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Dear Mr. Stevenson:

Re: Application for Recognition of Alpha Trading Systems Limited Partnership and Alpha Exchange Inc. as an Exchange – Notice and Request for Comment (the "Notice and Request for Comment")

TMX Group Inc. ("**TMX Group**") welcomes the opportunity to comment on the Application for Recognition of Alpha Trading Systems Limited Partnership and Alpha Exchange Inc. as an Exchange (the "**Application**") as published by the Ontario Securities Commission (the "**OSC**") on April 15, 2011. TMX Group comments encompass the collective views of its subsidiaries, including Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSX Venture**") (collectively, the "**Exchanges**").

All capitalized terms have the same meanings as defined in the Notice and Request for Comment or the attachments, unless otherwise defined in this letter.

Our comments are organized as follows:

Appendix A: Responses to the Questions in the Notice and Request for Comments

Appendix B: Comments on the Proposed Listing Handbook and Related Forms

Appendix C: Comments on the Proposed Trading Policies

Appendix D: Comments on the Proposed Member Agreement

Appendix E: Comments on the Draft Terms and Conditions of Recognition

At a high level, we submit that there are a number of matters omitted from the Application that should be published to permit the public full and due consideration of the Application. These matters, as well as other issues of particular concern, are highlighted below. Overall, we submit that the Application does not provide sufficient support for Alpha Group to be recognized as an exchange at this time.

1. The conflicts presented by the ownership structure of Alpha Group are significantly understated in the Application. Alpha Group focuses in its Application on Alpha Exchange being a privately-held exchange. However, it does not go further to explain that it proposes to be a private exchange, closely held by dealers who are its significant customers and major beneficiaries. This represents a largely unprecedented development in the history of stock exchanges, and certainly in Canada. Alpha Group focuses on the fact that its dealer-owners are regulated to then presume they have incentives to provide a market that has high standards of integrity, but declines to address the conflicts presented by the unique structure of a private exchange, closely held by its significant customers. This ownership structure is fraught with risk to the integrity of the market and should lead to higher corporate governance standards to manage the risks. Alpha Group should be required to have a minimum of 50% independent representation on the Alpha Exchange Board of Directors. The definition of independence should include an ownership test of 5% because at that level there is significant risk that such shareholder (who may also be a customer) could use its ownership to influence decision-making.

   Alpha Group essentially proposes to operate a new recognized exchange with a unique and conflicted ownership structure without taking on the safeguards, duties and obligations to uphold the integrity of the market and the public interest. There are key gaps in its corporate governance structure and proposed level of listed issuer regulation which highlight Alpha Group's refusal to accept these obligations which are critical to the role of an exchange issuers in the Canadian market.

2. Alpha Group has not published any evidence of its financial viability with the Application. The financial viability of a proposed exchange is key to the integrity of the market and is a component of Form 21-101F1. The public is entitled to confirm the financial viability of the proposed exchange before acceptance of the exchange's application for recognition as it strikes at the core of the Application's merit. Exchange rules and policies will be meaningless if Alpha Group does not have the requisite financial resources to appropriately perform its functions as an exchange. While Alpha Group submits that it is already a regulated entity which meets all capital requirements under the rules of IIROC, these requirements are not sufficient for an exchange.

   Alpha Group should be required to publish its financial statements as part of the public review process and thereafter on an annual basis to ensure ongoing public scrutiny of the exchange's viability. TSX published an annual report prior to being a public company, which supported the integrity of the market because the public was able to confirm the financial viability of the exchange and have confidence in the market.

3. As submitted to you on April 26, 2011, the Listing Standards Comparison Chart (the "Chart") which is attached to the Application contains numerous errors and omissions in respect of TSX and TSX Venture listing standards. The Chart is a key and material component of the Application, provided to enable the public to compare and contrast Alpha Exchange's proposed level of listed issuer regulation and listing requirements with those of existing exchanges. Alpha Exchange submits in the Application that its approach to listing is based on principles including "listing standards that are equal to or better than current listing standards that exist on different exchanges in Canada."[1] On the basis of the flawed comparison of listing standards that has been presented, this

[1] Alpha Application (2011) 34 OSCB 4578.

submission by Alpha Exchange cannot be supported. Given Alpha Exchange's submission, the materiality of the Chart to the Application, and the extent of the errors and omissions, it is difficult to understand how the public, or even the OSC, could properly assess the proposed listing standards and provide informed comments on the Application without a correct Chart. As the TSX and TSX Venture rules are available on a real-time basis on our website at tmx.com, it is further difficult to understand how Alpha Exchange published its Application with this level of inaccuracy.

We are aware that Alpha Group has republished the Chart. However, the republication of the Chart was not published in the OSC Bulletin until May 13, 2011 and was not accompanied by any notice to bring it to the attention of the public invited to review the Application. The Chart was also replaced on the Alpha Group website and posted on the OSC website without any indication to the public, so it is difficult to understand how the public is realistically able to consider the republication as part of their review of the Application. Further, even if the public becomes aware of the republished Chart, there may not have been sufficient time at that point to review and consider the Chart and provide comments to the CSA within the original time frame provided.

While Alpha Exchange now purports to have prepared the Chart on a best efforts basis to provide general context to its proposed listing requirements, the republished Chart continues to contain a number of errors and omissions which may mislead a reviewer in a comparison of the requirements. In particular, a reviewer could reasonably interpret that Alpha Exchange's proposed requirements are equal to or better than standards that exist on other exchanges as a result of errors or omissions in the Chart. While Alpha Exchange submits that the Chart is not intended to be a detailed list of all of the requirements of other exchanges, and that reviewers should independently refer to the rule books of such other exchanges, it is not appropriate to present misleading comparison information, particularly after having been advised of certain errors and omissions. The public should be entitled to rely on the accuracy of the Application. For example, Alpha Exchange did not correct the Chart to provide TSX's listing requirements for international issuers, leaving reviewers with the incorrect view that Alpha Exchange's proposal to list issuers that are listed on other exchanges is on par with TSX. TSX conducts the same comprehensive listing review for domestic and foreign applicants, and each must meet TSX original listing requirements, in stark contrast to Alpha Exchange's proposed lack of review in respect of listing international issuers. Please see Appendix B for a more fulsome discussion of the proposed rules for inter-listed issuers.

Alpha Exchange should be required to correct the Chart to provide accurate information and context for the public review of the Application and to support the principles it has asserted of its approach to listing. Please refer to Appendix B for further comments on the Listing Handbook and the comparison with TSX and TSX Venture listing rules.

4. Alpha Exchange's proposed model for issuer regulation involves minimal exchange oversight of listed issuers. As described under paragraph 1, the unique conflicts presented by the ownership structure of Alpha Group may be linked to the refusal by Alpha Exchange to provide oversight. The dealer-owners, who are significant customers, may benefit directly and indirectly from gaps in listed issuer regulation and the general lack of oversight.

Once an issuer is listed on Alpha Exchange, it appears that Alpha Exchange's approach will be to require the issuer to provide notice of certain transactions (as specified in the

Listing Handbook). It does not appear that Alpha Exchange will review or accept the proposed transaction prior to completion.

We submit that Alpha Exchange's refusal to be involved in issuer transactions prior to completion presents substantial risk to the integrity of the market and security holders. After transactions are completed, there is often no adequate remedy for the harm that may have occurred to the market and security holders. This risk impacts Canada's capital markets and investor confidence as a whole. Alpha Exchange seeks to list issuers of a size and quality that makes the lack of oversight particularly problematic for market integrity and investor protection.

Exchanges play an important role in ensuring protection of the public interest and the integrity of the capital markets. This responsibility cannot be shifted from the exchange to issuers, directors or shareholders who have varying and sometimes conflicting interests. In our experience, relying on others, whether issuers or legal counsel, to determine whether exchange requirements apply, particularly security holder approval requirements, may lead to a conclusion different from that of the exchange. It is also not clear whether or how Alpha Exchange will review issuers on an ongoing or post-transaction basis. If a purely retroactive review of listed issuers and transactions is what is contemplated, there may be irreparable harm to the market that could have been prevented by appropriate proactive oversight. There are several areas in which the lack of oversight proposed by Alpha Exchange presents undue risk to the public and market. Alpha Exchange should be required to evidence how it will monitor issuers and oversee listed issuer regulation. Alpha Exchange should be required to publish these aspects of issuer regulation for the public to understand how it will act in the interests of the market and the public. Please refer to Appendix B for further comments on the Listing Handbook.

We further note that the Application is in stark contrast to the recent approval by the SEC of the BX Venture Market (BX) as a listing market on NASDAQ OMX BX, Inc. (NASDAQ). The BX model focuses heavily on exchange oversight and rigorous regulatory scrutiny of listed issuers on an ongoing basis. There is also detailed information relating to processes and staffing in the published BX regulations. We would expect to see similar information provided for public review to permit an informed assessment by the public of the adequacy of Alpha Group's Application.

5. There is no clear delineation of Alpha Exchange's regulatory functions and business functions. For example, there is no description or discussion of Alpha Exchange's internal structure for listed issuer regulation staff and processes. Generally, this staff should consist of professionals with extensive skills and qualifications in order to support the regulatory functions of the exchanges in maintaining the integrity of the market and supporting investor protection. Further, there are areas in which Alpha Exchange appears to perform regulatory functions that IIROC should perform. For example, trading halts, and the differentiation between business and regulatory halts, are not defined and it appears that they may be imposed by either Alpha Exchange or IIROC. See Appendix B for further comments on the Listing Handbook. See Appendix C for further comments on the Trading Policies.

   The internal structure of Alpha Exchange should be published for public review to ensure the proposed exchange operations adequately addresses market considerations and the public interest.

