You can't -- one size doesn't fit all.

COMMISSIONER KELLY: But can you give me an example?

MR. KESSOUS: TMX -- the TMX Group today runs for TSX and TSX listed equities -- TSX and TSX Venture equities today owns -- the TSX and TSX Venture market owns TMX Select. If they keep Alpha, they'll have yet another medallion to trade those same listed securities.

Today, Pure is the only -- Pure only has the one book, one entity to trade those securities. Same goes with Chi-X, Omega, and the other competitors that we have around.

So we would like to have the option as well to have a different book if we wanted to, to be able to address a market segment that we can't address with the current offering that we have.

MR. THOMPSON: I think it's important too to recognize that if Maple does go through, then you have three operating markets already licensed and open for business. So I think when we understand that, there are concerns about fragmentation, about costs, market data, and the like from different exchanges.

And certainly, it's been hard to gain traction for a lot of marketplaces out there. What we're really saying as well is that if we do need to compete, we want to have license and not be prohibited from necessarily launching again a different ATS with a different market structure.

Because again, the three existing, they can have different -- you know, matching allocations, different pricing, and that puts us at a very strong disadvantage.

COMMISSIONER KELLY: Well, I was just going to take that a step further. You know, you've sort of implied that the concentration of order flow amongst a small number of inter -- financial intermediaries is a concern in that in the event that this happens.

And I guess my question would be, will -- will the Maple dealers be able to inhibit growth of a new competing marketplace from your chair end? I think I know the answer, but I'd love for you to elaborate on that for me.

MR. THOMPSON: I think that, you know, any marketplace that launches has to have providers of the liquidity. I think it's important to recognize how the Maple owners have directed their flow thus far to

Alpha.

We kind of look at that market share as sort of unaccessible or unattainable, so I think to answer your question, a new market will struggle to certainly capture some of that market share. However, I mean, there's other ways to also have provisions, pricing, and target the rest of the market, you know, which would at least be the 40 percent that the banks don't control.

And in addition to that too, you can be on speed, on pricing, and to -- the chair's point, best execution always applies. And therefore again, if you have a quality product, you can at least also capture some of that flow because you do offer the best price.

COMMISSIONER KELLY: Just -- you mentioned also cross-subsidization and how that -- obviously, a risk here in this new structure. You mentioned specifically between clearing and trading. Do you have some thoughts there again specifically as to how that could occur?

MR. KESSOUS: Well, Mr. Kloet yesterday -- or was it Mr. Bertrand -- said they never gave any thoughts about cross-subsidies. They never crossed their mind. But there's a totation(ph) from a competitive perspective where you own a service where nobody else can compete. We only can compete against this group on trading. This is where we compete. Chi-X doesn't do listing. We don't have clearing, obviously. We only compete on trading.

If they can use the revenue that they can extract from a business where there's no competition and apply that revenue to trading by allowing themselves to lower fees or their spreads or to put pricing pressure to a point where it would be not sustainable for us or other ATS to run this business, this is where, you know, we have concerns.

Along the same line, the cross -- the allocation of costs could be seen as a cross-subsidy as well. They've given the argument of synergies, and Mr. Kloet talked about -- when you asked the question, talked about merging, you know, the finances, merging several functions at CDS, corporate functions that CDS has today with trading or with what the TMX does today.

So there's obviously going to be cost efficiencies and synergies there, but if costs are not allocated rationally, proportionally, and fairly across the different businesses, you could justify a fee increase in clearing, for example, because of a high cost base when the costs have not been allocated properly.

And that -- take an example -- buying a hundred computers, they are not going to serve you for finance if you don't split that 50/50 or whatever ratio we think is fair, you'll be allocating the costs on one business line at the detriment of the other.

MR. THOMPSON: I think I would also just weigh in that -- you know, I think the point to look at each different service as a discrete market. So, I mean, I think we've seen a trend on trading fees that they've come down, both the active side and then also the actual margin itself.

But Maple would be positioned to, you know, offer trading for free, you know. And again, that might make sense if you look at -- you know, at the actual user. But for our market, being unable to compete with any other service, you know, that would again be something that would put us out of business, obviously. But Maple would be positioned to do this. I think, to your point, it's how you allocate costs. And again, I think it's also looking at different markets, you know, separately.

CHAIR: Well, zero would give you a pretty strong message, wouldn't it? But I think we've talked a fair bit about cross-subsidies in the sense of understanding not whether it necessarily exists, but whether there's the possibility of it occurring.

