

**B.2.6 TMX Group Limited et al. – ss. 21, 144**

**Headnote**

Subsection 144(1) of the Securities Act (Ontario) – application for order varying the Commission’s order recognizing TMX Group Limited, TSX Inc. and Alpha Exchange Inc. as exchanges – variations required to replace references to IIROC – requested orders granted.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144(1).

May 12, 2023

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5, AS AMENDED  
(Act)**

**AND**

**IN THE MATTER OF  
TMX GROUP LIMITED  
AND  
TSX INC.  
AND  
ALPHA EXCHANGE INC.**

**ORDER  
(Sections 21 and 144 of the Act)**

**WHEREAS** the Ontario Securities Commission (**Commission**) issued an order dated July 4, 2012, which was varied on April 24, 2015, September 29, 2015, June 22, 2018, February 8, 2019, and May 31, 2019 and August 31, 2020, recognizing each of Maple Group Acquisition Corporation (now TMX Group Limited), TMX Group Inc., TSX Inc., Alpha Trading Systems Limited Partnership, and Alpha Exchange Inc. as exchanges pursuant to section 21 of the Act (**Exchange Recognition Order**);

**AND WHEREAS** the Commission considers the proper operation of the exchanges as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of the exchanges be dealt with appropriately, the fairness and efficiency of the market not be impaired by any anti-competitive activity, and that systemic risks are monitored and controlled;

**AND WHEREAS** TMX Group Limited (**TMX Group**), TSX Inc. (**TSX**), and Alpha Exchange Inc. (**Alpha Exchange**) have agreed to the applicable terms and conditions set out in the Schedules to the Exchange Recognition Order;

**AND WHEREAS** TMX Group provided to Commission Staff a letter, dated June 28, 2012, regarding TMX Group’s undertakings to the Autorité des marchés financiers, which is attached to the Exchange Recognition Order at Appendix B;

**AND WHEREAS** the Commission has received an application under section 144 of the Act to vary and restate the Exchange Recognition Order to reflect the legal name change of Investment Industry Regulatory Organization of Canada to Canadian Investment Regulatory Organization (**CIRO**) (**Application**);

**AND WHEREAS** based on the Application, the Commission has determined that:

- (a) TMX Group, TSX, and Alpha Exchange continue to satisfy the recognition criteria set out in Schedule 1 to the Exchange Recognition Order,
- (b) it is in the public interest to continue to recognize each of TMX Group, TSX, and Alpha Exchange as an exchange pursuant to section 21 of the Act, and
- (c) it is not prejudicial to the public interest to vary and restate the Exchange Recognition Order pursuant to section 144 of the Act;

**IT IS ORDERED**, pursuant to section 144 of the Act, that the Application to vary and restate the Exchange Recognition Order is granted.

**IT IS ORDERED**, pursuant to section 21 of the Act, that:

- (a) TMX Group continues to be recognized as an exchange,
- (b) TSX continues to be recognized as an exchange, and
- (c) Alpha Exchange continues to be recognized as an exchange,

provided that TMX Group, TSX, and Alpha Exchange comply with the terms and conditions set out in the Schedules to the Exchange Recognition Order, as applicable.

**DATED** this 12th day of May 2023, to take effect June 1, 2023.

“Susan Greenglass”  
Director, Market Regulation

**SCHEDULE 1  
CRITERIA FOR RECOGNITION**

**PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101**

**1.1 Compliance with NI 21-101 and NI 23-101**

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation (NI 21-101)* and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

- (a) access;
- (b) marketplace operations;
- (c) exchange rules, policies and other similar instruments;
- (d) order and trade transparency;
- (e) transparency of marketplace operations;
- (f) record keeping;
- (g) marketplace systems and business continuity planning;
- (h) confidentiality of information;
- (i) outsourcing;
- (j) clearing and settlement;
- (k) fair and orderly markets;
- (l) the management of conflicts of interest; and
- (m) filing of financial statements.

**PART 2 GOVERNANCE**

**2.1 Governance**

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange;
- (b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;
- (c) fair, meaningful and diverse representation on the board of directors (**Board**) and any committees of the Board, including:
  - (i) appropriate representation of independent directors, and
  - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers, and employees of the exchange.

**2.2 Fitness**

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

### **PART 3 ACCESS**

#### **3.1 Fair Access**

- (a) The exchange has established appropriate written standards for access to its services, including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.
- (b) The access standards and the process for obtaining, limiting, and denying access are fair, transparent, and applied reasonably.

### **PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE**

#### **4.1 Regulation**

The exchange has the authority, resources, capabilities, systems, and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

### **PART 5 RULES AND RULEMAKING**

#### **5.1 Rules and Rulemaking**

- (a) The exchange has rules, policies, and other similar instruments (**Rules**) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.
- (b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies, and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to
  - (i) ensure a fair and orderly market, and
  - (ii) provide a framework for disciplinary and enforcement actions.

### **PART 6 DUE PROCESS**

#### **6.1 Due Process**

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

### **PART 7 CLEARING AND SETTLEMENT**

#### **7.1 Clearing and Settlement**

The exchange has appropriate arrangements for the clearing and settlement of trades.

### **PART 8 SYSTEMS AND TECHNOLOGY**

#### **8.1 Information Technology Risk Management Procedures**

The exchange has appropriate risk management procedures in place, including those that handle trading errors, trading halts, and circuit breakers.

