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SUBMITTED ELECTRONICALLY

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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 91-407 on Derivatives: Registration, CSA Derivatives Committee April 18, 2013 (the "Committee")

Dear Mr. Stevenson and Me Beaudoin:

TMX Group Ltd. ("TMX Group") appreciates the opportunity to comment on the CSA Consultation Paper 91-407 on Derivatives: Registration (the "**Consultation Paper**"). The Consultation Paper invited market participants to provide input on Committee proposals regarding requirements for the registration of key derivatives market participants.

The form and implementation of registration requirements will have a significant impact on the effectiveness of these measures in mitigating both firm and systemic risk, particularly when measured against the regulatory burden that they will impose. We commend the Committee and the CSA for addressing the regulatory objectives, key issues and challenges associated with this reform in a thoughtful and consultative manner.

The implementation of new registration requirements for derivatives will also have a significant impact on Canadian derivatives market participants and intermediaries, as well as on TMX Group subsidiaries, and our domestic and foreign market participants. Although many of our comments on registration requirements are addressed in broad terms, we would be pleased to expand on our comments, either in writing or in person.

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, TMX Select, Alpha Exchange, The Canadian Depository for Securities, Montréal Exchange, Canadian Derivatives Clearing Corporation, Natural Gas Exchange, Boston Options Exchange, Shorcan, Shorcan Energy Brokers, Equicom and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community. TMX Group is headquartered in Toronto and operates offices across Canada (Montreal, Calgary and Vancouver), in key U.S. markets (New York, Houston, Boston and Chicago) as well as in London, Beijing and Sydney.

Definition of Derivatives in the Consultation Paper

Our concern with respect to the Consultation Paper lies mainly with the scope of the definition of derivatives for the purposes of registration, and the potential impact on exchange-traded and centrally-cleared markets and participants on those markets.

The Introduction to the Consultation Paper refers specifically to the need to impose obligations on certain participants in the OTC derivatives market.

“In Consultation Paper 91-401 the Committee outlined its proposals relating to the regulation of over-the-counter (“OTC”) derivatives in Canada, including proposals to impose obligations on *certain participants in the OTC derivatives market.*” (emphasis added)

In the next sentence Paper extends these requirements to all derivatives markets:

“To implement those regulatory proposals the Committee believes that it is necessary to impose registration requirements on key derivatives market participants (including participants that represent significant risks to the market because of their derivatives exposure and persons *in the business of trading in derivatives or providing advice in relation to derivatives.*” (emphasis added)

On page 22 of the Paper the Committee suggests that the definition of derivatives provided in CSA Staff Consultation Paper 91-301 can provide insight into what types of instruments may be considered derivatives for the purposes of triggering registration as a derivatives dealer. This definition (the “Scope Rule”) is a negative definition, specifying those contracts that are not to be considered derivatives, and catches all exchange-traded futures and options in its very wide net. We observe that the focus of the Committee shifts very abruptly from OTC derivatives and OTC market participants to the much broader category of all derivatives, including those that are listed on an exchange and cleared by a central counterparty.

We are concerned with the scope this definition. The CSA's OTC derivatives market reform project is exactly that – a set of proposals aimed at the regulation of OTC markets, which have been identified as under-regulated, insufficiently transparent and potential sources of systemic risk. In contrast, exchange-traded derivatives are centrally cleared and subject to a comprehensive regulatory regime, including laws and regulations relating to the authorization and supervision of exchanges, clearing houses and market participants. Exchange-traded derivatives offer a fair and transparent market model, efficient price discovery, market liquidity, anonymity and rigorous market surveillance. These derivatives already benefit from all of the risk management and mitigation advantages of central counterparty clearing. Furthermore, the rules governing market access and trading of exchange-traded derivatives in Canada extend to rigorous proficiency requirements specific to registrants who deal in or advise on exchange-traded derivatives.