And I think that, obviously, in an area where you have significant concentration and control over these services, one obviously has to consider it. And obviously, if there's a competitive market, pay some attention to it.

Having said that, I want to ask you another question, which is really around Alpha. There's been a fair bit of discussion around Alpha which, as you know, presently has an exchange application before this Commission. The application -- the transaction is not clear with respect to Maple's intentions with respect to Alpha.

So there are two things that we -- you might agree or disagree with me with respect to Alpha. Firstly, it would be helpful if this Commission knew whether or not they had a deal. Would you agree with that?

And secondly, it would be useful to know what they intend to do with Alpha if they have a deal. From my perspective, perhaps yours, do you have any knowledge of either of those two?

MR. KESSOUS: No, we don't.

CHAIR: So if you gained that knowledge, could you let us know?

MR. KESSOUS: Certainly.

CHAIR: Thank you. Now, let's be a little bit more serious about the question, obviously.

You seem to be of the opinion that you have no difficulty with Alpha potentially becoming part of the Maple group and also continuing to function. But do you see its function as being any different?

For example, I think Mr. Clark talked about the momentum initiative. It was discussed yesterday by CNSX. How do you see something like that -- I think ITT was invited to the party. I'm not sure whether you were. Were you invited?

MR. KESSOUS: No, we were not invited.

CHAIR: You were not invited. Do you know why?

MR. KESSOUS: No, I don't know why.

CHAIR: Well, if you find out, could you let us know?

MR. KESSOUS: We'll add that to the list.

CHAIR: So tell me a little bit about that from your perspective, as a competitor, obviously, of the exchanges or in trading.

MR. KESSOUS: There is -- we have to recognize that Canada is very special in terms of order flow and ownership of order flow. This is a matter of fact. And when I mentioned we were up against the TSX that had 90 percent order flow, it was counting the order flow of the -- you know, the big five or six dealers that owned the majority of the order flow in Canada.

So when we talk about 80 percent today between Alpha and the TSX, we see it as 80 percent, whether it's the two being separate or the two being combined. We're still competing for that flow. We're still competing for those dealers.

What we do -- we have definitely brought new customers in Canada from, you know, leveraging our global presence and added to the volumes traded in Canada. That has benefitted everybody.

And the -- the concentration of order flow, although still concentrated with the Canadian dealers, has decreased overall, but it's still an issue that we're dealing with. And we're dealing with it by being more competitive, and we continue to do so.

We've heard, you know, praises about our technology and our pricing. We continue to be aggressive on pricing. We continue to be aggressive on technology. And we'll continue to do so for the years ahead.

The concern we brought forward about the TMX or Maple owning three venues is a valid concern because in us wanting to compete further, having the ability to offer different trading segments, different products is something we'd like to do, and it's not something that you can do with one product and one offering.

We've gone out to the masses with the product that we have today. There's still niches, and there's still demand for a different market model. So we're looking forward to be able to compete in that space in that manner as well.

COMMISSIONER CONDON: Are you looking at me because it's my turn to ask a question, or are you just looking at me --

CHAIR: Well, I don't even know how to respond.

COMMISSIONER CONDON: Well, I'll take the opportunity while you're at a loss for words to --

CHAIR: Well, go ahead.

COMMISSIONER CONDON: -- to shift the conversation to the Australian example that you referred to in your letter and your remarks today. I just wondered if you could provide us with a bit more context about that.

So I take it that one of the reasons why we might be interested in it is because the Australian Stock Exchange is vertically integrated so that it operates trading and clearing. Is the for-profit or the service fee aspect of access to clearing in Australia -- was that a relatively new development? Did it previously operate at a cost recovery, or was it always a circumstance in which there were fees associated with access to clearing --

MR. KESSOUS: There has --

COMMISSIONER CONDON: And if I could just add, then, could you provide a little bit of context in terms of if that service fee is standard for all entrants, so whether it's based on volume of clearing and so on.

MR. KESSOUS: There has not been competition in trading in Australia until recently. And Chi-X Australia was the first one to compete against the exchange.

COMMISSIONER CONDON: For trading?

MR. KESSOUS: For trading. So as far as trading and clearing for those trades, there was just the ASX. As far as fees, the fees are transparent and published, and they are applicable to all entrants. So new entrants would pay the same fees as Chi-X as a service fee, no matter what volume they clear on the ASX clearing facility.