### **PART 9 FINANCIAL VIABILITY**

#### **9.1 Financial Viability**

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

**PART 10 FEES**

**10.1 Fees**

- (a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those listed in paragraphs 1.1(a) and (e) of this Schedule.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

**PART 11 INFORMATION SHARING AND REGULATORY COOPERATION**

**11.1 Information Sharing and Regulatory Cooperation**

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**SCHEDULE 2**  
**TERMS AND CONDITIONS APPLICABLE TO TMX GROUP LIMITED, TSX INC., AND ALPHA EXCHANGE**

**1. DEFINITIONS AND INTERPRETATION**

(a) For the purposes of this Schedule:

“accounting principles” means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“affiliated entity” has the meaning ascribed to it in section 1.3 of NI 21-101;

“Alpha Member” means a person or company that has been permitted to access the trading facilities of Alpha Exchange and is subject to regulatory oversight by Alpha Exchange, and the person’s or company’s representatives;

“associate” has the meaning ascribed to it in subsection 1(1) of the Act;

“ATS” means an alternative trading system as defined in subsection 1(1) of the Act;

“audited consolidated financial statements” means financial statements that

(i) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, including that they adhere to the standards specified for consolidated financial statements in International Accounting Standard 27 *Consolidated and Separate Financial Statements*,

(ii) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and

(iii) are audited in accordance with Canadian GAAS and are accompanied by an auditor’s report;

“Board” means the board of directors;

“criteria for recognition” means all the criteria for recognition set out in Schedule 1 to the Exchange Recognition Order;

“dealer” means “investment dealer” as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements*;

“Governance Committee” means the governance committee established by TMX Group pursuant to section 17 of Schedule 3 to the Exchange Recognition Order;

“CIRO” means the Canadian Investment Regulatory Organization;

“marketplace” has the meaning ascribed to it in subsection 1(1) of the Act;

“marketplace participant” has the meaning ascribed to it in section 1.1 of NI 21-101;

“NI 21-101” means National Instrument 21-101 *Marketplace Operation*;

“officer” has the meaning ascribed to it in subsection 1(1) of the Act;

“regulated TMX marketplace” means a TMX marketplace that is regulated by the Commission as a recognized exchange or an ATS;

“Regulatory Oversight Committee” means the committee established by TMX Group pursuant to section 18 of Schedule 3 to the Exchange Recognition Order;

“Rule” means a rule, policy, or other similar instrument of TSX or Alpha Exchange, as applicable;

“shareholder” means a person or company that holds any class or series of voting shares of TMX Group;

“significant TMX shareholder” means a person or company that:

(i) beneficially owns or exercises control or direction over more than 10% of the outstanding shares of TMX Group provided, however, that the ownership of or control or direction over additional TMX Group

shares in connection with the following activities will not be included for the purposes of determining whether the 10% threshold has been exceeded:

- (A) investment activities on behalf of the person or company or its affiliated entity where such investments are made (I) by a bona fide third party investment manager with discretionary authority (subject to such retained discretion in order for the person or company or its affiliated entity to fulfil its fiduciary duties); or (II) by an investment fund or other pooled investment vehicle in which the person or company or such affiliated entity has directly or indirectly invested and which is managed by a third party who has not been provided with confidential, undisclosed information about TMX Group,
- (B) acting as a custodian for securities in the ordinary course,
- (C) normal course trading (including proprietary client facilitation trading) and wealth management activities (including, for greater certainty, in connection with the management of any mutual funds, pooled funds, trust accounts, estate portfolios and other investor funds and portfolios), including electronic securities trading, conducted for or on behalf of clients of the person or company, provided that any fund manager with discretionary authority carrying out such activities on behalf of such clients, or such clients, have not been provided with confidential, undisclosed information about TMX Group,
- (D) the acquisition of TMX Group shares in connection with the adjustment of index-related portfolios or other “basket” related trading,
- (E) making a market in securities to facilitate trading in shares of TMX Group by third party clients or to provide liquidity to the market in the person or company’s capacity as a designated market maker for shares of TMX Group securities, in the person or company’s capacity as designated market maker for derivatives on TMX Group shares, or in the person or company’s capacity as market maker or “designated broker” for exchange traded funds which may have investments in shares of TMX Group, in each case in the ordinary course, (which, for greater certainty, will include acquisitions or other derivative transactions undertaken in connection with hedging positions of, or in relation to, TMX Group shares), or
- (F) providing financial services to any other person or company in the ordinary course of business of its and their banking, securities, wealth and insurance businesses, provided that such other person or company has not been provided with confidential, undisclosed information about TMX Group,

and subject to the conditions that the ownership of or control or direction over TMX Group shares by a person or company in connection with the activities listed in (A) through (F) above:

- (G) is not intended by that person or company to facilitate evasion of the 10% threshold set out in clause (i), and
  - (H) does not provide that person or company the ability to exercise voting rights over more than 10% of the voting shares of TMX Group in a manner that is solely in the interests of that person or company as it relates to that person or company’s ownership of or control or direction over the subject shares, except where the ability to exercise voting rights over more than 10% of the voting shares arises as a result of the activities listed in (E) above in which case the person or company must not exercise its voting rights with respect to those excess voting shares; or
- (ii) is a shareholder whose nominee is on the TMX Group Board, for as long as that nominee remains on the TMX Group Board;

“TMX clearing agency” means any clearing agency owned or operated by TMX Group or TMX Group’s affiliated entities;

“TMX issuer” means a person or company whose securities are listed on a TMX marketplace;

“TMX marketplace” means any marketplace owned or operated by TMX Group or TMX Group’s affiliated entities;

“TMX marketplace participant” means a marketplace participant of any TMX marketplace;

“TMX trading facility” means any trading facility owned or operated by TMX Group or TMX Group’s affiliated entities;

“TSX issuer” means a person or company whose securities are listed on TSX;

“TSX PO” means a person or company that has been permitted to access the trading facilities of TSX and is subject to regulatory oversight by TSX, and the person’s or company’s representatives; and

“unaudited non-consolidated financial statements” means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

- (i) they are not audited; and
  - (ii) investments in subsidiary entities, jointly controlled entities and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 *Consolidated and Separate Financial Statements*.
- (b) For the purposes of this Schedule, an individual is independent if the individual is “independent” within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time, but is not independent if the individual is:
- (i) a partner, director, officer or employee, of a TMX marketplace participant or an associate of a partner, director, officer or employee of a TMX marketplace participant, or
  - (ii) a partner, director, officer or employee of an affiliated entity of a TMX marketplace participant, who is responsible for or is actively or significantly engaged in the day-to-day operations or activities of that TMX marketplace participant.

## **2. PUBLIC INTEREST RESPONSIBILITIES**

- (a) The recognized exchange must conduct the business and operations of the recognized exchange in a manner that is consistent with the public interest.
- (b) The mandate of the Board of the recognized exchange must expressly include the regulatory and public interest responsibilities of the recognized exchange.

## **3. CRITERIA FOR RECOGNITION**

The recognized exchange must continue to meet the criteria for recognition set out in Schedule 1 to the Exchange Recognition Order.