In fact, most OTC regulatory reform efforts seek to apply the advantages of exchange-traded derivatives - transparency, central counterparty clearing, market regulation and surveillance, and participant registration - to the OTC markets. We therefore submit that there are no benefits to be gained by including exchange-traded derivatives within the scope of this registration regime, and we strongly recommend that the Committee make clear that the proposals in this Paper do not extend to exchange-traded derivatives. This would avoid significant duplication and confusion, align the proposals with rules adopted in the US and Europe, and would also be consistent with other OTC reform proposals that do not apply to exchange-traded derivatives, such as segregation and portability and trade reporting.

Registration requirements

Not excluding exchange-traded derivatives from this definition will impose significant and unnecessary costs and burdens on participants on derivatives exchanges, without providing any additional risk management or investor protection benefits.

Under the heading Derivatives Dealers the Paper specifies that:

“The Committee believes that persons carrying on the business of trading in derivatives or holding themselves out to be carrying on that business should be regulated. The Committee recommends that these persons be required to be registered as derivatives dealers in each Canadian province and territory where they conduct derivatives trading business, unless an exemption is available.”

First, we recommend that market participants who are currently subject to registration requirements under existing Canadian laws and regulations with respect to their activities on derivatives exchanges not be subject to duplicative and redundant registration requirements under new derivatives legislation. Persons carrying on the business of trading in exchange-traded derivatives are already regulated under existing derivatives and securities laws and regulations, as well as by IIROC rules and proficiency requirements. Canadian broker-dealers are subject to a comprehensive regulation regime with respect to exchange-traded derivatives, and layering an additional regime on top of this one will not advance in any way the transparency, integrity or stability of markets, OTC or otherwise. It should be noted that CFTC registration requirements clearly limit the requirements to those participants who are dealers in swaps, and not all derivatives.

Second, we recommend that the Committee clarify the differences between dealing and trading. There is clearly a difference between the concepts of dealing in OTC derivatives and trading exchange-traded derivatives. For example, IIROC Dealer Rule 1.1 defines a Securities Dealer as:

"Securities Dealer" means an individual, firm or corporation acting as dealer (principal) or broker (agent) in carrying out transactions in securities and commodity futures contracts or options on behalf of clients and includes, without limitation, acting as an underwriter or adviser;

This is clearly distinct from the concept of trading, whereby a market participant enters orders to buy and sell through the agency of a securities or derivatives broker, or directly if they are eligible for exchange membership. There is an entire class of market participant that trades exchange-traded derivatives to an extent that would meet the Committee's proposed trading trigger, but should not be deemed to be dealers. These traders, known as principal or proprietary traders, trade their own accounts and do not offer services to or trade against clients. Principal traders trade on exchanges as clients of Canadian broker/dealers, who are registered and regulated in accordance with the relevant provincial securities or derivatives regulation, as well as being subject to IIROC member regulation. In addition to the fact that IIROC broker-dealers are gatekeepers for these principal traders, these traders in turn do not advise, act on behalf of, or face clients. There is therefore no apparent rationale for considering them to be dealers despite their trading activity, and imposing investor protection or business conduct obligations on them would add significant costs without adding any benefits. These traders are not subject to registration under current legislation and regulation, and we question how the registration of principal traders on exchange-traded and centrally-cleared derivatives markets would advance the objectives of the OTC market reform project.

We strongly recommend that the Committee clarify that a market participant that trades exchange-traded derivatives, trading through the agency of a registered dealer, would be exempt from registration requirements, similar to the exemption in NI 31-103 Section 8.5.

Exemptions

There are very limited exemptions available under the proposals. The first is for regulated persons, but the exemption refers only to regulatory regimes imposed by “other Canadian regulatory authorities,” which implies that these are authorities other than the members of the CSA. This would seem to exclude existing registration requirements under existing securities and derivatives regulation, and apply principally to other financial institutions, principally banks. As noted above, we strongly recommend that market participants who are already subject to registration requirements not be subject to a duplicative and redundant registration regime.