COMMISSIONER CONDON: And so you're not aware of whether this service fee was a relatively recent --

MR. KESSOUS: It was very -- it was recent because the regulation have 'forced' the ASX to open up the clearing services to Chi-X. They were -- they didn't have to do that before because there was no competition, and nobody needed to have access to the ASX clearing services. So this is new. There was no -- it wasn't open, and there was no fee schedule attached to it either.

MR. THOMPSON: And the objective of the ASX there too -- I mean, of course, they would have to argue to the reasonability of that fee. Right? So that's obviously the conversation that did take place. But again, when you've a for-profit, you know, agenda behind you, you know, they would try to argue to the highest level possible.

So, I mean, certainly that's where we see it apply, but this is the first of its kind. Just to add some color to Australia too, there is no competition for clearing either. So this is really -- they're at the early stages where I think we used to be in 2008, 2007 too. So it's an interesting comparable -- actually, comparison to Canada.

COMMISSIONER CONDON: I see. Thank you.

CHAIR: That was an issue, as I recall, in the Singapore transaction with the ASX; was it not? The clearing component, I mean, was --

MR. THOMPSON: It was. It was.

CHAIR: -- a significant issue, if I recall.

MR. THOMPSON: Yeah, absolutely. And just to give you an update there too, there's actually a new proposal in response to that experience, trying to keep clearing and keep what they would determine to be, you know, fundamental systemically important institutions in Australia as a result too. But certainly, that was a high issue that was brought up.

CHAIR: So on the governance issue, in fairness to Maple, what they are suggesting, obviously, given the ownership interest in the investment in this, that they view their need to obviously have the capacity to nominate and have those interests represented on the board.

And I'm sure, from a business perspective, you wouldn't disagree with that. However, obviously, your point of view is somewhat modified, and you're suggesting the 50/50 -- 50 percent independence. And I can understand why you have. That's been our tradition from the point of view of these matters.

But having said that, they also had put a lot of process and governance around this to try and ensure that they reflect the public policy objectives and the critical importance of the exchange and clearing.

What do you say as to that? You do not believe that that's sufficient to address these issues? And if so, why is independence so important to you?

MR. THOMPSON: I think that -- I think that given the control and the number of services that Maple will represent controlling, that, you know, one question is, you know, is there true independence, you know, to therefore provide, you know, fair and reasonable representation?

The second is the perception. You know, I think more to your mandate, actually, about how it's looked at from the outside, you know, I think that the nomination agreements -- we didn't necessarily have great concern, but simply it's a deviation from today's practice. And I think it can undermine, you know, the perception of fairness.

I think Maple's going to have a hard time anyway, even if they do things well, to argue that they are acting fairly, just by the simple perception of -- again, you've got a huge monopoly and a lot of interests there.

So I think to our point, we took a simple stance to say, we think that the TSX corporate governance, you know, practices today are good, and to not deviate from them probably makes sense. Certainly from a commercial standpoint, you know, Maple should have that opportunity. But again, given the significance, you know, to all of the market integrity issues that we're talking about today, I think that's why we said, you know, probably that's not appropriate in this context.

MR. KESSOUS: And just to add to Matt's comments, that perception also comes from, you know, not the -- not only the fact that they own all those services. It's also that these owners will also be the biggest customers. Not big customers, but biggest customer, largest customers of trading and clearing as well.

CHAIR: You mean the buy side?

MR. KESSOUS: The buy side and the banks.

CHAIR: Both sides.

MR. KESSOUS: Yes.

CHAIR: All right. So you're including both.

COMMISSIONER CONDON: So therefore, just following on from that, it doesn't help you to achieve a greater comfort level around this that there is the buy side involvement with respect to the founding shareholders, that that could impose some sort of, you know, discipline around what otherwise, you know, might be a very concentrated perspective?

MR. KESSOUS: That's right.

COMMISSIONER CONDON: It doesn't provide you with comfort, or it does?

MR. KESSOUS: It doesn't provide us comfort.

COMMISSIONER KELLY: Just to get some relativity to those NSX fees, what is the connectivity fee that Chi-X pays to CDS?

MR. KESSOUS: About $3,000 a month.

MR. THOMPSON: And that's not really an access fee. That's just the actual -- that's the actual system itself, so there's no access fee in place there.

COMMISSIONER KELLY: And that's the

only fee.

MR. THOMPSON: Yeah, that's it.

CHAIR: I think that concludes our questions, then. Thank you, Mr. Kessous.