6. Alpha Exchange has provided that it will contract with IIROC to provide as its agent market regulation services "as well as some issuer listing services approved by the Commission."[2] It is key to considering the Application that the public understands what Alpha Exchange proposes to do. Vague statements like this hinder the public review process. If there are issuer listing services that the Commission has approved or that Alpha Exchange intends to submit for approval, the Application should provide such information for consideration as integral to understanding the exchange's operations. Such statements are inconsistent with other statements in the Application that provide that "Alpha Exchange will perform all listing functions except for those arising out of material disclosure which will be performed by IIROC."[3]

7. Alpha Exchange proposes to have broad discretion in the proposed Trading Policies which we submit is inappropriate in the context of Canada's market. In Canada, IIROC provides real-time market surveillance. IIROC is therefore best able to consider a decision to modify or cancel trades on a marketplace and determine what is in the best interests of the market as a whole and its participants. This is particularly true given the conflicts presented by Alpha Group's ownership structure and the multi-marketplace environment in Canada where these types of decisions should be made consistently across marketplaces. Alpha Exchange should not be permitted to take its views of the broader market and public interest into account in applying the proposed broad discretion, in a manner that could be contrary to IIROC's determination. See Appendix C for further comments on the Trading Policies.

8. Alpha Group purports in its Application that Alpha Exchange will operate an electronic automated marketplace for Members "on substantially the same basis as Alpha ATS has been operating."[4] Alpha Exchange briefly summarizes the key differences between the Alpha Exchange Trading Policies and the current Alpha ATS Trading Policies. There has been no blackline or detailed comparison of the Trading Policies provided to enable an appropriate public review. Such comparisons have been required by regulators in the past when new or revised trading policies have been published for public comment. A detailed summary comparing the functions, features and order types supported by Alpha Exchange in contrast to Alpha ATS should be published for the public to provide informed comments.

9. The proposed Trading Policies add a section on Market Makers as a key difference from the Alpha ATS Trading Policies. Alpha Exchange proposes to appoint market makers for Alpha listed securities and for other traded securities which are not listed on Alpha Exchange. The Market Maker provisions in the proposed Trading Policies describe the Market Maker responsibilities more as liquidity providers than as market makers. Alpha Exchange should be required to publish what the purpose and obligations of its Market Makers will be. If a Market Maker on Alpha Exchange is really just a liquidity provider, then it should be named appropriately and not benefit from the exemptions in UMIR that are applicable to market makers. This would be particularly relevant with respect to securities that are not listed on Alpha Exchange, where the listing exchange would have true market making in place.

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[2] (2011) 34 OSCB 4579.
[3] (2011) 34 OSCB 4579.
[4] (2011) 34 OSCB 4565.

10. It is of critical concern that an Approved Trader on Alpha Exchange may be "an employee of a client of a Sponsoring Member."[5] Such employees are not subject to regulation and may be outside of the jurisdiction of Canadian regulators. This proposal is too broad and does not support accountability, supervision, monitoring and investigative processes and practices related to direct market access (DMA) trading. Further, we believe that it is a market integrity concern that Approved Traders are given the ability to fulfil a Market Maker's responsibilities. Approved Traders for Market Makers or Odd-lot Dealers should not be permitted to be an employee of a client.

11. As Alpha Exchange is a new marketplace, all existing requirements and policies related to launching a new marketplace must apply, specifically:

    (a) the requirement to publish technology specifications at least three months before operations begin (NI 21-101, subsection 12.3(1)); and

    (b) the requirement to offer testing facilities at least two months before operations begin (NI 21-101, subsection 12.3(2)).

    However, none of these qualifications is evident in the Application.

12. The Intraspread facility currently offered by Alpha ATS is not present in the Trading Policies. Unless Alpha Exchange does not intend to support and offer Intraspread, we expect that it would be included in the Trading Policies, and would be subject to public review and comment. As the Application suggests that Alpha Exchange will offer fundamentally the same trading features as Alpha ATS based on the similarities of their respective Trading Policies, the absence of Intraspread from the Trading Policies should be explained.

13. The Application has not been published in French for due consideration by French-speaking Canadians. It has been deemed appropriate by the Autorité des marchés financiers that all rules and policies of the Exchanges that are published for review and comment are to be provided in both official languages of Canada.[6] There is no reason to exclude part of the Canadian public from due consideration of the Application. Providing full and fair review by all Canadians is particularly important at this initial stage while there is still an opportunity for the public to impact the exchange's structure and operations.

14. The Rule Review Process has not been published with the Application. Currently the Application provides "it is anticipated that material changes to Alpha Exchange's rules will be published for public comment and be subject to Commission approval."[7] Other exchanges must submit all of the rule changes for Commission approval and must adhere to a detailed rule review process. These exchange rule review processes are publicly available. This process should therefore be published for public comment and should be consistent with the standards already deemed appropriate and necessary to the other exchanges existing in Canada. It would not be appropriate for Alpha Exchange to change its rules without an established process for stakeholder input or Commission

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[5] Definition of Approved Trader (2011) 34 OSCB 4752.
[6] Authorization Exemption (2004–PDG–0012 dated 2004-02-27, Bulletin 2004-03-12 Vol. 1. No. 6) and Authorization Exemption (2004–PDG–0076 dated 2004-06-28, Bulletin 2004-07-02 Vol. 1 No 22).
[7] (2011) 34 OSCB 4560.

involvement based on its own assessment of materiality unless that flexibility is provided to all exchanges. Further, the rule review process should be in place at the exchange's inception so that the rules provided for public comment cannot then be unilaterally changed by Alpha Exchange.

15. The appeals procedures for the listing and trading rules have not been published with the Application. Further, the Application contemplates that such procedures do not need to be in place until six months after the exchange's commencement of operations. While the rules are said to be subject to the rule review process, that process has not been provided (as noted in paragraph 14 above), so it is difficult to expect any level of public consideration of the adequacy of the exchange's operations, particularly in respect of important rights such as due process, when these important attributes are not published. Further there is no explanation as to why the six-month grace period has been provided, nor what the requirements of the exchange will be in the interim period. Due process and the associated appeal rights should be available at the commencement of exchange operations as a matter of market integrity and investor confidence.

16. There are no terms proposed in the Recognition Order that would address regional interests. There have not been any draft orders published yet by securities regulators in other provinces. Regional interests have traditionally been a concern for exchanges in Canada. In particular, Alpha Exchange proposes to target issuers who would meet TSX Venture listing requirements, and even to classify its Tier 2 issuers as "venture issuers" under applicable securities legislation, yet there has been no apparent consideration of the regional interests that are engaged by this proposal.

In addition to the numerous omissions and other concerns, we note instances of inappropriate rhetoric in the Application. Vague propositions without corroboration such as "it was reported that experience has shown that discretion is just as likely to be abused as exercised appropriately, and that review by the exchange only added time and not necessarily value"[8] do not belong in an Application relevant to the integrity of the Canadian capital markets. Moreover, there are a number of circumstances in the Listing Handbook and Trading Policies under which Alpha Exchange will be exercising discretion. We question how this discretion will be exercised appropriately and add value without any acknowledgment of, or guidance for, the exercise of such discretion.

Thank you for the opportunity to comment on the Application. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

Kevan Cowan
President, TSX Markets
TMX Group Head, Equities

[8] (2011) 34 OSCB 4578.

APPENDIX A
RESPONSES TO THE QUESTIONS
IN THE NOTICE AND REQUEST FOR COMMENTS

1. **Is Alpha Group's proposed governance structure, including its proposed role for a ROC, appropriate in the context of Alpha Group's ownership structure and regulatory responsibilities? Does it adequately address the potential conflicts of interest? Alternatively, is requiring 50% independent representation on the Alpha Exchange Board of Directors appropriate? If so, would a ROC still be appropriate or necessary, and with what level of authority over regulatory matters?**

Alpha Group's proposed governance structure is not appropriate in the context of its ownership structure. Alpha Exchange will be a private closely held exchange with the majority of its Board seats held by dealers that are owners and significant customers. This structure is unique and should be subject to a high level of governance standards and scrutiny.

We agree with staff's comments that independence on the Board of an exchange is a key component in ensuring that adequate consideration is given to the exchange's general public interest mandate. In particular, we agree that the separation between ownership and governance through independent representation helps to ensure that perspectives other than the industry or certain owners are considered by the exchange.

The benefits and protections that come with appropriate independent representation on a Board cannot be compensated for by a ROC. A ROC is not an appropriate substitute for an independent board. We firmly believe that the public interest role of an exchange necessitates appropriate representation of independent individuals on the governing board of the exchange. It is the public interest aspect of an exchange's operations that requires an appropriate level of independent representation which cannot be addressed by the implementation of a ROC. In the case of Alpha Exchange, these aspects are unique and of particular concern because it is private and closely held by significant customers and so should be subject to more scrutiny.

Conflicts of interest can arise, as in the case with Alpha Exchange, based solely on the ownership structure of the exchange. In a private, closely-held exchange, the ability for shareholders to influence the exchange is more significant than in widely-held companies, as the identity of the investors is known to the exchange. A few large shareholders can influence the decision-making function at a private exchange, particularly if these owners are represented on the exchange's Board.

We acknowledge that industry knowledge on an exchange's board of directors is one of many useful attributes that some exchange directors should have. However, given that the exchange holds a public interest mandate rather than a mandate to address only the industry's needs, it is difficult to imagine a scenario where the need for industry input would outweigh the need for an independent board. An independent board could clearly show that it is in a position to make independent determinations and not based on the majority input of owners and other non-independent members.

One would expect Alpha Exchange to ensure that its Board members have a mix of experience that is appropriate for the Board of a highly regulated entity with a public interest mandate. For example, in addition to industry experience, the Alpha Board should have individuals with strong financial and risk management backgrounds, strategic leadership, previous board/governance experience at large institutions, and technology experience (given the infrastructure needed to

operate an exchange). It would be difficult to achieve an appropriate mix when half of the directors are industry appointees.

We agree that an independent board of the Alpha Exchange would help to mitigate a number of the conflicts that will arise, in particular those that arise by virtue of being private and closely held by significant customers which we believe leads to the most significant conflicts. An independent Board would help to manage the conflicts that arise due to the fact that the interests of the dealer members of Alpha Exchange that are, or are owned by, the limited partners of Alpha LP may have distinct interests from other dealer members of Alpha Exchange that are not owners. A board without an appropriate level of independence could allow the Alpha Exchange to take into account primarily its dealer-owners' views rather than consider other dealer-members, or more troubling, without adequately taking into account the public interest above all other.