## **4. FITNESS**

In order to ensure that the recognized exchange operates with integrity and in the public interest, the recognized exchange must take reasonable steps to ensure that each director and officer of the recognized exchange is a fit and proper person. As part of those steps, the recognized exchange will consider whether the past conduct of each director or officer affords reasonable grounds for the belief that the director or officer will perform his or her duties with integrity and in a manner that is consistent with the public interest responsibilities of the recognized exchange.

## **5. BOARD OF DIRECTORS**

- (a) The recognized exchange must ensure that at least 50% of its Board members are independent directors.
- (b) The chair of the Board of the recognized exchange must be independent.
- (c) In the event that the recognized exchange fails to meet the requirements of paragraphs (a) or (b) of this section, it must immediately advise the Commission and take appropriate measures to promptly remedy such failure.
- (d) The recognized exchange must ensure that the Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least 50% being independent.

## **6. REPRESENTATION OF INDEPENDENT DEALERS**

At least one director of the recognized exchange must be a representative of a marketplace participant that is not affiliated with any Canadian Schedule I bank.



**7. GOVERNANCE REVIEW**

- (a) At the request of the Commission, the recognized exchange must engage an independent consultant, or independent consultants, acceptable to the Commission to prepare a written report assessing the governance structure of TMX Group and TSX and will also include Alpha Exchange if requested by the Commission (**Governance Review**).
- (b) The recognized exchange must provide the written report to its Board promptly after the report's completion and then to the Commission within 30 days of providing it to its Board.
- (c) The scope of the Governance Review must be approved by the Commission.
- (d) The Governance Review must include an appropriate degree of public consultation, including consultation with users of the recognized exchange's services and facilities.

**8. FEES, FEE MODELS, AND INCENTIVES**

- (a) The recognized exchange must not, through any fee schedule, any fee model, or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company; or
  - (ii) any discount, rebate, allowance, price concession, or other similar arrangement for any service or product offered by the recognized exchange that is conditional upon:
    - (A) the requirement to have a TMX marketplace be set as the default or first marketplace a marketplace participant routes to, or
    - (B) the router of a TMX marketplace being used as the marketplace participant's primary router.
- (b) Except with the prior approval of the Commission, the recognized exchange must not, through any fee schedule, any fee model, or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession, or other similar arrangement on any services or products offered by the recognized exchange that is conditional upon the purchase of any other service or product provided by the recognized exchange or any affiliated entity; or
  - (ii) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.
- (c) The recognized exchange must obtain prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to, any incentives relating to arrangements that provide for equity ownership in TMX Group for marketplace participants or their affiliated entities based on trading volumes or values on TMX marketplaces.
- (d) The recognized exchange must not require another person or company to purchase or otherwise obtain products or services from any TMX clearing agency as a condition of the recognized exchange supplying or continuing to supply a product or service.
- (e) Except with the prior approval of the Commission, the recognized exchange must not require another person or company to purchase or otherwise obtain products or services from the recognized exchange, any TMX marketplace, or a significant TMX shareholder as a condition of the recognized exchange supplying or continuing to supply a product or service.
- (f) At the request of the Commission, the recognized exchange must:
  - (i) conduct a review, the scope of which must be approved by the Commission, of the fees and fee models of the recognized exchange and all regulated TMX marketplaces that are related to trading, clearing, settlement, depository, data, and any other services specified by the Commission;
  - (ii) include input from relevant stakeholders; and

- (iii) provide a written report on the outcome of such review to its Board promptly after the report's completion and then to the Commission within 30 days of providing it to its Board.
- (g) If the Commission considers that it would be in the public interest, the Commission may require a recognized exchange to submit, for approval by the Commission, a fee, fee model, or incentive that has previously been submitted and/or approved by the Commission.
- (h) Where the Commission decides not to approve the fee, fee model, or incentive submitted under paragraph (g), any previous approval for the fee, fee model, or incentive must be revoked, if applicable, and the recognized exchange must no longer be permitted to offer the fee, fee model, or incentive.

## **9. ORDER ROUTING**

The recognized exchange must not support, encourage, or incent, either through fee incentives or otherwise, TMX marketplace participants to coordinate the routing of TMX marketplace participants' orders to a particular TMX marketplace or TMX trading facility.

## **10. CLEARING AND SETTLEMENT**

The recognized exchange must not establish requirements relating to clearing and settlement of trades that would result in:

- (a) unfair discrimination of or between market participants based on the clearing agency used; or
- (b) an imposition of any burden on competition among clearing agencies or back-office or post-trade service providers that is not reasonably necessary or appropriate; or
- (c) an unreasonable prohibition, condition, or limitation relating to access by a person or company to services offered by the recognized exchange or a TMX clearing agency.

## **11. FINANCIAL REPORTING**

The recognized exchange must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days after the commencement of each fiscal year.

## **12. ADDITIONAL INFORMATION**

The recognized exchange must provide the Commission with the information set out in Appendix A to this Schedule 2, as amended from time to time.

## **13. PROVISION OF INFORMATION**

- (a) The recognized exchange must, and must cause its affiliated entities to, promptly provide the Commission, on request, any and all data, information, and analyses in the custody or control of the recognized exchange or any of its affiliated entities, without limitations, redactions, restrictions, or conditions, including, without limiting the generality of the foregoing:
  - (i) data, information, and analyses relating to all of its or their businesses; and
  - (ii) data, information, and analyses of third parties in its or their custody or control.
- (b) The recognized exchange must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, other recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.
- (c) The disclosure or sharing of information by the recognized exchange or any affiliated entities pursuant to the Schedules to the Exchange Recognition Order is subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its role as registrar, issuing agent, transfer agent, or paying agent for the Government of Canada.