MR. KESSOUS: Thank you.

CHAIR: Thank you, Mr. Thompson. Appreciate you coming today and providing the information that you provided.

MR. THOMPSON: Thank you for your time.

CHAIR: So I think we're on schedule. Mr. Perry?

MR. PERRY: Okay. Are we ready?

CHAIR: I think we're ready. Go ahead, sir.

MR. PERRY: Okay. Thank you. To begin with, I'd like to be clear about a few things. First, my only motivation for making this submission to the OSC is the passion that I've had in doing my part in creating and maintaining a quality marketplace for the 30 years I worked in the listings department of Toronto Stock Exchange. So passion is my motivation only.

CHAIR: So you were in the listings department 30 years, and when did you leave?

MR. PERRY: September 30.

CHAIR: Okay. So it's just recent,

then.

MR. PERRY: Yes, sir.

CHAIR: So you've been through the process of demutualization, exchange trading, et cetera.

MR. PERRY: Yes, sir.

CHAIR: Thank you.

MR. PERRY: Second, I do not possess any proprietary information. None of my comments are meant to be critical of TMX Group Inc. nor any members of its current management. Unless otherwise specified, I speak in general terms and as matters of principle only.

Third, my entire 30 years' experience with Toronto Stock Exchange was in the listings department, so unless specified otherwise, my comments are confined only to the business of original listings and listed issuers' subsequent transactions.

And fourth, I make these comments as a member of the public only, and I commend the Commission for having an open public hearing. I'd like to interject for just a second. Is the Competition Bureau here today?

CHAIR: I have no idea.

MR. PERRY: No? My understanding is

the Competition Bureau doesn't have a public forum like this does, and I commend the Commission for having an open public hearing where any member of the public has the opportunity to present, and I think that would be, in cases that are large like this, especially with the Competition Bureau, but --

CHAIR: Well, you need to appreciate it's a different responsibility, sir.

MR. PERRY: I understand.

CHAIR: And the approach that the Bureau takes under its legislative mandate precludes them from being able to access the public comment in the way that we do. And so you need to understand that even if the desire was there, it's very challenging for the Bureau to be able to do that.

MR. PERRY: Understood.

CHAIR: Thank you.

MR. PERRY: Fourth, I make these comments as a member of the public only, and I have no current association or affiliation with any organization whatsoever. And I'm not a beneficial holder of any TMX Group Inc.'s securities.

I believe the history of competition for listings the Toronto Stock Exchange had with the old Montreal Stock Exchange, and to a much lesser extent, the Vancouver Stock Exchange and the Alberta Stock Exchange, has largely been lost from collective memory.

The Toronto Stock Exchange in those days was a not-for-profit private company and a hundred percent owned by its members. I believe the checks and balances in that system as they applied to the listings department worked well.

And if I could just offer an example in that, there were three levels of -- in the process, there were three levels of delivering an original listing application, and so the first would be just amongst ourselves, we'd -- on staff, we would discuss the application on its merits. We'd deliver it to the stock list committee, an independent group of brokers knowledgeable about capital formation and the people on the street at the time, and then it would go to the board of governors of the Toronto Stock Exchange.

And there was one case where a member of the board of governors caught an issue for us that proved to be very relevant to the acceptability of its listing, and Chairman Powell's predecessor had to spend quite a bit of time to navigate that situation and took a few weeks to deal with it in an appropriate way.

Within a few short years, in the 90s,

the TSE became a for-profit company, completed its IPO, and purchased the junior exchanges in Canada, thus eliminating virtually all domestic competition for listings. I think the Canadian National Stock Exchange is to be congratulated for establishing and maintaining a beachhead as the only other Canadian exchange for listings.

By referring to the not-for-profit TSE as a relatively efficient enterprise, I am in no way suggesting a back to the future -- suggesting back to the future is a way to move forward. My point is simply that I believe that that system worked in its day under those circumstances.

Competition for business in the capitalist system demands management's application of any number of survival techniques. I believe a flaw in this system may be that an enterprise that succeeds in defeating its competition may be vulnerable over time to become complacent, speaking in principle only.

Without original listings, whether that comes through the front door or the backdoor, there would be no trading, no settlement system, no data to sell, and no subsequent listed issuer distributions, all of which are important revenue generators.