It is of particular concern that not only does Alpha Group propose to have a board that cannot meet a 50% independent test, but that the four industry directors proposed at the outset are all representatives of its dealer-owners. To think that the Board would not act in a manner that would advantage these particular owners over all others when they comprise 50% of the Board, with the exchange's CEO filling a board seat as well, is surprising. The Board from day one will be in a position to make stewardship decisions about the exchange's operations that can take into account their interests as owners above all else.

We therefore submit that Alpha Exchange's Board of Directors should have 50% minimum independent representation.

To opine on whether a ROC is necessary, if more than 50% of the board is independent, we would need to understand the appeal procedures proposed by Alpha Exchange, but they have not been published. As structured, we do not find the ROC sufficiently independent from the board. For example, quorum for the ROC in some instances can be without a majority of independent members. As well, the Alpha Exchange Board must grant approval to the ROC in order for the ROC to obtain advice or to seek assistance from internal or external legal, accounting or other advisors which can have the effect of neutralizing the independence of the ROC. Further it is our view that independence alone is not sufficient for a ROC. A ROC must be composed of independent directors who have the necessary skills and knowledge to carry out its functions.

2. **Is the definition of independence proposed by Alpha Group to be applied to Alpha Exchange's board directors appropriate in the context and nature of their proposed structure? Are there any other exclusions that would be warranted?**

(a) <u>General</u>

The definition of independence is not clear in the Alpha Exchange Recognition Order, as it refers to a "material relationship" without providing a definition for material relationship. If Alpha Exchange is using the term "material relationship" as defined in National Instrument 52-110 Audit Committees (NI 52-110) subsection 1.4(2), then this should be made clear in the Recognition Order.

(b) Ownership

The list of material relationships set out in the Recognition Order does not include one of the more fundamental relationships given Alpha Group's ownership structure as a private, closely held exchange, being individuals that represent entities with a minimum level of ownership of Alpha Exchange. This concept is raised in Alpha Group's Application, but is missing in the Recognition Order terms and conditions. We strongly believe that these individuals (i.e., those that represent the owners) must be considered to have a material relationship with Alpha Exchange, and therefore cannot be considered to be independent for purposes of the Alpha Exchange Board.

For the ownership test, we agree that 10% is a minimum reasonable threshold at which a relationship would become material for purposes of a corporate governance independence test. However, we submit that there is a significant risk in a private and closely held exchange that a shareholder who controls more than 5% and who is potentially a significant customer of the exchange, could use its ownership to influence its representatives' decision-making on the exchange. This person should therefore not be considered to be independent. Also, the language used to describe this relationship must be sufficiently broad to capture all of the ownership-related relationships that could result in a material relationship being formed.

(c) Application of Discretion in Determining Independence

Alpha Exchange proposes that its Nominating Committee, composed of two independent directors and two non-independent directors, can make a determination that a director who triggers a brightline test for material relationship is nonetheless independent. A similar construct is used at the TMX Group exchange boards of directors and at TMX Group, but in a far stricter manner. For the TMX Group companies, the boards cannot override a material relationship that exists pursuant to the categories listed in NI 52-110 subsection 1.4(3). The board override feature at TMX Group is only available with respect to additional independence standards that TMX Group has developed, and the override can only occur upon notice to the OSC and disclosure in the TMX Group management information circular. By comparison, the Alpha Exchange Nominating Committee has the ability to override every finding of a material relationship, which in our view provides the Nominating Committee with too much discretion.

While the OSC may be advised in advance of the Nominating Committee's determination, the Nominating Committee's decision would not need to be made public. At a minimum, it would be prudent to require Alpha to news release such fundamental determinations so that the public can appreciate the governance structure at Alpha Exchange.

(d) Family Relationships

We also believe that certain family relationships can trigger a material relationship. See comments on the Alpha Exchange Recognition Order at Appendix E.

3. **Are the proposed terms and conditions of recognition that deal with conflicts of interest and confidentiality appropriate in light of the potential conflicts of interest associated with Alpha Exchange's ownership structure? If not, why not? Would other or additional terms and conditions be more appropriate?**

We acknowledge that there are different types of conflicts of interest, and a variety of ways in which these can be appropriately managed. The conflicts of interest that can arise through an ownership structure of an exchange are distinct from those that may arise as part of a tension between a for-profit organization and its public interest mandate. Given that the owners of the Alpha Exchange are dealers that will trade on Alpha Exchange and could underwrite issuers that could list on Alpha Exchange, we believe that there is an additional material conflict of interest that is not described in detail, nor appropriately managed, in Alpha Exchange's Application.

Alpha Exchange's Application describes a potential conflict of interest between the commercial interests of the exchange and the interests of its users. It does not describe the conflict of interest between the commercial interests of its owners that are also exchange users and its other users. We do not agree with Alpha's comment that competition restricts the ability of Alpha LP's Partners to direct Alpha Exchange to act in their interests over the interest of other users, and that Alpha ATS has demonstrated this through its current operations. In fact, we have seen evidence to the contrary with the introduction of products and services by Alpha ATS that will be of particular benefit to those dealers that own Alpha ATS. When the dealer-owners of Alpha Exchange control a large volume of order flow traded in Canada, and a majority of retail order flow in particular, competitive interests alone will not provide significant discipline to manage the conflicts of interest that come with exchange ownership. Another example of commercial interests of owners affecting marketplace operations is the momentum program that targets trading in specific symbols to increase order flow to Alpha ATS, which results in a disproportionate benefit to Alpha ATS owners who are able to achieve gains financially through their ownership of the ATS, particularly through an ownership structure which we understand changes based on the amount of order flow sent to Alpha ATS by its dealer-owners.

In order to deal with this additional conflict between dealer-owners and other users and market participants generally, we propose that, at a minimum, additional disclosure should be provided by Alpha Exchange and its dealer-owners to advise of the conflicts. Our proposal is consistent with the approach taken in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) and its Companion Policy which provide that three methods are typically used to respond to conflicts of interest: avoidance, control, and disclosure. For example, a dealer that performs an underwriting function with respect to an issuer that is seeking a listing on Alpha Exchange should disclose in the prospectus that it has an ownership stake in the listing exchange. We submit that an ownership level of 5% or more would warrant disclosure. This disclosure would provide to prospective purchasers of the securities relevant information about the relationship between the issuer's underwriter and the listing exchange. Disclosure should also be made if the issuer itself is an affiliate of an entity that owns 5% or more of Alpha Exchange.

In addition, disclosure should be made by Alpha Exchange and its dealer-owners if any form of compensation arrangement exists whereby a dealer-owner of Alpha Exchange can benefit financially through its ownership stake in Alpha, or if the dealer can otherwise benefit financially if it sends listings business to Alpha Exchange. Similarly, if a dealer-owner of Alpha Exchange can increase its ownership levels in Alpha Exchange by sending order flow to Alpha Exchange, this information should be disclosed to its trading clients. We submit that this type of disclosure

is consistent with the concept of disclosure obligations imposed on registrants under NI 31-103 for referral arrangements. Under section 13.10 of NI 31-103, written disclosure of referral arrangements is required and must include a description of the conflicts of interest resulting from the relationship between the parties and the method of calculating the referral fee and, to the extent possible, the amount of the fee. Pursuant to the Companion Policy to NI 31-103, disclosure of the conflict should be made prior to the transaction or service that gives rise to the conflict and with regard to referral arrangements, reasonable steps should be taken to ensure that clients understand the extent of the financial interest in the arrangement. We strongly believe that these types of disclosure mechanisms that are imposed on registrants to address conflicts of interest should be applied to Alpha Exchange's dealer-owners, who stand to profit financially as exchange owners from their actions as dealers and underwriters.

4. **Is it appropriate to impose a term and condition of recognition requiring Commission approval before a person or company obtains a certain percentage interest in Alpha Group, in order to consider the continued appropriateness of its ownership and governance structure? If so, what percentage of ownership is appropriate in the context of a privately-held exchange?**

Yes. We believe that regulatory approval of ownership over a prescribed limit is important to ensure that regulators are in a position to consider whether additional conflicts procedures are needed to address the influence that owners could have over exchange operations. We believe that this right of approval by the regulators is important given the public interest mandate of the exchange. We submit this is of particular importance in the context of Alpha Exchange as a private exchange closely held by its significant customers.

In TSX's history, the issues of share ownership restrictions and concerns about conflicts were raised at the time of demutualization. Prior to demutualization, ownership powers of larger firms were neutralized by the fact that dealers were limited to a maximum of three votes at meetings of members, irrespective of the number of seats held. In the move to demutualization, a 5% restriction on share ownership was proposed in part to address concerns of small firms respecting control and concentration of the exchange by larger dealers.

The purpose of the original TSX share ownership restriction was to ensure that it was not possible for an individual shareholder, or a group acting together, to obtain substantial influence over the exchange without the prior consent of the OSC. Although the exchange industry has changed dramatically since TSX's demutualization and initial public offering, we continue to believe that a concentration of exchange ownership can be detrimental to the public interest, and therefore ownership of an exchange over a prescribed limit should first be approved by the regulators. An ownership limit of 10% is generally appropriate. In the context of Alpha Exchange's structure as a private exchange closely held by its significant customers, we submit that an ownership threshold of 5% is more appropriate.

5. **Should issuers of the same size and quality be subject to an equivalent level of listed issuer regulation by competing exchanges? Are some elements of listed issuer regulation merely "branding" and if so, what are those areas?**

Yes, issuers of the same size and quality should be subject to an equivalent core level of listed issuer regulation by domestic exchanges. The regulatory framework of each exchange should take into account and be consistent with prevailing Canadian securities and corporate legislation and, at a minimum, not be detrimental to the public interest or integrity of the market. We do not suggest that equivalent means identical. However, in support of market integrity and the public

interest, we would expect that issuers of the same size and quality listed on different exchanges would be subject to an equivalent base level of rules regarding certain matters that are fundamental to the public interest. Such fundamental matters cannot be adequately dealt with or mitigated by branding or disclosure. For example, fundamental matters would include security holder approval for dilutive transactions, transactions which would have a material effect on control of the issuer and the terms governing normal course issuer bids. In the US, the SEC has required NYSE and NASDAQ to have equivalent requirements for fundamental matters such as shareholder approval. We submit that this approach should similarly be adopted in Canada among exchanges targeting to list issuers of a similar size and quality. Regulatory arbitrage with respect to such fundamental matters could otherwise result and would negatively impact the integrity of the Canadian market.

