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July 4, 2016

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 Trading Rules

TMX Group Limited ("**TMX**" or "**we**") welcomes the opportunity to comment on behalf of its subsidiaries TSX Inc. ("**TSX**"), TSX Venture Exchange Inc. ("**TSXV**"), and Alpha Exchange Inc. ("**Alpha**"), on the request for comments published by the Canadian Securities Administrators ("**CSA**") on April 7, 2016 titled "CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 *Trading Rules*" (the "**Request for Comment**").

For purposes of this letter, all capitalized terms and terms otherwise defined in the Request for Comment have the same meaning as set out in the Request for Comment, unless otherwise defined in this letter.

We commend the CSA on its ongoing efforts to make Canadian capital markets more fair and efficient. Notwithstanding any questions as to the appropriateness of a securities regulator involving itself in fee-setting or rate-capping, TMX is supportive of industry efforts to further reduce maker-taker fees to the extent that doing so does not negatively impact overall market quality and the competitiveness of Canada's capital markets.

In June 2015, TMX unilaterally commenced a program of phased reductions to its equities market maker-taker fees in response to industry concerns relating to the impact of the maker-taker fee model on transaction costs, intermediation levels, routing conflicts of interest and market fragmentation. As we identified no material negative impacts to overall market quality resulting from these reductions, and influenced other marketplaces to make similar reductions, we believe these reductions were beneficial.

In June 2016, we continued with a second phase of reductions but limited these to the fees applicable to interlisted equities given that the proposed CSA fee cap for non-interlisted equities and ETFs was directionally aligned with our own fee reduction program. Consistent with the cautious approach we have taken on fee reductions for interlisted securities, we are also supportive of the CSA's position and rationale for deferring any further action on interlisted securities. Despite this, and while it is still early to draw inferences as to the impact of these changes, we note that our reductions have again influenced other marketplaces to follow suit with similar reductions.

Our comments are focused on two areas of concern related to implementation. Our primary concern is that implementation of the proposed fee caps through a National Instrument might impair regulators' ability to manage and react to any associated risks to market quality. There are also practical issues associated with the identification of 'inter-listed securities' that will affect a marketplace's ability to ensure compliance with the proposed fee caps. These issues are discussed below.

Implications of implementation of proposed fee caps via National Instrument

As indicated in our published impact report resulting from the first phase of our make-take reductions,[1] we observed negative implications to Alpha's market share in the highly-liquid ETF, interlisted and non-interlisted categories when its per share active fees and passive rebates for high-priced securities[2] were reduced effective June 1, 2015 to $0.0018 active / ($0.0014) passive. A similar outcome was observed for Chi-X, who reduced its per share ETF rates to $0.0017 active / ($0.0014) passive, also effective June 1, 2015. Further examination suggested this was caused by a reduction in liquidity provision as indicated by similar observed decreases in the 'percent time at the CBBO' metrics for Alpha and Chi-X in the affected securities categories.

In our view, the observed impacts from this decrease in rates to levels contemplated for the proposed fee caps may be indicative of an 'outlier effect' caused by fee and rebate levels at Alpha and Chi-X that were too far off of those charged by TSX. At worst, it may reveal the surpassing of the break point in fee and rebate levels below which liquidity provision is materially affected.

[1] http://www.tsx.com/resource/en/1260/maker-taker-reduction-program-impact-report-1-2016-01-27-en.pdf
[2] Priced $1 and over.

To protect against the latter of these two effects, the CSA will need to actively monitor the impact of the fee caps, and if there are indications of harm to market quality, it will need to be able to react quickly and decisively to increase or reverse the caps.

To be able to react quickly and decisively if needed to properly manage the associated risks to market quality, there will need to be sufficient regulatory flexibility. We are concerned that implementing the proposed fee caps through a rule – i.e., through amendments to National Instrument 23-101 *Trading Rules* ("**NI 23-101**") – will not allow for a sufficient level of flexibility. For example, substantial delays in mitigating any harm to market quality may be experienced if amendments to NI 23-101 to increase or reverse the fee caps would require a public comment period. We understand that authority to issue a blanket order that negates the impact of a rule may not be available in all CSA jurisdictions, and in any event the associated process and coordination required across the CSA to issue such an order might introduce similar delays. A more effective approach to provide flexibility might involve the issuance of separate orders in respect of each marketplace, which could be issued by the recognizing or lead regulator for each recognized exchange and registered ATS, as applicable. Our understanding is that amending or repealing such orders may not invoke the same degree of administrative process and delay.