The selling of an original listing has

attached to it a responsibility that, if not met, can negatively affect Canada's reputation, which may, for a while at least, inhibit some ability to raise capital in Canada. We witnessed such damage done in the '90s with the YBM Magnex, and the Bre-X affairs, as did those before in the 60s with the Windfall affair and the Atlantic Acceptance affair.

I believe some of the checks and balances that were in place in the listings department of the TSE when I started in 1981 were as a result of the Windfall affair and the Atlantic Acceptance affair, and I gave an example earlier about the checks -- one example of checks and balances that we had in that system at that time.

Reputation and business lost can happen quickly, as we all know, and it can take significant time to recover, especially with the elephant next door. However, at the same time, and I think very much important to focus on, is that in our system, it's very important that good people be allowed to have the opportunity to grow their businesses using the public marketplaces, especially including those involved in Canada's highly productive speculative natural resource exploration sectors.

From my experience, a Goldilocks

combination of care and common sense needs to be consistently exercised during the original listing process through each stage of any business cycle. Original listings is the first and foremost important gatekeeping function of any securities exchange's entire business.

Again, the point I wish to make in my submission is simple. The OSC and others are now in a position to decide the future course of TMX Group Inc., post- Maple acquisition. In the public interest and for the good of Canada, I ask those deliberating and deciding this issue to keep in mind the importance of the quality of listings.

As well, I think this acquisition should be considered as a way to move Canada forward in its position in the global marketplace, and not mostly focusing only on its potential negative effects. The comments I heard earlier this morning and what I've been reading in the paper, there's a lot of comments made from those who are actually in competition right now in trading with TSX and Venture.

So I think there is competition in the system already for trading. I think the competition for the listings business is not as open, as CNSX is really -- other than the Venture Exchange and the main market, TSX exchange, CNX is the only other recognized exchange. And it has a beachhead. It's maintaining it.

And I think for the good of competition, a solution may be, if I can offer my two cents in a solution, would be to create a system allowing greater competition in the listings business.

And if I could throw out a wild suggestion, would be to make it a condition of consent to give -- in some way, give CNSX the Venture Exchange and let it roam into territory that it can see. So thank you very much for allowing me to make this presentation.

CHAIR: Thank you very much, Mr. Perry. A few questions on the listings. We haven't really talked that much about it. The main discussion of listings came from FAIR Canada, who said that the exchange is in a conflict, and that listings should not be continued in the exchange and should be -- they had a number of alternatives as to how to deal with listings.

The TSX, just -- and perhaps the Venture Exchange itself, I would say the TMX Group and the way it handles the listings business -- you call it the original listings business -- is unique internationally with respect to listings. And it appears that the exchange, if FAIR is correct, and I know our Staff will confirm it, is one of the few exchanges internationally that has the listings business within its core mandate as a publicly traded company. Do you have any comments on that?

MR. PERRY: And I'm going to be a bit careful in my comments here because I have had the experience for so long within that department and post for-profit, and I'm going to be careful not to make any comment that would be kind of telling any specifics that I think are going on inside.

But I'd like to say generally that there certainly has been no consequence that has come out of these few years of experience now with the listings department being in a for-profit corporation, and I respectfully disagree with FAIR.

CHAIR: Okay. That's helpful. Let me ask you something else about the quality of listings. What's missing, if anything, today with respect to the quality associated with the original listing process?

MR. PERRY: Again, I wish not to get specific with what I understand are the processes going on still after my retirement. In my experience, seeing a number of business cycles, each one obviously being much different, when times are good in general in the whole business, there can become a complacent atmosphere. Everybody relaxes a little bit.

That's when -- and I'm not talking just about the exchange. I'm talking about the -- sometimes it's occurred at the OSC as well. I think that's a matter of --

CHAIR: What occurs at the OSC? I didn't hear.

MR. PERRY: I think during certain business cycles, there can be a complacent attitude across all aspects of the securities business.

CHAIR: I didn't take the comment personally.

MR. PERRY: No. Okay. Well, it was before your time anyway, so --

CHAIR: Everything is before my time.

MR. PERRY: I won't bring up -- I won't bring up an example, but --

CHAIR: That's okay.

MR. PERRY: And that -- I don't think any -- anybody is going to -- it's just human behavior that if times are good, you know, there's going to be a complacent -- the point I'm making is that the original listings is the hub of it all, and as we saw with Bre-X and YBM, there's another one on the table now, and if one cared to take a look at the time that it was listed, one would find that that would be around the same time as Bre-X and YBM. It's not a new listing.