Further, there should be qualified professionals, personnel and resources to ensure appropriate ongoing oversight of listed issuer regulation. Exchanges in Canada are relied on to oversee increasingly complex listing and financing matters, many of which fall outside of the jurisdiction of the securities commissions. For example, backdoor listings, reverse take-overs and non-prospectus offerings are not subject to review by securities regulatory authorities so exchange review is particularly important to protecting the public interest and upholding market integrity in such transactions. Alpha Exchange should therefore be required to ensure a sufficient level of resources and professional and qualified support for its regulatory functions. We submit that the model proposed by Alpha Exchange does not appear to adequately support the role of an exchange in Canada in the oversight of listed issuers of the size and quality proposed.

To the extent that an exchange chooses to differentiate itself on the basis of the scope and nature of its listed issuer regulation, listed issuer regulation can be viewed as a type of "branding". There are some elements of listed issuer standards which may relate to branding of the exchange. For example, original listing requirements may be adopted for exchanges to target issuers at a particular development stage or in a specific industry. Issuers meeting these standards should then be subject to an equivalent level of listed issuer regulation with respect to core elements.

Other listed issuer requirements such as dilution, security holder approval, exchange oversight and disclosure are, in part, driven by the type of issuers targeted, but the fundamental core elements are then equivalent to issuers of similar size and quality. For example, TSX Venture rules are specific to the size and nature of its issuers, in some cases providing more oversight due to the earlier development stage of those issuers.

Branding through issuer regulation also makes sense where an exchange targets issuers from specific sectors, such as mining or investment funds and adopts a specific framework for listing or disclosure that suits that sector. This branding may not be problematic provided that the integrity of the market is upheld with a core level of issuer regulation and oversight.

6. **Given the listing requirements proposed by Alpha Exchange, is it appropriate to classify Tier 1 issuers as "non-venture" issuers and Tier 2 issuers as "venture" issuers under applicable securities legislation? Should the CSA reconsider its current issuer "venture"/"non-venture" classification in light of the application by Alpha Exchange?**

We submit that it is not appropriate to classify Tier 2 issuers listed on Alpha Exchange as "venture" issuers under applicable securities legislation. Alpha Exchange does not propose to provide any level of oversight or discretionary decision-making. Alpha Exchange cannot

therefore seek to grant its issuers venture issuer status without providing any support for the offer of such flexibility. Alpha Exchange seeks to obtain venture issuer flexibility for its issuers without regard for the size and nature of such issuers or for the role of an exchange in overseeing matters fundamental to the interests of market integrity and the public.

As further described below, given the listing requirements proposed by Alpha Exchange: (i) there is no support for the application of venture issuer status to Tier 2 issuers on Alpha Exchange; and (ii) all Alpha Exchange listed issuers should be classified as "non-venture" issuers under applicable securities legislation.

(a) Alpha Exchange submits that Tier 1 and Tier 2 issuers will have "clearly differentiated listing and continuing listing requirements".[9] However, in reviewing Alpha Exchange's Listing Handbook, it appears that aside from original listing requirements, there are no differences in the requirements applicable to Tier 1 and Tier 2 issuers. Once listed, Tier 1 and Tier 2 issuers on Alpha Exchange will be subject to identical requirements and standards under the Listing Handbook. There is only one set of continued listing requirements which is applicable to both tiers of issuers.

(b) There are no provisions for inter-tier movement. Without tier management, Tier 2 issuers may be subject to venture issuer status indefinitely. Conversely, Tier 1 issuers may no longer meet Tier 1 requirements, yet maintain Tier 1 issuer status and be publicly perceived as Tier 1 issuers.

(c) If Tier 2 issuers on Alpha Exchange are classified as "venture issuers" for the purposes of Canadian securities laws, issuers listed on Alpha Exchange might opt for Tier 2 status to obtain "venture issuer" status under securities law. Under Alpha Exchange's Listing Handbook, there is no detriment to having Tier 2 status and no benefit to having Tier 1 status.

(d) Under applicable securities legislation, all TSX listed issuers are "non-venture" issuers. Alpha Exchange's proposed original listing requirements for both Tier 1 and Tier 2 issuers are more comparable to those of TSX than TSX Venture, and indicative of issuers more senior than TSX Venture issuers. Alpha Exchange's proposed listing requirements contemplate issuers that are revenue and income or cash flow generating, and generally at an advanced stage of development. At the time of original listing, most TSX Venture issuers do not generate any revenues, cash flow or income. Alpha Exchange issuers should therefore be subject to the more stringent corporate governance and internal control requirements under securities legislation that also apply to TSX issuers.

(e) TSX exempt and non-exempt issuers are all subject to non-venture issuer status for the purposes of securities law. Alpha Exchange's proposed Tier 2 could result in large revenue producing issuers being classified as venture issuers under applicable securities legislation and avoiding internal control requirements and more stringent disclosure rules. This result should not be supported.

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[9] (2011) 34 OSCB 4579.

(f) Alpha Exchange's listing requirements purport to rely heavily on director approval and shareholder approval, supporting the view that such issuers are of a size and maturity to be subject to more stringent securities law application. It would not be appropriate to permit Tier 2 issuers to be eligible as "venture issuers" when they are not subject to the strong level of exchange oversight provided by TSX Venture to its issuers.

(g) We understand that at the time of adoption of National Instrument 51-102 the CSA preferred the listing test (based on the exchange listing) to a market value test as "more transparent and easier to understand and apply for investors."[10] On this basis, and as supported by the submissions above, all Alpha Exchange listed issuers should be classified as "non-venture" issuers under securities legislation.

We submit that the current CSA classification of "venture" and "non-venture" issuers is well understood and is applied by existing exchanges without issue. We submit that Alpha Group's application does not present any new considerations for the CSA in this area.

7. **Is an exchange's ability to exercise discretion necessary for regulating its listed issuers? Or can shareholder approval and the role of independent directors be a substitute to ensure the maintenance of a quality marketplace?**

In TSX and TSX Venture experience, an exchange requires discretion as a tool for regulating its listed issuers in order to uphold market integrity and protect the public interest. While an exchange may have an extensive regulatory framework, as TSX and TSX Venture do, it cannot address all transactions, situations and fact scenarios which are ever changing and increasingly complex. Discretion permits exemptions from requirements, but more importantly, also permits the imposition of conditions with a view to addressing the public interest and market integrity, to preserve the quality of the market. Discretion also assists in preventing issuers from avoiding application of rules through technical interpretation and complex arrangements, providing the exchange with the ability to apply the spirit and intent underlying its rules.

In the Application, Alpha Group states as one of its principles that it rejects the exercise of discretion by the exchange in its review of transactions. Alpha Group grounds this view in its understanding that discretion is "just as likely to be abused as exercised appropriately and that the review by the exchange only added time and not necessarily value."[11] This refusal to exercise discretion may have serious negative implications for the public interest and the integrity of the market, permitting issuers to avoid rules and regulations that support the public interest and the integrity of the market. An exchange cannot effectively support the integrity of the market and the public interest, as required by exchange recognition, without exercising discretion. Such an approach does not consider the complexity and constantly changing variables in the market.

We note that there are a number of instances where the Alpha Exchange Listing Handbook will require Alpha Exchange to exercise discretion, particularly with respect to listings and delistings, and that there is no information with respect to the factors to be considered in applying discretion, nor who will be charged with exercising this discretion.

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[10] (2003) 26 OSCB (Supp-3).
[11] (2011) 34 OSCB 4578.

For example, under Section 6.05, there is discretion with respect to an amendment to conversion prices for warrants and other convertible securities. Under section 8.01(2), there is discretion to determine what is a backdoor listing. There are no guidelines provided for how or when discretion may be exercised, nor any information about the result of the use of discretion. Alpha Exchange purports to reject discretion because of concerns for abuse and the addition of time rather than value so guidance should be provided to guard against these concerns.

It is also unclear what will happen if a transaction does not fit under Alpha Exchange's rules. Can the transaction proceed without any approvals, or is it prohibited? These issues should be clarified to understand whether there will be any oversight in such circumstances, as well as for transparency and certainty. We submit that pricing and backdoor listings are examples of areas where discretionary exchange oversight is necessary to prevent abuses and support the integrity of the market. If the Listing Handbook does not explicitly provide the exchange with any discretion, Alpha Exchange will be unable to provide any oversight where there are gaps in regulation, which may have serious negative implications for the quality of the market and investor protection.

With respect to whether shareholder approval and the role of independent directors can be a substitute for exchange discretion to ensure the maintenance of a quality market, we submit that there are serious risks in adopting this approach in such a broad manner. Shareholder approval and independent director review are important components of corporate governance and provide a form of internal oversight and regulation of a listed issuer. However, they cannot be an effective substitute for exchange oversight to maintain the integrity of the market in all situations. Directors and shareholders have different interests than the exchange in monitoring the quality of the market and may not always have the knowledge, skills or incentives to make decisions that will serve market quality.

Excessive reliance on shareholder approval and independent directors as a substitute for broader exchange regulation is risky in terms of maintaining market quality, investor confidence and protecting the public interest in Canada's capital markets. Junior (venture) issuers in particular typically have leaner structures than senior issuers, do not have the same level of formal corporate governance and internal controls, are not subject to the same level of public or shareholder scrutiny, and may be dominated by a majority shareholder. Such issuers are often at increased risk for self-dealing or abuse by management. TSX listed issuers, and in particular, non-exempt listed issuers, are similarly subject to more stringent requirements for transactions including insiders and other related parties. Without the added oversight of exchange regulation, there may not be sufficient independent scrutiny of these issuers to ensure appropriate compliance and uphold the quality of the market.

