



November 21, 2012

VIA EMAIL

The Secretary
Ontario Securities Commission
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Dear Secretary:

Re: Proposed Amendments to OSC Rule 13-502 Fees and Companion Policy 13-502 Fees

TMX Group Limited ("TMX") appreciates the opportunity to comment on the Proposed Amendments ("Amendments") to OSC Rule 13-502 Fees ("Rule 13-502") and Companion Policy 13-502 Fees ("CP13-502") as published by the Ontario Securities Commission ("OSC") on August 23, 2012.

TMX understands the pressures that the OSC is facing. TMX and many capital market participants are facing similar pressures. We all have to balance the multiple areas of growing responsibility with the reality of limited funding and resources. You acknowledge that market participants are facing challenging market conditions. Our submission poses a number of questions that should be addressed against this backdrop, including consideration of the potential impact of the Amendments on innovation and the Canadian capital markets.

Overall, TMX has a fundamental concern with the significance of the proposed Amendments and their impact on capital market participants in Canada during difficult economic circumstances. There is a lack of detailed information provided in support of the proposal. While the Amendments propose new approaches for funding the OSC, there are no corresponding new approaches proposed for managing and employing your regulatory resources. There is no apparent system of accountability for how the fees collected will be allocated and managed. Further, the Amendments appear to be creating obstacles to accessing capital, but no assessment of the potential impact of the Amendments on Canada's capital markets and participants has been provided.

TMX submits that further dialogue is necessary between the OSC and market participants before such significant costs should be imposed. TMX would be pleased to participate in further discussions to ensure that the fees are ultimately aligned with the best interests of the OSC and the capital markets.

All capitalized terms have the same meanings as defined in Rule 13-502, unless otherwise defined in this letter.

Anticipated Costs and Benefits

TMX understands the benefits the OSC seeks to gain from implementing the Amendments. Adopting fees that reflect changing needs, fairness of fees among users, predictability of revenues and increasing reserves are all benefits we understand. TMX faces similar challenges, particularly if the Amendments are implemented.

The Amendments propose to implement significant fees for specified regulated entities, which has a considerable impact on TMX. The OSC suggests that its proposal is fair because it allocates costs to those who use and benefit from the OSC's resources. However this assumption disregards the public interest mandate of TMX. TMX shareholders will initially bear the TMX fees, rather than the public and the market participants that use TMX marketplaces. Only the benefits of increased funding to the OSC are set out, without any corresponding assessment of costs.

Generally the financial impact provided in the Amendments only describes the impact on the OSC, which is, of course, positive. There is a small discussion of the impact on market participants that are small and medium enterprises, but there is no other discussion of the impact of the Amendments. Additional transparency should be provided about the anticipated costs, balanced against the benefits, before the Amendments are finalized.

Alternatives Considered/Unpublished Materials

The Amendments provide that no alternatives were considered and that you have not relied on any unpublished materials. The OSC's press release on October 23, 2012 provides that OSC staff surveyed the practices of select Canadian and international regulatory agencies, but the Amendments do not provide any information on this survey.

We request that the OSC publish this information to allow market participants to assess the appropriateness of the Amendments in comparison with other industry regulators in Canada and other exchange regulators abroad. For example, we are aware of other regulated industries where the regulators must publish their budget on an annual basis for approval, which enables scrutiny and accountability for how resources are allocated and for controlling costs.

Participation Fees for Specified Regulated Entities

There is no background given as to how the proposed level of participation fees aligns with the OSC's costs of oversight. There is no explanation given for the assessment of market participation fees based on market share as determined based on the highest of total dollar value, total trading volume and total number of trades of exchange-traded securities. What is the proposed link between these totals and the impact on OSC costs? The lack of information or apparent alignment between the fees and the actual OSC costs, and the lack of any constraints on how the resources will be allocated and used, are of significant concern and should be fully fleshed out before such fees are imposed. We submit that further transparency regarding how the fees are set and proposed to be used would be appropriate, and would ensure accountability for how the OSC is determining to spend the funds and control its spending.

There is similarly no explanation of the fees being charged to exempted marketplaces. What costs of oversight are incurred for marketplaces that are exempt from the OSC's oversight,

particularly if they will be charged an activity fee should anything arise? Also there is no explanation for the quantum of fees proposed for an ATS. What is the rationale for the fee differential for different securities on an ATS? What does the \$50,000 to review a Form 21-101F2 reflect?

Lastly, the Amendments provide that it is appropriate to charge users for benefits they accrue. Any benefits of oversight by the OSC are therefore appropriately borne by participants and beneficiaries of TMX marketplaces. TMX will be exploring the appropriate balance in allocating its rising OSC fees among its beneficiaries, and like the OSC, may seek to increase fees as a result.

Activity Fees

The activity fees are significant. While the Amendments state that the fees are based on average historical hours, past costs, and fees in other jurisdictions, no information has been provided to allow any comparison or informed assessment to be conducted. The fees do not appear to relate to the actual work or costs involved in the activity, or take into account the participation fees already being used by the commission to fund expertise and salaries. For example, it is unclear whether activity fees are payable for variations of a recognition order when initiated by you, and if the fees are the same regardless of the complexity of the variation requested. Lastly, the activity fees are significant and may influence decision-making by a specified regulatory entity, but no impact assessment has been conducted on the potential effect on the capital markets.

Variable Cost-based Fees for Specified Regulatory Entities

The Amendments propose to charge an exchange, ATS or clearing agency if the designated cost of work done by the OSC on a filing exceeds \$300,000. Although the Amendments do provide that the special activity fee is not intended to apply frequently, there is no mechanism to ensure any efficiency in handling the filing. How are the hours tracked and are they subject to any oversight? There is no apparent mechanism for the filer to review the expected scale and duration of the work or to monitor it. There is a broad statement as to responsibility for the OSC's use of external counsel, without regard to the participation fees already being used by the commission to fund expertise and salaries or the market activity fee that may be payable. Lastly, the variable-based fee presumes that it is the filer who is the primary beneficiary of the activity. As you know, TMX has a public interest mandate so this presumption is inaccurate.

Finally, you note that the fee should be consistent with the complexity of the filing. The complexity is frequently driven by the structure and operational difficulties of the Canadian Securities Administrators, placing TMX at a competitive disadvantage to its international competitors, and therefore harming the capital markets overall. There is no apparent discipline being imposed to work within any cost boundaries or control costs.

Yours truly,



Thomas A. Kloet
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TMX Group Ltd.