It's the integrity of the person who is -- person and people who are doing that job that is critical. Whether that's done in TMX Group or it's done by some other organization I don't think is really pointing the finger where it should be. It's the integrity of the individuals.

CHAIR: Let me cut to the chase here a little bit.

MR. PERRY: Yes.

CHAIR: So you're referring to these well-known and challenging companies that obviously this Commission and the capital markets had to deal with, and they were original listings, as you described them, on the TSX prior to the TSX being a publicly traded for-profit entity. Would you agree with that?

MR. PERRY: I don't have the dates exactly, but -- yes, probably, yeah.

CHAIR: But you were there then.

MR. PERRY: Yes.

CHAIR: So? Why did you let it happen?

MR. PERRY: Wasn't me. I won't get

specific, but it wasn't me.

CHAIR: I understand. But I'm talking more about the process.

MR. PERRY: Yeah. In my opinion, I think this is far enough back in history that I can probably be a little more open than more recent times with personnel at the TSX right now. In my own opinion, at that time there had crept into the system that I believe had very good checks and balances into it a level of complacency.

CHAIR: I see. So that's what you're getting at when you say that.

MR. PERRY: Yes. Yes, sir.

CHAIR: Another quick question, and then -- so worldwide, and I really don't have the statistic for Canada, although I think Mr. Kloet and Mr. Bertrand did talk about -- or maybe Kevan Cowan did. Listings are down worldwide. Original listings are down worldwide, and there is an issue that's arisen in the discussions, I think in the financial media, that that's a bit of a concern for capital raising. And it's a concern in many countries.

Do you think that the -- that has anything to do with the concerns with respect to the quality of listings?

MR. PERRY: I don't think --

CHAIR: Or just a reflection of the markets?

MR. PERRY: I think it's a reflection of the markets. There's been a very long run in the bull market for the resource sector, the mining sector. It's had really long legs this time. There's obviously an international nervousness about the future of the stock exchanges and their levels for investors. Does that answer your question?

CHAIR: That's fine. Thank you. Appreciate it.

COMMISSIONER CONDON: Thank you. Mr. Perry, you make some reference to the question of listing fees in your letter, and you contrast the sort of downward pressure on trading fees because of competition with the absence of that feature with respect to listing.

And that's, I think, one of the reasons why you're proposing that it would be a useful thing to have more competition around listing. If that were not to develop, would you -- how would you feel about the possibility of regulated listing fees? Because we've heard various submissions around the question of the role that the regulators should start playing with respect to fees and other aspects of the trading cycle. But what about listing in that respect?

MR. PERRY: Well, I think the capitalist system and the regulators staying away as much as possible from an enterprise is important. Obviously there's been a long history of association between the Toronto Stock Exchange and the Ontario Securities Commission and the oversight that the Securities Commission has over it. And that has especially matured over the last 50 or 60 years since the Windfall affair.

It's a tough question to answer. It's fine -- to me, it would be a very fine balance between having an environment where our capitalist -- our capital markets can grow to maintain if not compete better with the international markets. We're just a small exchange in the world.

But at the same time, as you know, the OSC does an audit in the listings department once a year, and if there's any concern by the Commission that more oversight needs to be done there, perhaps watch a little more would be my suggestion.

COMMISSIONER KELLY: So if the Maple bid is permitted to proceed, you talked earlier about perhaps figuring out a way to get CNSX to be more of a competitor in this area, but just focus on the new entity for a moment, given your expert position, your experience. What sort of structure should there be in the new entity as it pertains to listings? What sort of checks and balances need to be there? What's the role of the independent directors? What's the regulator's role? I'm sure you have opinions.

MR. PERRY: The ideal model going forward for any market, whether it's CNSX or --

COMMISSIONER KELLY: No, my question's specifically to the Maple Group --

MR. PERRY: TMX. Yeah.

COMMISSIONER KELLY: -- acquisition.

MR. PERRY: Well, as I think I said before, public record shows that what's been happening over the last few years has been good. There haven't been any new issues that have caused concern, so I'm just -- I'm just -- based on my experience, I'm just always -- I'm tuned to always be careful.

I think it's the care and the common sense together, and the care component is where the checks and balances -- maybe another review of what the checks and balances is -- are in the current system, and suggestions -- I -- as I said, the old system worked well, where we had this three -- three layers before a company got actually officially approved for listing.