Exchanges should have discretion, for example, to impose further conditions on related party transactions, to regulate novel transactions and to ensure that regulatory exemptions are used appropriately. In related party transactions, discretion has been exercised to require fairness opinions or independent valuations at thresholds below securities legislation requirements. Discretion has also been exercised to require disclosure as well as disinterested security holder approval where securities of a company are being spun out by a listed issuer by way of private placement, when the market price of the securities being issued is unknown. Discretion has also been applied to introduce additional filing requirements for listed issuers applying to use the financial hardship exemption from security holder approval, to ensure that the financial hardship exemption was used in accordance with the spirit and intent of the rules. While exchange rules and regulations are designed to address most situations, it is not possible to foresee all transactions and fact scenarios. As such, we submit that discretion is a key component to the

ability of an exchange to maintain the quality of the market. While shareholder approval and the role of independent directors may play an important role in such transactions, such approvals may not always be sufficient to substitute for exchange oversight.

We note that the Notice and Request for Comments cites that Alpha Exchange "proposes to rely upon the objective standards set out in their Listing Handbook, together with both shareholder approval and the mandated involvement of independent directors"[12], but there appear to be no specific requirements for independent director approvals under Alpha Exchange's proposed Listing Handbook. Also, Section 10.01(2) of the Listing Handbook exempts certain Alpha Exchange listed issuers from having independent directors so it is unclear what oversight or investor protection will be applied in such circumstances. We therefore submit that Alpha Exchange's proposed rejection of discretion in favour of shareholder approval and independent director approval is not supported by the proposed Listing Handbook and does not provide adequate oversight of listed issuers to ensure the maintenance of a quality market.

We submit that there is no support provided for the model of reliance on independent director approval. The review process for management and directors of Alpha Exchange listed issuers should be published in order to understand the level of scrutiny Alpha Exchange proposes to apply before and after listing. If the model of reliance on independent directors in substitution for exchange oversight is to be supported, it must be with a clear understanding that there has been a consistent and robust vetting process applied by Alpha Exchange to all directors and officers, including an assessment of the qualifications and experience of such individuals. Alpha Exchange should be required to conduct investigative research and background checks and have a process to apply the results to listed issuers. Quality of management strikes at the core of market integrity and reputational concerns, particularly where exchange oversight is limited.

Alpha Exchange's proposed model for the listing of issuers without ongoing oversight or discretion is inappropriate and contrary to both the public interest and the integrity of the market. Alpha Exchange's Application does not explain how the exchange will review transactions, conduct suitability reviews, monitor issuers and generally oversee listed issuer regulation. Alpha Exchange's oversight should provide for a robust review process in support of market integrity and investor protection. If Alpha Exchange does not propose to pre-approve transactions, we submit that a purely retroactive review of listed issuer transactions may result in irreparable harm to the market, with little recourse, and presents an unacceptable level of regulatory risk. Please also see our response to Question 5 for a discussion of the requirement for a sufficient level of resources and qualified and professional support to carry out such oversight.

8. **Should a listed issuer that is an investment fund be subject to the same security holder approval requirements for acquisitions as mutual funds? In particular, should the investment fund manager bear the costs and expenses associated with an acquisition of a listed issuer that is an investment fund?**

Alpha Exchange is clearly taking a concentrated approach to targeting investment fund listings, so it is of great importance that its rules be adequate to support the integrity of the market and in line with securities law requirements.

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[12] (2011) 34 OSCB 4559.

Security holder approval requirements for acquisitions of listed issuers that are non-redeemable investment funds should be substantially similar to the requirements in NI 81-102 for mutual funds, including the requirement that the investment funds participating in the acquisition bear none of the costs and expenses associated with the transaction. This approach has been advocated by the OSC and recently adopted by TSX after a public comment period. Without a consistent approach to investment fund acquisitions by Canadian exchanges, opportunities for regulatory arbitrage will result and could be detrimental to the quality of the marketplace. Should a different approach be deemed acceptable for Alpha Exchange, TSX would expect to adopt substantially similar requirements and not hold its listed investment funds to a different standard.

Further, Alpha Exchange's rules also deviate from National Instrument 51-102 in that there is no requirement for security holder approval if dilution from an acquisition exceeds 100%. Alpha Exchange's rules will only require security holder approval if the transaction is a backdoor listing which does not include dilution over 100%. There is no reason for this deviation from securities law requirements, and it should be corrected.

9. **Should Alpha Exchange's Listing Handbook contain specific criteria relating to listing applications from foreign special purpose issuers, such as investment funds or exchange-traded notes? Should this criteria require Alpha Exchange to consider Staff's assessment that it would be in the public interest to approve such a listing application?**

Alpha Exchange's Listing Handbook should contain specific listing requirements for foreign special purpose issuers. We submit that it is important for an exchange to publish its rules and regulations to the fullest extent possible for market transparency and certainty. We note that this approach by Alpha Exchange is inconsistent with Alpha Exchange's stated principle to provide "clear, objective standards that provide consistent and efficient decision making."[13]

We do not believe that it is necessary for these criteria to require Alpha Exchange to consider the OSC's assessment that it would be in the public interest to approve listing applications from foreign special purpose issuers, unless such issuer has filed a prospectus with the OSC. The exchanges have a general mandate to preserve the quality of the market which will be considered as part of the listing of foreign special purpose issuers. Such assessment by the OSC would lead to duplication of regulatory oversight that will increase costs and decrease efficiency without evidence of corresponding benefits to the marketplace. We note that we understand the OSC's concern for listing foreign special purpose issuers without due consideration of the impact on the market and its participants in Canada, and that TSX has as a matter of regulatory cooperation also agreed to bring such listing applications to the attention of the investment funds group at the OSC.

[13] Page 4578, (2011) 34 OSCB.

APPENDIX B – LISTING HANDBOOK

1. **Part II. Original Listing Requirements**

General

(a) 2.01(2) – Alpha Exchange intends to use discretion in making listing decisions but suggests that discretion will not be used/needed for its regulation of issuer transactions. See Question 7 in the Request for Comments for a discussion of the use of discretion.

(b) 2.01(2)(d) – Lists what factors may be considered by Alpha Exchange in determining whether a capital structure is acceptable, but does not specify any criteria for what would constitute an acceptable capital structure. This lack of specificity will create inconsistency and a lack of transparency. Alpha Exchange should clarify the criteria or provide some interpretive guidance for what would constitute an acceptable capital structure.

Minimum Listing Standards

(c) 2.02(2) and 2.05(2) – The tests titled "Income" are really cash flow tests, although the commentary describes the tests as an income requirement. Tests for meeting original listing requirements should be clearly stated. These income tests should therefore be renamed as "Cash Flow" and appropriately described.

(d) 2.05(6)(e) – The number of required board lot holders (200) appears to contradict the requirement in 2.05(3) (250).

2.06 – Management

(e) Alpha Exchange should clarify the process for reviewing PIFs and how decisions regarding management suitability will be made. This is particularly important given the purported reliance on independent director approvals and corresponding reduced level of oversight by the exchange. See also Appendix A, response to Question 7.

2.07 Inter-listed Issuers

(f) 2.07(1) – Foreign incorporated issuers that are listed and in good standing on a recognized foreign exchange may be listed on Alpha Exchange by filing the documents listed in Section 2.06. However, Section 2.06 does not require the filing of any documents, but provides that Alpha Exchange may review the conduct of a Related Person of an issuer. Further, this subsection then provides that such issuers are not subject to the provisions of the Listing Handbook. We submit that this broad denial of responsibility for foreign listed issuers presents significant risk to the integrity of the market and investor protection.

We further submit that there are significant risks in allowing foreign companies to list on Alpha Exchange or any Canadian exchange without meeting its listing standards, unless significant diligence has been done on the foreign exchanges to ensure that listing standards are equivalent or higher. In addition, other

exchanges may have standards that are equivalent to or exceed Alpha Exchange's listing requirements, but that does not provide any assurance that an issuer would meet Alpha Exchange's listing requirements at the time they list on Alpha Exchange. Generally, exchanges have ongoing listing requirements which are significantly lower than original listing requirements.

TSX and TSX Venture require that all issuers, foreign or domestic, meet its original listing requirements. In addition to those requirements, the Exchanges conduct a jurisdictional review to ensure that basic shareholder rights are present and conduct local background reviews with respect to key insiders of the issuer.

(g) 2.07(3) - The list of accepted foreign exchanges broadly includes all exchanges located in countries represented on the IOSCO Technical Committee. The commentary in this section suggests that the exchanges located in these countries have substantially similar requirements. There are countries represented on this committee that are not "designated foreign jurisdictions" under National Instrument 71-102. These designated foreign jurisdictions have undergone a form of review to determine that those jurisdictions had substantially similar requirements for the purposes of exempting certain foreign issuers from certain Canadian continuous disclosure requirements.

There is no apparent support for concluding that exchanges in the countries represented on the IOSCO Technical Committee member jurisdictions have substantially similar requirements. It is not apparent whether any review has taken place. In particular, we note that the list of countries that are IOSCO Technical Committee members is very broad. Companies listed on exchanges in those countries may be exempt from some or all of the provisions of the Handbook. We submit that there may be serious implications for listing foreign issuers based on the IOSCO Technical Committee jurisdictions without a thorough review of the local exchange requirements and securities and corporate law. Canadian capital markets may be seriously adversely impacted by Alpha Exchange listing companies in reliance on another exchange's requirements, without separate due diligence by Alpha Exchange.

In addition, this section requires the exercise of discretion by Alpha Exchange and has no guidance for the exercise of such discretion. Alpha Exchange should clarify what exemptions may be provided since 2.07(1) provides that the Handbook does not apply to international issuers. Refer to the response to Question 7 in Appendix A for a discussion of the use of discretion.