The other exemption is for Foreign Derivatives Dealers and Advisors. This is not a registration exemption, but rather an exemption from certain regulatory requirements where the Foreign Derivatives Dealers and Advisors are subject to an equivalent regulatory regime in their home jurisdiction. It appears that the foreign dealers and advisers will be expected to make the case that their home regime is substantially equivalent to the Canadian regime.

We recommend that exemptions should be provided where equivalent regulatory regimes are in place. With respect to CSA members, this would apply to market participants that are already subject to registration requirements. With respect to the assessment of equivalent regimes in foreign jurisdictions, we recommend that this assessment of substituted compliance should be done by and among regulators. Obliging foreign entities to make the case of equivalence in each and every application for an exemption would seem to be duplicative and wasteful. The CSA should be able to assess the principal jurisdictions – i.e. US, EU – for equivalence once and then grant recognition consistently.

Shorcan Brokers Ltd., (“Shorcan”) part of the TMX Group, is a concrete example of a firm that is already registered and regulated, and therefore should be exempted from any proposed derivatives registration regime.

Section 6.1 (b) (i) regarding Business Trigger for Trading states:

“Intermediating Trades – In general, the provision of services relating to the intermediation of trades between counterparties to derivative contracts will be considered to be a trading business activity. This typically takes the form of the business commonly referred to as a broker.”

Shorcan is an inter-dealer bond broker active in brokering Canadian fixed income products, including interest rate derivatives, since 1977. Shorcan is registered as an Exempt Market Dealer (EMD) with the OSC and is subject to minimum capital requirement. All of Shorcan’s brokers are subject to proficiency requirements.

Shorcan is also regulated as an inter-dealer bond broker with IIROC and is regulated by IIROC rules 2100 and 36. Shorcan does not provide its clients advice nor does Shorcan take principal positions (no risk).

Shorcan’s client base includes US Broker Dealers and as such is currently in the process of registering with the National Futures Association as an Introducing Broker (IB) for the purposes of preserving access to the US customers as it pertains to its CAD\$ derivatives business.

The TMX Group submits that inter-dealer bond brokers, registered as EMD’s, governed by IIROC be exempt from the derivatives registration contemplated in the Consultation Paper as the registration requirements would be redundant and superfluous.

De Minimis Exemption

Finally, we recommend a de minimis exemption for registration. This will make our rules consistent with those in the US and Europe, avoiding regulatory arbitrage. Set at an appropriate threshold, a de minimis exemption will avoid the registration of firms that are not primarily in the business of dealing, for example commercial hedgers and principal traders. For many firms, particularly those that participate in the commodity sector, no allowances for even relatively small amounts of un-hedged positions is practically very difficult to achieve and administratively burdensome.

Consistent with U.S. regulations, derivative volumes counted towards the de minimis threshold should exclude exchange-traded derivatives as well as bona fide hedge transactions. While entities falling below the de minimis threshold would not be subject to registration, such entities would remain subject to all registrant requirements for those transactions that do not qualify as hedge transactions. This framework ensures that market participants that engage in diminutive levels of speculative activity are subject only to registrant requirements for the portion of their business that is un-hedged. Such methodology aligns with the regulatory aim of not imposing unnecessary commercial burden while ensuring material risks are managed in a consistent and prudent manner.

CONCLUSION

TMX Group 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 enhance the transparency of OTC markets and the overall mitigation of risks. We believe that OTC markets will benefit from appropriate and sensible regulatory reform, and that the CSA must focus on areas that have been identified as under-regulated and that will actually benefit from reform. We also strongly recommend a thorough evaluation of the costs and benefits of any change to the regulatory environment, ensuring that additional regulatory burdens will produce better risk mitigation and transparency outcomes. 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 at (514) 871-3525 with any questions regarding our comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alain Miquelon', with a long horizontal flourish extending to the right.

Alain Miquelon