## **14. COMPLIANCE WITH TERMS AND CONDITIONS**

- (a) The recognized exchange must certify in writing to the Commission, in a certificate signed by its CEO and general counsel, within one year of the effective date of the recognition of the recognized exchange as an exchange pursuant to this Exchange Recognition Order and every year subsequent to that date, or at other

times required by the Commission, that the recognized exchange is in compliance with the terms and conditions applicable to it in the Exchange Recognition Order and describe in detail:

- (i) the steps taken to require compliance;
  - (ii) the controls in place to verify compliance; and
  - (iii) the names and titles of employees who have oversight of compliance.
- (b) If a recognized exchange or its directors, officers, or employees become(s) aware of a breach or a possible breach of any of the terms and conditions applicable to the recognized exchange under the Schedules to the Exchange Recognition Order, such person must, within two business days after becoming aware of the breach or possible breach, notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer, or employee of the recognized exchange must provide to the Regulatory Oversight Committee details sufficient to describe the nature, date, and effect (actual and anticipated) of the breach or possible breach.
- (c) The Regulatory Oversight Committee must, within two business days after being notified of the breach or possible breach under (b), notify the Commission and confirm that the breach or possible breach is under investigation as required by (d).
- (d) The Regulatory Oversight Committee must promptly cause an investigation to be conducted of the breach or possible breach reported under (b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to the recognized exchange under the Schedules to the Exchange Recognition Order, the Regulatory Oversight Committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date, and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

**APPENDIX A**

**Additional Reporting Obligations**

**1. Ad Hoc**

- (a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding, or other similar arrangement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).
- (b) Any plans by the recognized exchange or its affiliated entities that carry on business in Canada to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.
- (c) Immediate notification if the recognized exchange:
  - (i) becomes the subject of any order, directive, or other similar action of a governmental or regulatory authority;
  - (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or
  - (iii) becomes, or is notified that it will become, the subject of a material lawsuit.
- (d) Any strategic plan for the recognized exchange and its affiliated entities carrying on business in Canada, including strategic plans relating to its equities, fixed income, and derivatives (including exchange-traded and over-the-counter or otherwise) businesses, within 30 days of approval by the Board.
- (e) Any information submitted by the recognized exchange to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order, or NI 21-101, provided concurrently.

**2. Annual Reporting**

- (a) At least annually, or more frequently if required by the Commission, the recognized exchange's assessment of the risks, including business risks, facing the recognized exchange and its affiliated entities carrying on business in Canada, and its plan for addressing such risks.

**SCHEDULE 3**  
**TERMS AND CONDITIONS APPLICABLE TO TMX GROUP LIMITED**

**15. DEFINITIONS AND INTERPRETATION**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

**16. SHARE OWNERSHIP RESTRICTIONS**

- (a) TMX Group must continue to own, directly or indirectly, all of the issued and outstanding voting shares of TSX and Alpha Exchange.
- (b) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over more than 10%, or such other percentage as may be prescribed by the Commission, of any class or series of voting shares of TMX Group. The Commission's approval under this paragraph may be subject to such terms and conditions as the Commission considers appropriate.
- (c) The articles of TMX Group must contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares, and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

**17. GOVERNANCE COMMITTEE**

- (a) TMX Group must maintain a governance committee of the Board that, at a minimum:
  - (i) is made up of independent directors;
  - (ii) confirms the status of nominees to the TMX Group Board as independent before the name of the individual is submitted to shareholders as a nominee for election to the TMX Group Board;
  - (iii) confirms on an annual basis that the status of the directors who are independent has not changed; and
  - (iv) assesses and approves all nominees of management to the TMX Group Board.

**18. REGULATORY OVERSIGHT COMMITTEE**

- (a) TMX Group must establish and maintain a Regulatory Oversight Committee that, at a minimum:
  - (i) has a minimum of three directors;
  - (ii) is made up of independent directors;
  - (iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:
    - (A) ownership interests in TMX Group by any TMX marketplace participant with representation on the TMX Group Board,
    - (B) increased concentration of ownership of the recognized exchange, and
    - (C) the profit-making objective and the public interest responsibilities of TMX Group, including general oversight of the management of the regulatory and public interest responsibilities of TSX and Alpha Exchange;
  - (iv) oversees the establishment of mechanisms to avoid or appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by TMX Group, TSX, or Alpha Exchange, including those that are required to be established pursuant to the Schedules to the Exchange Recognition Order;
  - (v) reviews the effectiveness of the policies and procedures regarding conflicts of interest on a regular, and at least annual, basis; and

- (vi) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval or notification for such reporting.
- (b) The Regulatory Oversight Committee must provide such information as may be required by the Commission from time to time.

**19. FEES, FEE MODELS, AND INCENTIVES**

- (a) TMX Group must ensure that a regulated TMX marketplace does not, through any fee schedule, any fee model, or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a particular market participant or any other particular person or company; or
  - (ii) any discount, rebate, allowance, price concession, or other similar arrangement for any service or product offered by the regulated TMX marketplace that is conditional upon:
    - (A) the requirement to have a TMX marketplace be set as the default or first marketplace a marketplace participant routes to, or
    - (B) the router of a TMX marketplace being used as the marketplace participant's primary router.
- (b) TMX Group must ensure that any affiliated entity does not, through any fee schedule, any fee model, or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession, or other similar arrangement on any services or products offered by the affiliated entity that is conditional upon the purchase of any other service or product provided by a regulated TMX marketplace; or
  - (ii) any discount, rebate, allowance, price concession, or other similar arrangement for any service or product offered by the affiliated entity that is conditional upon
    - (A) the requirement to have a regulated TMX marketplace be set as the default or first marketplace a marketplace participant routes to, or
    - (B) the router of a regulated TMX marketplace being used as the marketplace participant's primary router.
- (c) Unless prior approval has been granted by the Commission, TMX Group must ensure that a regulated TMX marketplace does not, through any fee schedule, any fee model, or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession, or other similar arrangement on any services or products offered by the regulated TMX marketplace that is conditional upon the purchase of any other service or product provided by the regulated TMX marketplace or any affiliated entity; or
  - (ii) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.
- (d) TMX Group must ensure that a regulated TMX marketplace obtains prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to, any incentives relating to arrangements that provide for equity ownership in TMX Group for marketplace participants or their affiliated entities based on trading volumes or values on TMX marketplaces.
- (e) TMX Group must ensure that a regulated TMX marketplace does not require another person or company to purchase or otherwise obtain products or services from any TMX clearing agency as a condition of the regulated TMX marketplace supplying or continuing to supply a product or service.
- (f) TMX Group must ensure that a regulated TMX marketplace does not require a person or company to obtain products or services from the regulated TMX marketplace, any other TMX marketplace, or a significant TMX

shareholder as a condition of the regulated TMX marketplace supplying or continuing to supply a product or service, unless prior approval has been granted by the Commission.

