



September 9, 2021

Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Sirs/Mesdames,

TMX Group Limited (“**TMX Group**” or “**we**”) welcomes the opportunity to comment on the Notice and Request for Comments published on August 19, 2021 by the Ontario Securities Commission (the “**OSC**”) entitled “Notice and Request for Comments - Application by GLMX Technologies, LLC. for an Exemption from the Marketplace Rules” (the “**RFC**”). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the RFC.

### **TMX Group**

TMX’s key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange, TSX Venture Exchange, TSX Alpha Exchange, the Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

### **The Need for Equivalence and Reciprocity**

As articulated in previous comment letters submitted to the OSC,<sup>1</sup> TMX Group supports a policy of mutual recognition or substituted compliance based on:

- 1) the equivalence of regulatory regimes in the home jurisdiction of the applicant for the purposes of regulatory recognition or exemption of non-Canadian marketplaces, and
- 2) reciprocal arrangement of recognition by the non-Canadian marketplaces’ home jurisdictions.

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<sup>1</sup> See for example our letters dated [March 18, 2013](#), [June 14, 2013](#), [September 23, 2013](#), [June 6, 2016](#), [November 13, 2017](#) and [April 29, 2021](#).

We also believe that regulatory authorities are best placed to assess this equivalence between their own regimes and foreign regimes, rather than requiring each applicant to establish equivalence on a case-by-case basis.

TMX's principal concern with respect to the Requested Relief arises from the fact that a Canadian exchange or electronic platform trading SFTs could not currently operate in the United States unless it is registered with the Securities and Exchange Commission (the "**SEC**") and thereby become subject to applicable US regulations. It is being proposed that the Applicant be authorized to operate a marketplace in Canada without being subject to National Instrument 21-101 - *Marketplace Operation*, National Instrument 23-101 - *Trading Rules*, and National Instrument 23-103 - *Electronic Trading and Direct Electronic Access to Marketplaces*. This creates an unlevel playing field and a competitive disadvantage for Canadian marketplaces, including TMX Group, with respect to marketplace operation vis-à-vis its foreign competitors. The OSC should, in our view, be mindful of the uneven application of such licensing regimes, and the resulting effect on domestic marketplaces.

Canadian marketplaces must register with the SEC in order to offer trading in SFTs in the US market. In the interest of fairness, given the absence of reciprocal exemption arrangements between Canada and the United States we submit that US-based marketplaces should face a similar requirement when seeking to operate in the Canadian market. In this regard, the SEC to date has not granted any foreign market an exemption from registration as either a national securities exchange or an ATS platform based on a comparability or substituted compliance finding. Indeed, the SEC has issued an enforcement report warning non-U.S. markets against offering access from the U.S. for trading securities without registering in the U.S.<sup>2</sup>

TMX Group also disagrees with the approaches that are taken in connection with non-Canadian marketplaces doing business in Ontario compared to the approach taken with domestic non-Ontario based marketplaces. TMX Group is of the view that it is only logical that the OSC consistently apply mutual reliance to other Canadian provincial regulators since it is proposing to do so for non-Canadian authorities.

## **Conclusion**

We believe that it is vitally important that the OSC ensure that marketplaces operating in Ontario are subject to sufficiently high standards of regulation and supervision, thus ensuring a level playing field in Ontario for foreign and domestic marketplaces serving Canadian market participants. We are also of the view that the OSC should, as a general matter, reconsider its approach to recognition and exemption to ensure that it does not inadvertently create a situation of unfair competition. We are concerned that the

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<sup>2</sup> See [Report of Investigation Pursuant to Section 21\(a\) of the Securities Exchange Act of 1934: Eurex Deutschland](#).

inconsistency of the current framework for the recognition of marketplaces in Ontario may give preferential treatment to non-Canadian marketplaces and create an unlevel playing field.

Our strong recommendation is that the OSC engage in a full comparative analysis of foreign regulatory regimes based on objective criteria prior to granting non-Ontario based marketplaces recognition or exemption from recognition.

In the meantime, in light of the above, we ask that the OSC reconsider granting the Applicant an exemption from recognition in Ontario.

Best regards,

DocuSigned by:  
*Rizwan Awan*  
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Rizwan Awan

President, Equities Trading and Head of TMX Markets, Products & Services

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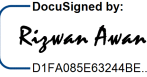
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