Practical compliance issues

There are practical issues associated with the identification of 'inter-listed securities' that will affect a marketplace's ability to ensure compliance with the proposed fee caps. These issues arise because there is no central authoritative source responsible for maintaining a list of 'inter-listed securities', and because of a lack of requirements for real-time notification to the Canadian listing exchanges by a Canadian-listed issuer when its interlisted status changes.

1) Lack of centralized list of interlisted securities

Currently, TSX maintains a list of interlisted securities, but it is a process that is undertaken on a best efforts basis for: (i) the purpose of inclusion in the monthly TSX eReview[3]; and (ii) identifying those securities that are subject to the fees applicable to continuous trading on TSX in interlisted equities. TSX's efforts to identify interlisted securities does not include identification of CSE-listed securities that might be listed in the US, nor would it include identification of US-listed securities that might one day be interlisted on other Canadian exchanges.

Regardless, we expect that each marketplace will have to maintain and update their own list, and will be dependent to an extent on the various other Canadian exchanges to maintain and report their interlisted securities on an accurate and timely basis. We expect at a minimum that there will be discrepancies in what is identified as an 'inter-listed security' by each marketplace. This may also lead to confusion and disagreements about what securities are on the 'official' list.

To address this issue, we believe a centralized list must be maintained by the CSA or IIROC to ensure accessibility and completeness, and to support consistency across marketplaces in the application of fees for interlisted securities to participants.

2) Issues affecting ability to identify interlisted securities on a timely basis

Issuers may become or cease to be interlisted at any time. When a U.S. listed issuer becomes listed in Canada on a TMX-owned exchange, we have advance knowledge of the interlisting

[3] A monthly digest of trading activity and corporate information for companies listed on TSX.

through the listing application process. For TSX-listed issuers, such interlisting would be broadly communicated through the published listing bulletin.

However, where a TSX-listed issuer subsequently lists on or delists from another exchange (including a US exchange), the issuer is required to notify TSX within 10 days after the change.[4] If an issuer fails to notify TSX of the change, we may only become aware of the inaccurate information through the process of preparing the monthly TSX eReview.

For TSXV-listed issuers, the issue is more acute given that there are no similar notification requirements imposed on TSXV-listed issuers when they become or cease to be interlisted.[5] While experience suggests that it is not typical for a TSXV-listed issuers to also be interlisted in the US,[6] the lack of reporting obligations will make compliance with the proposed fee caps difficult.

Further, the above relates to the requirements applicable to TSX- and TSXV-listed issuers. We have not examined the reporting requirements applicable to issuers on the other Canadian exchanges but would anticipate that similar challenges for the accurate and timely identification of changes to interlisted status will arise. We also have no current visibility into changes in interlisted status for issuers listed with other Canadian exchanges. Other Canadian exchanges will need to first identify changes on a timely basis and then communicate this to all other marketplaces, who will then each implement the change in fee status for the particular symbol.

Finally, we note that billing system changes may be needed at each marketplace to accommodate an intra-month change in a security's status between interlisted and non-interlisted.

All of this indicates that strict compliance is simply not feasible given current practices and limitations.

We again suggest that centralization and maintenance of an official list of 'inter-listed securities' by the CSA or IIROC would resolve these issues. Otherwise, to address the timing and completeness issues discussed above, we suggest that it may be appropriate to allow for the fee caps to be applied to interlisted securities as identified at the beginning of each month, and subject to a 'best efforts' standard.

Thank you for the opportunity to comment. We would be pleased to discuss any aspect of these matters at your convenience.

Yours truly,

"Kevin Sampson"

Kevin Sampson
Managing Director, Equity Trading
Equity Capital Markets

[4] Through Form 2 of the Company Reporting Forms.
[5] The Form 2 reporting requirements apply only to TSX-listed issuers.
[6] Based on information readily available, it appears that the number of TSXV-listed securities that are also listed in the US is likely in the single-digits.