- (g) TMX Group must ensure that any affiliated entity does not require another person or company to obtain products or services from any regulated TMX marketplace or any TMX clearing agency as a condition of the affiliated entity supplying or continuing to supply a product or service.
- (h) If the Commission considers that it would be in the public interest, the Commission may require a regulated TMX marketplace to submit, for approval by the Commission, a fee, fee model, or incentive that has previously been submitted to and/or approved by the Commission.
- (i) Where the Commission decides not to approve the fee, fee model, or incentive submitted under paragraph (h), any previous approval for the fee, fee model, or incentive will be revoked, if applicable, and the regulated TMX marketplace will no longer be permitted to offer the fee, fee model, or incentive.

## **20. CONFIDENTIALITY PROCEDURES**

- (a) TMX Group must establish, maintain, and require compliance with policies and procedures that:
  - (i) require that confidential information regarding marketplace operations, regulation functions, a TMX marketplace participant or TMX issuer that is obtained by a partner, director, officer, or employee of a significant TMX shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of a TMX marketplace:
    - (A) be kept separate and confidential from the business or other operations of the significant TMX shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and
    - (B) not be used to provide an advantage to the significant TMX shareholder or its affiliated entities.
- (b) TMX Group must regularly review compliance with the policies and procedures established in accordance with (a) and must document each review and any deficiencies and how those deficiencies were remedied.

## **21. ALLOCATION OF RESOURCES**

- (a) TMX Group must, for so long as TSX carries on business as an exchange, allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.
- (b) TMX Group must, for so long as Alpha Exchange carries on business as an exchange, allocate sufficient financial and other resources to Alpha Exchange to ensure that Alpha Exchange can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.
- (c) TMX Group must notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources, as required under (a) or (b), to TSX or Alpha Exchange, as applicable.
- (d) TMX Group must ensure that there continues to be significant focus on the development of its core senior equities business, including by allocating sufficient financial and other resources to allow for such development.

**SCHEDULE 4**  
**TERMS AND CONDITIONS APPLICABLE TO TSX**

**22. DEFINITIONS AND INTERPRETATION**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

**23. CONFLICTS OF INTEREST AND CONFIDENTIALITY**

- (a) TSX must establish, maintain and require compliance with policies and procedures that:
  - (i) require that confidential information regarding exchange operations, regulation functions, a TSX PO or TSX Issuer that is obtained by a partner, director, officer or employee of a significant TMX shareholder through that individual's involvement in the management or oversight of exchange operations or regulation functions:
    - (A) be kept separate and confidential from the business or other operations of the significant TMX shareholder, except with respect to information regarding exchange operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and
    - (B) not be used to provide an advantage to the significant TMX shareholder or its affiliated entities.
- (b) TSX must establish, maintain, and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant TMX shareholder or an affiliate of a significant TMX shareholder on TSX, and such policies and procedures, and any amendments, must not be implemented without prior approval of the Commission.
- (c) TSX shall establish, maintain, and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest arising from the listing of the shares of TMX Group or a competitor to TMX Group on TSX, and such policies and procedures, and any amendments, shall not be implemented without prior approval of the Commission.
- (d) TSX must regularly review compliance with the policies and procedures established under (a), (b) and (c), and must document each review, and any deficiencies and how those deficiencies were remedied.

**24. ACCESS**

TSX's requirements must provide access to the facilities of TSX only to properly registered investment dealers that are members of CISO and satisfy the access requirements reasonably established by TSX.

**25. REGULATION OF TSX POs AND TSX ISSUERS**

- (a) TSX must establish, maintain, and require compliance with policies and procedures that effectively monitor and enforce the Rules against TSX Issuers and TSX POs, either directly or indirectly through a regulation services provider.
- (b) TSX has retained and will continue to retain CISO as a regulation services provider to provide certain regulation services which have been approved by the Commission.
- (c) TSX must perform all other regulation functions not performed by CISO and must maintain adequate staffing, systems, and other resources in support of those functions. TSX must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of TSX.
- (d) TSX must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.



**26. RULES AND RULEMAKING**

- (a) TSX must establish and maintain a TSX Board Rules Committee that, at a minimum:
  - (i) is composed of independent directors; and
  - (ii) reviews and decides, or makes recommendations to the TSX Board, on all Rules that must be submitted to the Commission for review and approval under Schedule 6.

**27. FINANCIAL VIABILITY MONITORING**

- (a) TSX must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.
- (b) TSX must calculate monthly the following financial ratios:
  - (i) a current ratio, being the ratio of current assets to current liabilities;
  - (ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to adjusted EBITDA (i.e., earnings before interest, taxes, stock-based compensation, depreciation, and amortization) for the most recent 12 months; and
  - (iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,in each case calculated based on both consolidated and non-consolidated financial statements.
- (c) TSX must report quarterly in writing to the Commission the monthly calculations for the previous quarter of the financial ratios as required to be calculated under (b).
- (d) If TSX determines that it does not have, or anticipates that, in the next twelve months, it will not have, on a consolidated or non-consolidated basis, sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons for the deficiency, and any impact on the financial viability of TSX.
- (e) Upon receipt of a notification made by TSX under (d), the Commission may, as determined appropriate, impose additional terms or conditions on TSX.
- (f) TSX must deliver to the Commission its annual financial budget, on a non-consolidated basis, together with the underlying assumptions, that has been approved by its Board, within 30 days after the commencement of each fiscal year.

**28. ADDITIONAL INFORMATION**

- (a) TSX must provide the Commission with:
  - (i) the information set out in Appendix A to this Schedule 4, as amended from time to time; and
  - (ii) any information required to be provided by TSX to CIRO, including any and all order and trade information, as required by the Commission.

**APPENDIX A**

**Additional Reporting Obligations**

**1. Definitions and Interpretation**

For the purposes of this Appendix:

“Participant” means a TSX PO or Alpha Member, as applicable.