2.10 Escrow

(h) 2.10(1) - Escrow is limited to IPOs and backdoor listings (8.03(3)). Escrow should apply to other going public transactions, such as reverse take-overs, to ensure investor protection and the integrity of the market. Without escrow, founders of newly listed issuers can immediately liquidate their holdings to the detriment of other security holders and may negatively impact the reputation of Canada's capital markets.

2. **Part III. Ongoing Requirements**

(a) 3.01 Directors and Officers – The statements in each of paragraphs (2) and (3) reflect broad discretion by Alpha Exchange in reviewing and assessing Related Persons. This is a clear example of the need for, and use of, discretion by Alpha Exchange in regulating its issuers for which specific and comprehensive guidance should be provided.

(b) 3.05(2)(i) – Reference to "section 2.07(c)" – this section does not exist.

3. **Part V. Periodic Disclosure**

(a) 5.02 Dividends – Alpha Exchange should clarify how issuer errors, such as late dividend notice, will be handled. Failure to address such issues may adversely affect market participants.

(b) 5.04 Enhanced Disclosure - Alpha Exchange should clarify whether issuers must comply with 58-101 F1 or F2.

4. **Part VI. Corporate Finance and Capital Structure Changes**

(a) 6.01(2) - Requires notice of any issuance or potential issuance of securities but it is unclear whether any response is required from Alpha Exchange before the issuance can occur. It is also unclear how or whether this rule is being enforced. If there are requirements, they must be enforced. The process for monitoring and enforcement of the rules should be transparent and subject to the public review process. In Canada, generally, enforcement of exchange rules occurs either through a pre-approval process (TSX and TSX Venture) or a "post & go" process (CNSX). If Alpha Exchange's proposed system is a "post & go" process, some clarification is required on how the rules will be enforced and whether there will be a post-transaction review. Without a robust system of enforcement or review, there will be a negative impact on the quality of the market and investor protection.

There are matters which are fundamental to the public interest for which a post review is not sufficient. For example, after closing of a private placement, it is difficult to undo the transaction without harm to security holders so there may not be an appropriate remedy. If there is a pre-review, there can be conditions imposed in advance such as security holder approval and pricing. We submit that the Listing Handbook should clearly provide for pre-review of such fundamental matters to adequately protect security holders and the integrity of the market.

(b) 6.04 - Private Placements – Alpha Exchange should clarify if there is any restriction on how long the issuer will be eligible to use the offering price that is referenced in a private placement announced by press release. There is an explicit time limit on price protection (45 days) when a confidential notice is submitted to Alpha Exchange (6.04(5)), but there appears to be no time limit when the market price is established with a press release. In the absence of any such requirement, the issuer could potentially rely on that offering price indefinitely and therefore be able to complete a private placement that is at a

substantial discount to the market price at the time of closing of the private placement. The rules should include a limitation on how long an offering price can remain valid in order to preserve market integrity and protect investors.

(c) 6.04(6) – Clarify why there is a reference to the issuance of securities "pursuant to a prospectus" in the section governing private placements.

(d) 6.05(2) - Indicates that convertible securities (such as share purchase warrants) may not be issued for no consideration except as "sweeteners" in conjunction with a private placement of listed securities. This implies that an issuer can complete a private placement of warrants provided that the warrants are issued for something other than no consideration. 6.05(1) provides that the aggregate of the issue price and the exercise price of warrants issued on this basis must not be less than the market price on the trading day prior to the private placement being announced.

These rules therefore provide issuers with an avenue to effectively reserve an issue price for common shares that is equal to the current market price indefinitely. For example, an issuer can complete a private placement of warrants at a nominal price of $0.0001 per warrant (which is something greater than no consideration). The exercise price of the warrants would be set at the current market price and have a term of 20 years (as the Listing Handbook contains no restrictions on the term of warrants). The net effect is that the persons holding the warrants (for which they only paid nominal consideration) would have the right to acquire common shares at the current market price for the next twenty years. This is contrary to the principles of market integrity.

(e) 6.05(3) – Requires the prior consent of Alpha Exchange and provides for discretion in connection with the amendment of conversion prices of warrants and convertible securities. There are no guidelines provided for how or when discretion may be exercised, nor what may be the result of the use of discretion. Refer to Question 7 in the Request for Comments for a discussion of the use of discretion.

Consider how Alpha Exchange's Listing Handbook would deal with the following:

(i) If a holder of a maturing convertible debenture is willing to convert (thus preserving the issuer's cash) but only at a lower price?

(ii) If an issuer wishes to provide an incentive to exercise to holders of in-the-money warrants (e.g., a new partial warrant?)

(iii) If an issuer wishes to extend the maturity of a convertible debenture due to current financial difficulties?

We submit that these gaps in Alpha Exchange's proposed rules will have a negative impact on the quality of the market and may harm investors.

(f) 6.07 Incentive and compensation options – Appears to only deal with stock options, and not a broader concept of security based compensation. It is unclear whether these requirements will apply to other plans such as Deferred Share Unit

and Share Purchase Plans. It is also unclear whether the payment of employee salaries, director fees or bonuses paid in listed securities would be subject to these requirements.

Further, there do not appear to be any prohibitions in relation to evergreen plans which have become quite common. It appears that issuers could adopt plans, including evergreen plans, without initial or renewal shareholder approval. Amendments to insider options, such as a reduction of the exercise price or extension, will also be permitted without security holder approval. Based on very strong feedback from institutional investors, TSX and TSX Venture rules require security holder approval for all of these matters. We submit that a failure to require security holder approval in this area, which is subject to particular risk of self-dealing and abuse, would negatively impact market participants.

(g) 6.16 Supplemental listings – Provides that Other Issuers, defined as issuers listed on an exchange other than Alpha Exchange, may apply to have a new class of securities listed and posted for trading on Alpha Exchange. It does not appear to provide any limits on what other exchange would be acceptable, or impose any standards on such listing. It does also not appear to limit the kind of securities that could be listed. For example, if common shares are listed on an exchange which has limited liquidity, and a convertible security is listed on Alpha Exchange, there could be a market integrity issue. Further, retail security holders may bear high costs to then be able to sell the underlying securities in the foreign market.

(h) 6.18 Normal Course Issuer Bids – TSX and TSX Venture each have rules for normal course issuer bids (NCIBs). However, in the multi-marketplace environment that now exists in Canada, we submit that, at a minimum, the trading related NCIB rules should be in UMIR or under securities legislation so that purchase restrictions can be monitored and enforced across all marketplaces. The current system of purchase restrictions on an exchange-by-exchange basis cannot effectively be monitored and therefore is of limited impact. TSX has previously alerted the OSC to this issue. The US rules are administered by the SEC through safe harbour rules.

(i) 6.20 NCIBs – Limits on Price and Volume – The requirements are unclear about what constitutes an inadvertent uptick. Specific factors and considerations should be provided. Also, there is no restriction on purchases during the opening session and last 30 minutes of the regular trading session. Generally, the opening price and trades in the last half hour of the regular trading session are significant market indicators that should not be influenced by NCIB purchases. Alpha Exchange's approach is inconsistent with TSX requirements and the US safe harbour rules which apply to all US public companies. While US public companies generally tend to be larger and more liquid than Canadian public companies, it should be noted that the US safe harbour rules apply to all US public companies and not just those companies listed on senior exchanges. Note also the exercise of discretion under this rule. Refer to the response to Question 7 in Appendix A for a discussion of the use of discretion.

(j) 6.21 Shareholder Rights Plans – This section does not consider whether the issuer has knowledge of a take-over bid. The provisions also omit any reference

to plan considerations such as triggering thresholds of less than 20% and other significant information concerning the plan. These factors have recently been considered important to regulators and relevant to investor protection. There are also no provisions for amending plans, and whether security holder approval is required for amendments.

(k) 6.21(3) - Provides that exiting shareholders may be exempt from a security holder rights plan. We are unaware of what an exiting shareholder is in the context of a plan. Clarify the definition of an exiting shareholder, and who is excluded from minority shareholder approval.

5. **Part VII. Significant Transactions**

(a) 7.01 Notification – There is a lack of guidance as well as an indication that Alpha Exchange will use discretion in reviewing these transactions. The process for review of such notices is not apparent. There are no guidelines provided for the exercise of discretion by Alpha Exchange in these rules. The rules merely provide for notice of significant transactions and notice of closing. Consider how Alpha Exchange will deal with the following:

(i) 7.01(1)(a) – When and how is the 10% calculated – pre or post transaction, at the time of announcement or signing agreement? Will Alpha Exchange assess what constitutes a “series” of transactions?

(ii) 7.01(1)(b) – What specific entities qualify as a “financial institution”?

(iii) 7.01(3) – What is a “change of business”? No definition or guidance is provided. This section provides that a change of business may be subject to the backdoor listing rules. Alpha Exchange must therefore use discretion in reviewing these transactions and determining the level of regulation it will apply and no guidance for the exercise of such discretion has been provided.

6. **Part VIII. Backdoor Listings**

(a) 8.01(2) - Clarify if discretion under this section permits Alpha Exchange to exempt consideration of a backdoor listing. Also refer to the response to Question 7 in Appendix A for a discussion of the use of discretion.

(b) 8.02(1) - Exempts transactions involving two or more listed issuers from being considered backdoor listings.

Consider the following example where the rules do not support the public interest and integrity of the market:

- Issuer A is an Alpha Exchange listed “shell” company with no active business operations and minimal assets other than cash. Issuer A has 40,000,001 common shares issued and outstanding and is trading at $0.25.

- Issuer B is an Alpha Exchange listed issuer that is a large scale mining issuer with a portfolio of producing mines and exploration projects at various stages.

- Issuer A agrees to acquire an advanced stage mineral exploration property from Issuer B in exchange for 10,000,000 shares of Issuer A. In addition, Issuer B agrees to make a strategic investment in Issuer A of $10,000,000 at a price of $0.25 per share (i.e., 40,000,000 share of Issuer A will be issued to Issuer B). Furthermore, Issuer A will reconstitute its board of directors such that 4 of 7 directors are nominees of Issuer B.