And I gave one example of where it was caught on the third level, and it was fortunate that it was, in hindsight. We used to have -- we'd hire RCMP officers that were on staff, and I had a personal experience with one of these companies that I named in here on a transaction that occurred after the original listing, and our information came through the RCMP grapevine, so to speak.

So I think, you know, there are a number of initiatives that could be looked at. I'm not complaining about the current system, but it would never hurt to revisit that, this being so important.

COMMISSIONER KELLY: I think the current system -- obviously its status quo probably doesn't work here. You've got, in the new world, underwriters looking at listing an entity that they own. So, I mean, there's got to be some sort of a check and balance here.

MR. PERRY: That was the case before as well.

COMMISSIONER KELLY: Yeah.

MR. PERRY: In this so-called private club -- was a private club, and I think it worked --

from the listings point of view, that, in my opinion, worked very well.

COMMISSIONER KELLY: Thank you.

COMMISSIONER CONDON: So Mr. Perry, I very much appreciate that your comments have been confined to your experience with the TSE and the TSX, and you may not want to answer this question, but as an individual investor, if you are -- if you are an individual investor, do you have any comments to make about the feature of the Maple acquisition that we've heard a lot of discussion about so far, which is the acquisition of the clearing side of the trading business?

Do you have any anticipation that it would affect you as an individual investor in any way?

MR. PERRY: I was still working for the TSX when -- when the bid first came up last spring, and my thoughts went back to when the banks were allowed to buy the brokerage houses, and the fear on the street then was that, boy, those are two entirely different atmospheres, and the brokerage houses aren't going to survive with the banks' atmosphere applied to the brokerage houses. And boy, we're going to lose the Canadian brokerage business, and the Americans are going to be right in there, and we're never going to have -- that was the fear on the street at the time. Never happened.

So I give a lot of credit to the banks for creating or permitting the atmosphere in the brokerage houses to continue, and look what's happened with the umph behind the brokerage houses now. With the banks owning them, we've not only maintained, but we've grown internationally.

So I don't think anybody -- I certainly wouldn't be critical of -- and I'm saying the banks loosely now. They're kind of promoting the Maple deal with other investors. Personally, I -- how would I criticize success? They have a vision for what they want to do with this combined company, and they have a great track record.

So I wouldn't argue with -- there's examples on -- in the far east that we've heard about of this integrated system working well. They have a track record that is proven. Does that answer your question?

COMMISSIONER CONDON: Yes. Thank you. That's helpful.

CHAIR: So a final question from me, given your experience in listings, is what is your view of TSX -- TMX now have an office in London, Houston, Chicago, and China, and there are obviously good reasons and important reasons for them to do that.

Emerging markets have challenges, obviously, from the point of view of listings in our market. So from the point of view of listing standards -- and you've been in this business for 30 years -- what do you suggest there?

MR. PERRY: I think the listing standards that are in place work well. I'm talking about the senior market.

CHAIR: Sure.

MR. PERRY: I don't have the experience in the junior market. Of course the whole business has become much more internationalized than it was before, but we did have companies listed with properties in foreign jurisdictions right from the time that I started in 1981.

CHAIR: Sure.

MR. PERRY: Libya, for example, and some others. That's always a risk, and that's always been taken into consideration during the original listing process, is the -- it's that fine balance of risk versus creating an opportunity.

And this country -- digress just for one second. I asked Steve Kee a few years ago, would be interesting to know the statistics of all of the equity that's been raised on the stock exchanges to grow the country to where it is. What percentage of all that equity has been raised through the stock exchanges? Talking on the equity side, not the debt side.

And he didn't know where he could go and find that. I would be interested to see that percentage.

So I bet you it's -- who knows? 80 percent or more? So, you know, these are -- the stock exchanges have been vital to grow this country. So to have a negative perception of the work to be done entirely I don't think is the right way to go.

I think it needs that fine balance of care, because one will damage the reputation for quite a long period of time. One can happen quickly. That fine balance of care and common sense, allowing good people to have a chance, especially in the market that we're invested.

CHAIR: Well, thank you so much. Nothing else?

COMMISSIONER KELLY: Thank you.

CHAIR: Mr. Perry, thank you for coming today. We appreciate your personal comments.

MR. PERRY: Thank you. And again, I'd like to compliment the Commission for having an open process, where any member of the public can come and appear.

CHAIR: Thank you, Mr. Perry, I think it's that time, which is lunch. We'll break until 1 o'clock.

--- Luncheon recess at 11:55 a.m.