**2. Ad Hoc**

- (a) Prior notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding, or other similar arrangement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace, or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).
- (b) Copies of all notices, bulletins, and similar forms of communication that the recognized exchange sends to Participants or issuers.
- (c) Prompt notification of any suspension or delisting of an issuer, including the reasons for the suspension or delisting.
- (d) Prompt notification of any suspension or termination of a Participant’s status as a Participant of the recognized exchange, including the reasons for the suspension or termination.

**3. Quarterly Reporting**

- (a) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Participant or issuer, which shall include the following information:
  - (i) the name of the Participant or issuer;
  - (ii) the type of exemption or waiver granted during the period;
  - (iii) the date of the exemption or waiver; and
  - (iv) a description of the recognized exchange’s reason for the decision to grant the exemption or waiver.
- (b) A quarterly report regarding original listing applications containing the following information:
  - (i) the name of any issuer whose original listing application was conditionally approved, the date of such approval, the type of listing, the category of listing and, if known, whether the issuer was denied an application to list its securities on another marketplace;
  - (ii) the name of any issuer whose original listing application was rejected and the reasons for rejection, by category of listing; and
  - (iii) the name of any issuer whose original listing application was withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category of listing.
- (c) A quarterly report summarizing all significant incidents of issuer non-compliance identified by the recognized exchange during the period, together with a summary of the actions taken to address and resolve the incidents of non-compliance.

**SCHEDULE 5  
TERMS AND CONDITIONS APPLICABLE TO ALPHA EXCHANGE**

**29. DEFINITIONS AND INTERPRETATION**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

**30. CONFLICTS OF INTEREST AND CONFIDENTIALITY**

- (a) Alpha Exchange must establish, maintain, and require compliance with policies and procedures that:
  - (i) require that confidential information regarding exchange operations, regulation functions, or an Alpha Member that is obtained by a partner, director, officer, or employee of a significant TMX shareholder through that individual's involvement in the management or oversight of exchange operations or regulation functions:
    - (A) be kept separate and confidential from the business or other operations of the significant TMX shareholder, except with respect to information regarding exchange operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and
    - (B) not be used to provide an advantage to the significant TMX shareholder or its affiliated entities.
- (b) Alpha Exchange must regularly review compliance with the policies and procedures established under (a) and must document each review and any deficiencies and how those deficiencies were remedied.

**31. ACCESS**

Alpha Exchange's requirements must provide access to the facilities of Alpha Exchange only to properly registered investment dealers that are members of CISO and satisfy the access requirements reasonably established by Alpha Exchange.

**32. REGULATION OF ALPHA MEMBERS**

- (a) Alpha Exchange must establish, maintain, and require compliance with policies and procedures that effectively monitor and enforce the Rules against Alpha Members, either directly or indirectly through a regulation services provider.
- (b) Alpha Exchange has retained and will continue to retain CISO as a regulation services provider to provide certain regulation services which have been approved by the Commission.
- (c) Alpha Exchange must perform all other regulation functions not performed by CISO, and must maintain adequate staffing, systems, and other resources in support of those functions. Alpha Exchange must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Alpha Exchange.
- (d) Alpha Exchange must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

**33. RULES AND RULEMAKING**

- (a) Alpha Exchange must establish and maintain an Alpha Exchange Board Rules Committee that, at a minimum:
  - (i) is composed of independent directors; and
  - (ii) reviews and decides, or makes recommendations to the Alpha Exchange Board, on all Rules that must be submitted to the Commission for review and approval under Schedule 6.

**34. FINANCIAL VIABILITY MONITORING**

- (a) Alpha Exchange must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.
- (b) Alpha Exchange must calculate monthly the following financial ratios:

- (i) a current ratio, being the ratio of current assets to current liabilities;
  - (ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to adjusted EBITDA (i.e., earnings before interest, taxes, stock-based compensation, depreciation, and amortization) for the most recent 12 months; and
  - (iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,
- in each case calculated based on both consolidated and non-consolidated financial statements.
- (c) Alpha Exchange must report quarterly in writing to the Commission, the monthly calculations for the previous quarter of the financial ratios as required to be calculated under (b).
  - (d) If Alpha Exchange determines that it does not have, or anticipates that, in the next twelve months, it will not have, on a consolidated or non-consolidated basis, sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons for the deficiency, and any impact on the financial viability of Alpha Exchange.
  - (e) Upon receipt of a notification made by Alpha Exchange under (d), the Commission may, as determined appropriate, impose additional terms or conditions on Alpha Exchange.
  - (f) Alpha Exchange must deliver to the Commission its annual financial budget, on a non-consolidated basis, together with the underlying assumptions, that has been approved by its Board, within 30 days after the commencement of each fiscal year.

**35. ADDITIONAL INFORMATION**

- (a) Alpha Exchange must provide the Commission with:
  - (i) the information set out in Appendix A to Schedule 4, as amended from time to time; and
  - (ii) any information required to be provided by Alpha Exchange to CIRO, including any and all order and trade information, as required by the Commission.

**SCHEDULE 6**  
**PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND**  
**THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO**

**1. Purpose**

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director. This Protocol also establishes requirements regarding the time at which an Exchange may begin operations following recognition by the Commission.

**2. Definitions**

For the purposes of this Protocol:

- (a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.
- (b) *Director* means "Director" as defined in subsection 1(1) of the Securities Act (Ontario).
- (c) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.
- (d) *Fee Change subject to Public Comment* means a Fee Change that, in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.
- (e) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that
  - (i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or
  - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (f) *Housekeeping Rule* means a new Rule or an amendment to a Rule that
  - (i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or
  - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (g) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.
- (h) *Rule* includes a rule, policy and other similar instrument of the Exchange.
- (i) *Significant Change* means an amendment to the information in Form 21-101F1 other than
  - (i) a Housekeeping Change,
  - (ii) a Fee Change, or
  - (iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

- (j) *Significant Change subject to Public Comment* means a Significant Change that
  - (i) is listed in paragraphs 6.1(4)(a) or (b) of Companion Policy 21-101 CP, or
  - (ii) in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

**3. Scope**

The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

**4. Board Approval**

The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

**5. Waiving or Varying the Protocol**

- (a) The Exchange may submit a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.
- (b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:
  - (i) written notice that Staff object to granting the waiver or variation; or
  - (ii) written notice that the waiver or variation has been granted by Staff.

