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SUBMITTED ELECTRONICALLY

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

c/o John Stevenson, Secretary
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Re: Canadian Securities Administrators ("CSA") Consultation Paper 91-403 on Derivatives: Surveillance and Enforcement, CSA Derivatives Committee November 25, 2011 (the "Committee")

Dear Mr. Stevenson and Me Beaudoin:

TMX Group Inc. ("TMX Group") appreciates the opportunity to comment on the CSA Consultation Paper 91-403 on Derivatives: Surveillance and Enforcement (the "**Consultation Paper**"). The Consultation Paper invited market participants to provide input on Committee proposals regarding a framework for surveillance and monitoring, harmonized market conduct rules and enforcement for over-the-counter ("OTC") derivatives markets. We commend the CSA

for seeking to bring about greater transparency in OTC markets and to combat against potential market abuse. Our comments are intended to provide the CSA with the benefit of our experience as the operators of self-regulatory organizations and transparent, well-regulated marketplaces.

TMX Group

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, Montréal Exchange, NGX, Boston Options Exchange (BOX), Shorcan, Equicom and other TMX Group companies provide trading markets, clearing facilities, data products and other services to the global financial community. TMX Group is headquartered in Toronto with offices in Montreal, Calgary, Vancouver and Houston.

Surveillance and Monitoring

Any surveillance and monitoring system should depend on the nature of the markets and products involved. Detailed proposals or comments with respect to OTC derivatives surveillance will have to wait until there is greater certainty as to (1) which OTC derivatives, if any, will be considered standardized enough to be required to be traded on-exchange, (2) trade reporting and central counterparty clearing requirements and (3) which OTC derivatives or transactions, if any, will be exempted from reporting in a trade repository and/or from being centrally cleared.

We agree that further study and research needs to be done on the development of a comprehensive surveillance system which supplements current market surveillance with OTC derivatives surveillance, and we will be pleased to participate in further study and discussion.

While we look forward to the opportunity to provide more detailed comments on eventual regulatory proposals, we have some preliminary comments on the considerations involved in building a surveillance and monitoring regime for OTC derivatives.

Operational Issues

We do not recommend that that OTC surveillance and enforcement should be the sole responsibility of a single regulator, self-regulatory organization or marketplace. Responsibilities should be distributed depending on the requirements of each category of OTC derivative. For example, in the case of a standardized OTC derivative that will be subject to exchange-trading requirements, surveillance and enforcement related to that derivative should be conducted by the exchange on which it will be traded. For non exchange-traded OTC derivatives that will be subject to reporting or clearing requirements, consideration should be given to having surveillance and enforcement responsibilities assumed by the clearing facility, the trade repository, or the regulator.

The determining factor should be which entity (exchange, clearing facility, trade repository or other regulatory body) has immediate access to transaction data once a transaction has taken place. Cross-product and cross-market surveillance can be achieved through information sharing MOUs that would allow information to be communicated either on an ad hoc or on a continuous basis.

In addition, we suggest that a system where different entities conduct surveillance and enforcement activities based on their specific field of responsibility and/or expertise will be more efficient than developing a new comprehensive system encompassing all types of OTC derivatives. The experience of the TREATS¹ project which started in 2003 and was abandoned in 2008 should be kept in mind. The objective of that project was to create a global audit trail system for securities and listed derivatives traded in Canada. The project was ultimately

¹ TREATS was the acronym for Transaction Reporting Electronic Audit Trail System.

abandoned due to the complexity and costs associated with developing and implementing a huge system encompassing multiple asset classes.

We believe that building on the surveillance systems and expertise that are available at existing regulated entities would be more cost effective and would deliver practical solutions in a much shorter timeframe. It would also minimize risks of duplicating efforts and/or responsibilities.

Surveillance and Monitoring of Market Conduct

We agree that market conduct rules should apply to all markets in order to ensure market integrity and to prevent manipulative and abusive market activities. We are concerned however that some of the surveillance practices that are currently used for exchange-traded derivatives markets such as the Montréal Exchange may not be appropriate for OTC markets. Listed derivatives markets are characterized by an order flow that contributes to a transparent price discovery process. A significant part of surveillance involves not only monitoring transactions that are executed but also the order flow that precedes and/or follows such transactions. Monitoring this pre- and post-trade order flow allows a rapid determination of whether the transaction should stand, or be cancelled or adjusted. Orders that do not trade are also monitored in order to identify unacceptable trading practices such as attempts to manipulate prices, to create new highs or new lows, or to influence the settlement price.

In the case of bilaterally negotiated OTC derivatives there is very limited transparency in the price discovery process and very limited order flow, if any. Even where OTC trades are reported to a trade repository or centrally cleared there may be very little market transparency before a transaction is executed.

Record-keeping and audit trail requirements for OTC derivatives market participants will help regulators establish a source of pre-trade and post-trade information, and we look forward to more detailed proposals in this regard from the CSA. In addition, alternative methods of market surveillance and monitoring that are appropriate to low order flow markets, or those with less pre-trade transparency, may be necessary.

CONCLUSION

TMX is supportive of the general direction in which the CSA proposals have been framed. We applaud the commitment by the CSA to implement reforms intended to bring transparency to the market and enhance regulators' oversight and ability to respond to market risks or manipulations. We believe that OTC markets will benefit from appropriate and sensible regulatory reform, and we are ready and willing to participate in the development and implementation of these reforms in order to improve market integrity and systemic stability.

Please feel free to contact me (514) 871-3525 with any questions regarding our comments.

Respectfully submitted;



Alain Miquelon