- The property being acquired by Issuer A from Issuer B is not material to Issuer B and therefore there is limited, if any, disclosure related to the property contained in Issuer B's timely and continuous disclosure record. There is no NI 43-101 technical report on the property in Issuer B's continuous disclosure record.

- Upon completion of the transaction:

    - Issuer B would hold 50,000,000 of Issuer A's 90,000,001 issued and outstanding shares and would control the board of directors.

    - Issuer A would own an advanced stage mineral exploration property for which no disclosure is currently available in the public record.

- Based on the foregoing facts:

    - The transaction would not constitute a "backdoor listing" on the basis that it is between two listed issuers.

    - Shareholder approval would not be required for either the acquisition of the property or the private placement under sections 10.08 or 10.09 of the Listing Handbook.

    - Aside from a press release, no disclosure of the transactions would be required by Issuer A. Prospectus level disclosure would not be required.

    - Issuer A would not be required to meet Alpha Exchange's initial listing requirements.

We submit that this outcome should not be permitted and is not aligned with the public interest and support for market integrity. The inability to exercise discretion when circumstances like this may arise will compound the negative impact on the quality of the market.

7. **Part IX. Suspensions, Delisting and Other Remedial Actions**

(a) 9.01(1), 9.02(1) - Alpha Exchange may halt or suspend trading in a Listed Security. However, Section 11.01(1) under Appeals provides that there is no appeal of a decision to suspend trading pursuant to 9.01 or 9.02. Clarify why it is appropriate to exclude such a decision by the exchange from rights of appeal. Suspensions can last a considerable period of time and have a significant impact on investors.

(b) 9.01(1) – The Market Regulator may suspend trading. Clarify how this may happen.

(c) 9.02(1) – Alpha Exchange or the Market Regulator may halt an issuer to permit dissemination of material news. Clarify how this authority is divided and provide details about how halts will be imposed.

(d) 9.02(2) – Contemplates a trading halt imposed by the Market Regulator across other marketplaces and over-the-counter. Clarify how this may happen and what marketplaces would be affected.

(e) 9.03(1) - Halts and suspensions.

(i) Contemplates that Alpha Exchange may implement suspensions that are in the public interest pursuant to 9.01. Those decisions are not appealable according to Section 11.01(1)(ii). However, Alpha Exchange staff may also implement suspensions that are in the public interest pursuant to 9.03(1)(k) and those decisions are appealable. The appeal provisions should be published and clarified in support of the integrity of the market and transparency for market participants.

(ii) Alpha Exchange submits that its approach to listing is based on "rejection of the exercise of discretion by the Exchange…" Clarify whether this also applies to continued listing standards. 9.03(1) appears to require the exercise of discretion since the Head of Listings may suspend trading.

(iii) Alpha Exchange has discretion to suspend trading in the enumerated circumstances. There is no apparent definition or coordination between halts and suspensions. Circumstances in which investors are not permitted to trade are of particular public interest and should be very transparent.

(iv) Alpha Exchange submits that Tier 1 and Tier 2 issuers will have "clearly differentiated listing and continuing listing requirements".[14] This appears to only be differentiated at the stage of original listing. There is only one set of continued listing requirements for both Tiers of issuers. See Appendix A, Response to Question 6, for a fulsome discussion of the impact of this proposed structure.

(v) The rules do not contemplate any ability for the issuer to remediate the issues giving rise to the suspension, or provide a timeframe in which they may do so. They also do not identify the circumstances under which an issuer will be permitted to resume trading. We submit that it is not in accordance with supporting market integrity and investor confidence to omit guidance for how an issuer could regain compliance. This gives rise to a public interest concern since issuers and investors will not understand the process or relevant factors.

(vi) There is no ability to move between tiers. Consider if this should be reflected in the suspension and delisting process. See also Appendix A, response to Question 6.

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[14] (2011 (34) OSCB 4579.

(vii) It is not clear how Alpha Exchange will identify whether suspension circumstances have occurred. Clarify whether a Continued Listing Review program will be put into place and how continued listing reviews will be managed. Alpha Exchange should be required to publish for public review how it will conduct ongoing review of issuers and their transactions and management. See also Appendix A, response to Question 7.

(f) 9.05

(i) The Head of Listings may publicly reprimand an Alpha Exchange listed issuer for failure to comply with certain parts of the Handbook if suspension of trading is not an appropriate remedy. 9.03 contemplates suspensions in specific circumstances. Clarify the circumstances in which a reprimand might be seen as a suitable substitute to a suspension. Typically a reprimand is something that would be applied in addition to, not substitution for, a suspension. Given Alpha Exchange's submission that "discretion is just as likely to be abused as exercised appropriately", it is difficult to understand the application of discretion in determining something as fundamental as whether a suspension of trading in a security or a reprimand is appropriate, without specific enumerated circumstances to inform the decision.

(ii) The decision whether to reprimand in lieu of a suspension is subject to appeal, but the decision to suspend may not be (see item 7(e)(i) above). This disparity creates a conflict in a discretionary decision.

(iii) A reprimand is automatically stayed if it is appealed. A suspension is effective immediately, regardless of appeal.

(iv) The commentary enumerates factors you would expect to consider when determining whether to issue a reprimand, but gives no guidance for determining whether to issue a reprimand or suspend trading. Suspensions are undertaken to protect market quality and integrity. Public reprimands generally sanction an issuer and are intended to have a deterrent effect. These two goals are not the same. These sections should be clarified and reconsidered in order to give effect to market quality considerations, due process and investor protection.

(g) 9.06(1) Delisting – Clarify whether the time frame to meet original listing requirements is 150 days or 1 year, particularly given the onerous outcome of automatic delisting without further notice.

8. **Part X. Corporate Governance and Security holder Approval**

(a) 10.01(2) - Exempts issuers that have more than 50% of the voting power for the election of directors held by an individual group acting in concert or another company from independence, audit committee and compensation committee requirements. This exemption is contrary to Alpha Exchange's purported increased governance requirements and is not aligned with proposed decreased exchange oversight or the public interest.

(b) 10.04 – Audit Committee - No Alpha Exchange listed issuers should be classified as “venture” issuers. See Appendix A, Response to Question 6 for a fulsome discussion of this issue. If Alpha Exchange is able to use the “venture” classification for its Tier 2 issuers then these issuers will be exempt from the independence and composition requirements of 52-110 (note that TSX Venture imposes its own audit committee composition requirements in addition to 52-110).

(c) 10.07 General Requirements - A press release should be required when seeking written security holder approval, in order to provide the market with full information and time to consider the proposed transaction, in support of market integrity and investor protection. In the absence of a press release with a statement that security holder approval will be obtained in writing, security holders may assume that they would have an opportunity to vote on the matter at a meeting and may not otherwise take steps to understand or oppose the transaction.

(d) 10.08(1) Private Placements – Market price appears to be the most recent closing price. Strict use of a closing price may become problematic. In TSX experience, closing price may not be representative of market price. There are instances where there is material undisclosed information, and insiders may be participating in the private placement. Would Alpha Exchange allow such a private placement to proceed using an unrepresentative market price? There would be no apparent violation of insider trading rules as both parties would have access to the material undisclosed information, yet such a placement could severely impact market integrity. In addition, for securities that are less liquid, a closing price may be an aberration and unrepresentative. Further, without any ability to use discretion, Alpha Exchange will be unable to ensure an appropriate outcome in support of security holders or the integrity of the market.

(e) 10.09 Acquisitions – The drafting in this section suggests security holder approval is required even though the acquisition is of another investment fund that meets the listed requirements. This is inconsistent with the summary in the Notice and Request for Comments at Question 8 which provides that Alpha Exchange proposes to require security holder approval of an acquisition of a listed issuer that is an investment fund unless certain conditions are met.

It is difficult to understand the benefit security holders might obtain from a merger, as the primary beneficiary is generally the management company in terms of cost reduction from managing a larger fund rather than several smaller funds. In such circumstances, the security holders should only bear costs associated with such a merger if they approve the matter at a meeting where there was full disclosure on the costs of the merger.

The OSC has advocated that security holder approval requirements for acquisitions of listed issuers that are investment funds should be substantially similar to the requirements in NI 81-102 for mutual funds, including the requirement that the investment funds participating in the acquisition bear none of the costs and expenses associated with the transaction. This approach was recently adopted by TSX after a public comment period. If an investment fund seeks to be exempt from security holder approval for an acquisition, the fund

must not bear any of the costs and expenses of the acquisition. Otherwise, they ought to be required to seek security holder approval. Without a consistent approach to investment fund acquisitions by Canadian exchanges, opportunities for regulatory arbitrage will result that could be detrimental to the quality of the market.

APPENDIX C – PROPOSED TRADING POLICIES

1. **Part I. Definitions and Interpretation**

   (a) Alpha System, Alpha – clarify if the facilities and services under these definitions includes Intraspread, TTM and all market data services.

   (b) Approved Trader – definition permits an "employee of a client of a Sponsoring Member" to be an Approved Trader. DMA orders should be represented through an Approved Trader that is an employee of the Member that is responsible for the supervision of the orders. Permitting an Approved Trader who is an employee of a client of a Member does not support accountability, supervision, monitoring and investigative processes and practices in relation to DMA trading. Further, Market Makers should similarly not be permitted to be an employee of a client of a Sponsoring Member. See also comment at 2(b) below.

   (c) Market Maker – definition only refers to assignment on Alpha listed securities. This definition is inconsistent with the Market Maker provisions in Part VI.

   (d) Other Traded Security (OTS) – clarify what "stock exchange" is intended to qualify. Will it include exchanges recognized by a securities regulatory authority in a Canadian jurisdiction, or any globally recognized stock exchange? Understanding this definition is relevant to reviewing the adequacy of the proposed Trading Policies and their impact on the integrity of the market.

   (e) Related Entity/Related Person/Retail Customer – clarify the relevance of these terms as they are not used in the proposed Trading Policies or related agreements.