**6. Commencement of Exchange Operations**

The Exchange must not begin operations until a reasonable period of time after the Exchange is notified that it has been recognized by the Commission.

**7. Materials to be Submitted and Timelines**

- (a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will provide Staff with the following materials:
  - (i) a cover letter that, together with the notice for publication submitted under paragraph (a)(ii), if applicable, fully describes:
    - (A) the proposed Fee Change, Public Interest Rule or Significant Change;
    - (B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;
    - (C) the rationale for the proposal and any relevant supporting analysis;
    - (D) the expected impact, including the quantitative impact, of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;
    - (E) the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets;
    - (F) a summary of any consultations, including consultations with external parties, undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, and the internal governance process followed to approve the Rule or Change;
    - (G) for a proposed Fee Change:
      - 1. the expected number of marketplace participants likely to be subject to the new fee, along with a description of the costs they will incur; and
      - 2. if the proposed Fee Change applies differently across types of marketplace participants, a description of this difference, how it impacts each class of affected marketplace participant, including, where applicable, numerical examples, and any justification for the difference in treatment.
    - (H) if the Public Interest Rule or Significant Change will require members or service vendors to modify their systems after implementation of the Rule or Change, the expected impact of the Rule or Change on the systems of members and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the Public Interest Rule or Significant Change on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets;

- (I) where the proposed Significant Change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment;
    - (J) a discussion of any alternatives considered; and
    - (K) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;
  - (ii) for a proposed Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, a notice for publication that generally includes the information required under paragraph (a)(i), except information that, if included in the notice, would result in the public disclosure of sensitive information or confidential or proprietary financial, commercial or technical information;
  - (iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
  - (iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.
- (b) The Exchange will submit the materials set out in subsection (a)
- (i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and
  - (ii) at least fifteen business days prior to the expected implementation date of a proposed Fee Change.
- (c) For a Housekeeping Rule, the Exchange will provide Staff with the following materials:
- (i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;
  - (ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;
  - (iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
  - (iv) a notice for publication on the OSC website or in the OSC Bulletin that contains the information in paragraph (ii) as well as the implementation date for the Rule and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.
- (d) For a Housekeeping Change, the Exchange will provide Staff with the following materials:
- (i) a cover letter that indicates that the change was classified as a Housekeeping Change and, for each Housekeeping Change, provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and
  - (ii) blacklined and clean copies of Form 21-101F1 showing the Change.
- (e) The Exchange will submit the materials set out in subsection (d) by the earlier of
- (i) the Exchange's close of business on the 10th calendar day after the end of the calendar quarter in which the Housekeeping Change was implemented; and
  - (ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

**8. Review by Staff of notice and materials to be published for comment**

- (a) Within 5 business days of the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will review the notice and materials to ensure that they contain an

adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a resubmission of the notice and/or materials.

- (b) Where the notice and/or materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and/or materials accordingly, and the date of resubmission will serve as the submission date for the purposes of this Protocol.
- (c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 9.

**9. Publication of a Public Interest Rule, Significant Change Subject to Public Comment or Fee Change Subject to Public Comment**

- (a) As soon as practicable after the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will publish in the OSC Bulletin and/or on the OSC website, the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.
- (b) If public comments are received
  - (i) the Exchange will forward copies of the comments promptly to Staff; and
  - (ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

**10. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes**

- (a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within
  - (i) 45 days from the date of submission of a proposed Public Interest Rule or Significant Change; and
  - (ii) fifteen business days from the date of submission of a proposed Fee Change.
- (b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection (a).
- (c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, and promptly after the receipt of the materials submitted under section 7 for all other Changes.
- (d) The Exchange will respond to any comments received from Staff in writing.
- (e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.
- (f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection (g), to the Commission, for a decision within the following timelines:
  - (i) for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;
  - (ii) for any other Significant Change, the later of 45 days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or



- (iii) for any other Fee Change, the later of fifteen business days from the date of submission of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.
- (g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection (f),
  - (i) if the proposed Fee Change, Public Interest Rule or Significant Change introduces a novel feature to the Exchange or the capital markets;
  - (ii) if the proposed Fee Change, Public Interest Rule or Significant Change raises significant regulatory or public interest concerns; or
  - (iii) in any other situation where, in Staff's view, Commission approval is appropriate.
- (h) Staff will promptly notify the Exchange of the decision.
- (i) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and/or on the OSC website promptly after the approval:
  - (i) a notice indicating that the proposed Rule or Change is approved;
  - (ii) the summary of public comments and responses prepared by the Exchange, if applicable; and
  - (iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

**11. Review Criteria for a Fee Change, Public Interest Rule and Significant Change**

- (a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard for the purposes of the *Securities Act* (Ontario) (Act) as set out in section 1.1 of the Act. The factors that Staff will consider in making their determination also include whether:
  - (i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;
  - (ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;
  - (iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and
  - (iv) the Exchange adequately addressed any comments received.

**12. Effective Date of a Fee Change, Public Interest Rule or Significant Change**

- (a) A Public Interest Rule or Significant Change will be effective on the later of:
  - (i) the date that the Exchange is notified that the Change or Rule is approved;
  - (ii) if applicable, the date of publication of the notice of approval on the OSC website;
  - (iii) if applicable, the implementation date established by the Exchange's Rules, agreements, practices, policies or procedures; and
  - (iv) the date designated by the Exchange.
- (b) The Exchange must not implement a Fee Change unless the Exchange has provided stakeholders, including marketplace participants, issuers and vendors, as applicable, with notice of the Fee Change at least five business days prior to implementation.
- (c) Where a Significant Change involves a material change to any of the systems, operated by or on behalf of the Exchange, described in section 12.1 of National Instrument 21-101, the Significant Change will not be effective until a reasonable period of time after the Exchange is notified that the Significant Change is approved.

- (d) In determining what constitutes a reasonable period of time for purposes of implementing a Significant Change under paragraph (c), Staff will consider how the Significant Change will impact the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns.
- (e) The Exchange must notify Staff promptly following the implementation of a Public Interest Rule, Significant Change or Fee Change that becomes effective under subsections (a) and (b).
- (f) Where the Exchange does not implement a Public Interest Rule, Significant Change or Fee Change within 180 days of the effective date of the Fee Change, Public Interest Rule or Significant Change, as provided for in subsections (a) and (b), the Public Interest Rule, Significant Change or Fee Change will be deemed to be withdrawn.