2. **Part IV. Access to Trading**

   (a) 4.1 – What are the requirements and criteria for becoming an Approved Trader and what is Alpha's proposed approval process? Alpha's current ATS Trading Policies are more detailed. It is unclear if Alpha Exchange intends to have an approval process as an exchange or whether there are any conditions or qualifications to become an Approved Trader.

   (b) Under the definition of Approved Trader, a DEA/DMA person can be an Approved Trader. An Approved Trader should be a representative of a Member who is responsible for the trading activity being conducted through that Member and not merely a client. Although Section 4.1(4) provides that the Member is responsible for the activity of any Approved Trader, DEA/DMA activity should be designated through an IIROC registered trader that is responsible for that flow and through which trading is being supervised in order to uphold the integrity of the market and enforce consistent rules among exchanges.

3. **Part V. Governance of Trading Sessions**

   (a) 5.5 – Trading Halts - Alpha should be required to notify members, regulators, and any other impacted participants through electronic means when a halt occurs, to support market integrity.

(b) 5.5(3) – Alpha can initiate trading halts under circumstances which are governed by UMIR and administered by IIROC. Alpha should not be able to initiate such halts. There is no differentiation made between business halts and regulatory halts. See also related comments on the Listing Handbook at Appendix B, Section 7.

(c) 5.8 - Cancellation and amendment of orders and trades – Alpha proposes to cancel and correct trades without notifying the parties in advance.

The purposes for which Alpha is proposing to have the "right to change and/or cancel" trades are not clear. The stated purposes of mitigating errors made in order execution and maintaining market quality are broad and provide excessive and inappropriate discretion to intervene in a transaction. It appears that Alpha will be entitled to unilaterally assess trading activity and deem it harmful to its market, or its business, even if it has been conducted in compliance with Alpha's rules and operating model, and not necessarily a result of an Alpha error, technical, or systems related issue.

The determination of whether certain trading activity compromises the quality of the Canadian markets should be made by IIROC in consultation with the marketplace. Unlike other jurisdictions where more discretion may be left with marketplaces to monitor market quality and intervene in a trade, Canada's regulator (i.e., IIROC) has real-time market surveillance which provides our regulators with the ability to better assess errors, issues, and impacts to market quality in the context of the entire market, and not just one marketplace. IIROC, in consultation with the marketplace, is best able to assess the impact of errors on the quality of the market, and to consider a decision to modify or cancel trades on a marketplace, which may have been caused by a technical issue, systems issue, or error originating from its members.

We submit that it is integral to the integrity of the market that Alpha's rules define and clarify the scope of errors in which it may intervene (e.g., volatility/fat finger).

(d) 5.9 (2)(a), (3)(a), (4)(a) - Error Corrections Requested by Member – provides that Alpha will cancel a trade "…after consultation with the Market Regulator", but is not clear with respect to who makes the decision. It should be IIROC's decision, or only made after approval of the Market Regulator. We note that this is the current policy under the Alpha ATS Trading Rules.

(e) Section 5.11 - Account Types - rules do not provide that all required UMIR markers will be supported, which is inconsistent with requirements applied to other marketplaces.

(f) 5.12(1) – clarify that the reported trades made outside the CLOB include trade reporting pre-opening, and that such trades are limited to crosses.

(g) 5.12(2) - provides that crosses must be made at a price at or within the ABBO (Alpha Best Bid Offer). UMIR best price execution requires the cross at or within the NBBO.

(h) 5.21(2) – Display of Orders - references "Dark Orders" which are not defined.

4. **Part VI. Market Makers and Odd Lot Dealers**

(a) The differences between the Market Makers and the Odd Lot Dealers are not clear. It appears that all Market Makers and Odd Lot Dealers must be Members and/or Approved Traders with POs. Is there an enforcement mechanism to ensure this process is adhered to? Will there be a Market Maker and Odd Lot Dealer assigned to every listing issue?

(b) 6.13(1)(a), 6.13(4) – Clarify use of NBBO in these sections. The opening in (1) says incoming Odd Lot Market Orders will auto-execute at NBBO, while (a) says if the relevant price is not available in NBBO the order will be booked. In (4), the examples referring to NBBO similarly do not seem correct.

(c) 6.16(1) – Orders booked in OLOB – Explain why these will not be disseminated on the public data feed. There is no rationale provided for why these trades should not be transparent. Also, clarify whether Odd Lots can trade against each other.

APPENDIX D – MEMBER AGREEMENT

1. Schedule 2 – Market Maker Application Form and Agreement

Clarify drafting to ensure that notification may be compressed by Alpha, but that changes to Policies must be made in compliance with Alpha's obligations for changing its Policies.

2. Schedule 3 – Odd – Lot Dealer Agreement

Attachment A - Note 9

Odd-Lot dealers are not generally assigned for debentures/bonds. Odd lots can sometimes occur when two participants match each other with odd lots, but debentures/bonds otherwise trade at face value and are not intended to be broken up into sub face value amounts. Odd lots of these instruments should not be encouraged as they may disadvantage investors who may be left without an ability to sell where no match exists.

APPENDIX E – RECOGNITION ORDER

1. Section 3. Ownership of Alpha LP and Alpha GP

Given Alpha Exchange's ownership structure which is that of a private exchange closely held by its significant customers, we submit that an ownership threshold of 5% should be the trigger for OSC approval. This is consistent with the threshold chosen by the OSC with respect to The Toronto Stock Exchange Inc., prior to the time that it became a widely-held public company.[15] We believe that this threshold is appropriate because a concentration of exchange ownership, particularly where the concentration of ownership resides among a few powerful customers, can impact the manner in which an exchange takes into account the public interest. We note further that this threshold is not a prohibition against ownership concentration; rather it is merely a provision that enables the OSC to approve an entity, whether acting individually or acting jointly or in concert with another entity, prior to that entity attaining a concentrated stake in Alpha Exchange.

2. Sections 4. and 12. Fitness

We agree that given Alpha Exchange's ownership structure, the fit and proper person test should extend to persons beyond the directors and officers of Alpha Exchange. In our view, it is appropriate that the persons identified in sections 4 and 12 are subject to a fit and proper person review.

3. Section 5. Conflict of Interest and Confidentiality

We agree that Alpha Exchange should be required to establish and maintain policies and procedures that identify and manage conflicts of interest, and that these policies and procedures should be publicly available. The Alpha Exchange recognition order references conflicts arising from the operation of the marketplace or the services it provides. As discussed at Appendix A of our submission, a conflict that is both material and specific to Alpha's model is its ownership structure. The recognition order should specifically reference conflicts of interest arising from ownership by Alpha Exchange members (or their affiliates), to ensure that the conflicts policies both identify this conflict and contain mitigation and management provisions that address the conflict.

4. Section 13. Independent Representation on the Alpha Exchange Board

(a) *The Alpha Exchange Board Standards should be published as part of the public comment process.*

In order to be in a position to provide meaningful comment on whether the Alpha Exchange board independence standards are appropriate at the outset, the standards must be published as part of this public comment process prior to Alpha Exchange beginning operations. Incorporating the Board independence standards as part of the public comment process is consistent with the practice that was followed by TMX Group Inc. and TSX Inc. when they enhanced their independence definition for Board members by, among other things, creating board independence standards. When the concept of the Board independence standards was

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[15] Section 21.11(1) of the *Securities Act* (Ontario) contained a 5% approval threshold prior to Regulation 261/02 coming into force.

initially proposed to the OSC by TMX Group, OSC staff at that time felt that these provisions were of sufficient importance to warrant a public comment process. The notice and request for comments for this purpose was published for a 30-day comment period.[16] As part of the request for comments, the complete Board of Directors Independence Standards for each of TMX Group Inc. and TSX Inc. were published. This way, the public was able to review and comment on the full content of the standards, which we believe was necessary in order be in a position to provide informed comments.

(b) *Material Relationship*

The Alpha Recognition Order at subsection 13(b) confirms that if an individual has a material relationship with Alpha Exchange, he or she will be considered not to be independent. However, this definition is incomplete because "material relationship" is not defined. Alpha Exchange may decide to use the definition of "material relationship" as set out in subsection 1.4(2) of National Instrument 52-110 – Audit Committees (NI 52-110), or it may choose to use a different definition. In any event, as that definition essentially drives the determination of independence, it must be included in the text of the Recognition Order.

Based on the limited list of individuals who are considered not to be independent, as set out in subsection 13(b) of the Recognition Order, there appear to be a number of significant relationships that could trigger non-independence that are not captured in the Recognition Order. For example, the concept that immediate family members of certain individuals also have material relationships with an entity is not included in the Recognition Order. We submit that the OSC should consider whether the definition "material relationship" should extend to individuals who are immediate family members of those individuals listed in subsections 13(b)(iv) and 13(b)(vi) of the Recognition Order. This would be consistent with the approach taken in NI 52-110 subsection 1.4(3)(b).

The Recognition Order has omitted the material relationship that is attributed to individuals who are representatives of entities that own more than 10% of Alpha Exchange. This is a fundamental material relationship that must be described in the recognition order in order for the public to understand the composition of the Alpha Exchange Board, and its independent portion.

5. Section 22. Listing of Shareholders

The Alpha Exchange Recognition Order should contain a complete process to deal with listings of affiliated organizations. The rules should not be established after the first scenario arises. These rules and processes should be created prior to Alpha receiving its exchange recognition, and should be part of the public comment process. This process is in addition to any general conflict of interest provisions that Alpha Exchange is subject to as part of its daily operations.

6. Related Party Transactions

It appears that the Alpha Exchange Recognition Order does not contain requirements regarding related party transactions. TSX Inc. is subject to related party transaction requirements in its recognition order, in order to further ensure the ongoing financial soundness of the operating exchange within the broader TMX Group organization. We submit that it would be prudent to impose similar requirements on Alpha Exchange that would ensure that any material agreement

[16] Ontario Securities Commission Bulletin, April 22, 2005. (2005) OSCB 3917.

entered into with its affiliates or associates would be on terms and conditions that are as favourable to Alpha Exchange as market terms and conditions. This will impose a discipline on Alpha Exchange that would assist it in ensuring its financial soundness, which is consistent with the public interest mandate that comes with exchange recognition.