**13. Significant Revisions and Republication**

- (a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.
- (b) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is republished under subsection (a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

**14. Withdrawal of a Fee Change, Public Interest Rule or Significant Change**

- (a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.
- (b) If the notice of withdrawal relates to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and/or on the OSC website as soon as practicable.
- (c) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 10(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

**15. Effective Date of a Housekeeping Rule or Housekeeping Change**

- (a) Subject to subsections (c) and (d), a Housekeeping Rule will be effective on the later of
  - (i) the date of the publication of the notice to be published on the OSC website or in the OSC Bulletin, in accordance with subsection (e), and
  - (ii) the date designated by the Exchange.
- (b) Subject to subsections (c) and (d), a Housekeeping Change will be effective on the date designated by the Exchange.
- (c) Staff will review the materials submitted by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange submitted the documents in accordance with subsections 7(c) and 7(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.
- (d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, submit the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment, if applicable.
- (e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin or on the OSC website as soon as is practicable.

**16. Immediate Implementation of a Public Interest Rule or Significant Change**

- (a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.
- (b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible, but in any event, at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must follow within five business days following the Exchange receiving notice that Staff agree with immediate implementation of the Public Interest Rule or Significant Change.
- (c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following submission of the notice under subsection (b). If the disagreement is not resolved, the Exchange will submit the Public Interest Rule or Significant Change in accordance with the timelines in section 7.

**17. Review of a Public Interest Rule or Significant Change Implemented Immediately**

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 16 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 10, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

**18. Application of Section 21 of the *Securities Act* (Ontario)**

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.

APPENDIX B

June 28, 2012

Ontario Securities Commission  
20 Queen Street West  
19th Floor, Box 55  
Toronto ON M5H 3S8

**Attention: John P. Stevenson, Secretary of the Commission**

Dear Mr. Stevenson:

**Re: Maple Group - AMF Undertakings**

This letter is further to the meeting on March 7, 2012 during which OSC staff and TMX discussed Maple's understanding of the impact of the proposed undertakings to the AMF set out in the January 31, 2012 draft letter of Maple to Mr. Mario Albert, President and CEO of the AMF.

In paragraphs 15 and 16 of the letter (now paragraphs 14 and 15), Maple has undertaken, in effect, to continue to develop Montreal as a centre of excellence in derivatives. At the meeting, counsel to Maple indicated that this is consistent with Maple's current plans to continue to utilize the assets and resources at MX and CDCC to grow the trading and clearing of derivatives products, including both exchange traded derivatives and OTC derivatives. These undertakings would not have the effect of requiring TMX to move any existing businesses to Montreal, nor would they restrict Maple from developing and investing in derivatives opportunities, including for fixed income derivatives, in jurisdictions outside Montreal if that makes sense at some point in the future.

With respect to paragraphs 19, 20 and 21 (now paragraphs 18, 19 and 20), Maple is undertaking that if it establishes an exchange or clearing house in Canada (or participates in a joint venture or partnership) for trading or clearing derivatives that are presently over-the-counter derivatives, the head and executive office of that exchange or clearing house (or the principal Maple business unit that manages Maple's interest in that joint venture or partnership) will be in Montreal, the senior management responsible for overseeing operating plans and budgets, and development and execution of policy and direction, for that exchange or clearing house (or the principal Maple business unit that manages Maple's interest in that joint venture or partnership), will be in Montreal, and the most senior officer will be a resident of Quebec. With respect to over-the-counter derivatives, the application of these undertakings is limited to recognized exchanges and clearing houses in Canada (or participation in a joint venture or partnership) for over-the-counter derivatives. For the sake of clarity, since the undertakings are made by Maple, the undertakings do not prevent any investor in Maple from trading any derivatives or related products, including over-the-counter derivatives, through facilities not owned by Maple or its subsidiaries.

With respect to our discussions regarding the application of the undertakings to "fixed income transactions", reference to this term was added because CDCC currently clears transactions that are not "derivatives" within the ordinary meaning of that term, and the AMF wanted to ensure that the undertaking covered clearing of repurchase transactions (aka repos) and clearing of trades involving securities that are eligible for repurchase transactions. Following discussion with AMF staff, we have revised the AMF undertakings to clarify that only these transactions are covered by the undertakings, by referencing only the clearing of fixed income transactions in paragraph 30(c)(ii) (now paragraph 29(c)(ii)) and more clearly defining the term fixed income transactions in footnote 1. A revised draft of the undertakings, blacklined to the version previously circulated to you, has been provided to you for your reference.

Except for

- (i) the clearing through CDCC of trades in derivatives that are exchange traded on MX,
- (ii) the clearing through CDCC of trades for fixed income transactions or other securities that are intended to be cleared through the central counterparty facility of CDCC, and
- (iii) a clearing house subject to paragraphs 19, 20 and 21 (now paragraphs 18, 19 and 20),

the undertakings do not limit or restrict the location in which Maple or its affiliated entities conduct or manage business related to back office or post-trade processing of trades, including collateral management; and, for greater certainty, are not intended to transfer or diminish CDS' current cash markets clearing, settlement and depository functions. In addition, for the sake of clarity, since the undertakings are made by Maple, the undertakings do not prevent any investor in Maple from trading and/or clearing any fixed income securities through facilities not owned by Maple or its subsidiaries.

## B.2: Orders

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Finally, Maple confirms that management of TMX Group have considered these undertakings from the perspective of TMX's businesses. They are comfortable with these undertakings and believe they are consistent with TMX's current business plans and would not negatively impact TMX's ability to conduct its current or future businesses in the public interest.

We hope the foregoing is helpful.

Yours very truly,  
"Luc Bertrand"  
on behalf of  
Maple Group Acquisition Corporation

cc: Mario Albert  
Autorité des marchés financiers

Mark Wang  
British Columbia Securities Commission

Tom Graham  
Alberta Securities Commission

Susan Greenglass  
Ontario Securities Commission