

**13.2.2 TMX Group Inc. and TSX Inc. – Proposed Transaction with London Stock Exchange Group PLC – Notice and Request for Comment**

**TMX GROUP INC. AND TSX INC.  
PROPOSED TRANSACTION WITH  
LONDON STOCK EXCHANGE GROUP PLC  
NOTICE AND REQUEST FOR COMMENT**

**1. INTRODUCTION**

On February 9, 2011, TMX Group Inc. (TMX Group) and London Stock Exchange Group plc (LSEG) announced an agreement to combine their respective exchange groups (Proposed Transaction). TMX Group and its subsidiary TSX Inc. (TSX) are each recognized as an exchange by the Ontario Securities Commission (OSC or Commission).

In connection with the Proposed Transaction, TMX Group, TSX, and LSEG have applied (the Application) to the Commission for the following:

- (i) an order of the Commission approving the beneficial ownership by LSEG of all the common shares of TMX Group; and
- (ii) an amended and restated recognition order for TMX Group and TSX.

Staff of the Commission (Staff or we) are publishing this notice (Notice), together with the Application, to request public comment on the Application. The Notice is being published for a 45-day comment period and includes:

- Background on the Commission's regulation of stock exchanges
- Background information on TMX Group, TSX and the Proposed Transaction
- A discussion of key issues relating to the Application
- Information on the Commission's public consultation to be held to discuss the Application, and
- Information on how commenters may submit written comments.

Staff are also publishing, at Appendix B to the Application, a proposed draft recognition order, prepared by TMX Group and TSX, that reflects their proposed amendments to the current recognition order as a result of the Proposed Transaction.

The Commission will consider the Application with reference to criteria described below in Section 2 of this Notice. The Commission will determine whether it is in the public interest to make the requested orders. In doing so, the Commission will consider all available information and impose any terms and conditions necessary to ensure that it continues to have the appropriate regulatory oversight of TMX Group and TSX going forward. This is essential to fulfill the Commission's responsibility to provide protection to investors and to foster fair and efficient capital markets and confidence in capital markets.

In reviewing the Application, the Commission will also consider the report and recommendations of the Ontario Government's Select Committee on the Proposed Transaction.

In order to assist the Commission in assessing the Proposed Transaction, we are requesting comments on all aspects of the Application. We are also requesting comments on certain key issues relating to, and important aspects of, the Application, as identified below.

Please refer to Section 7 of this Notice for information on how to submit written comments. Please note that in assessing the merits of any assertions or conclusions made to us by commenters, we will take into account the extent to which such assertions or conclusions are supported by relevant evidence.

The Commission will also be holding a public consultation (Public Consultation) to solicit comment on and inform its consideration of the Application. Details on the Public Consultation are provided in Section 6 of this Notice.

## 2. BACKGROUND ON REGULATION OF EXCHANGES IN ONTARIO

### (a) *Recognition of Exchanges*

Exchanges play a fundamental role in the efficient operation of capital markets. Exchanges facilitate the efficient raising of capital by providing liquidity and price discovery. Exchanges may also carry out regulatory responsibilities by setting standards for the listing of securities and by imposing ongoing requirements on listed issuers.

The *Securities Act* (Ontario) (Act) mandates the OSC to provide protection to investors and to foster fair and efficient capital markets and confidence in those markets. As part of that mandate, we are responsible for the oversight of marketplaces, including exchanges. Before an exchange can carry on business in Ontario, it is required to be recognized by the OSC. Recognition is similar to a licensing process where the Commission considers whether it is in the public interest that an exchange be permitted to operate in Ontario and under what conditions.

Securities regulators generally supervise exchanges to ensure that they fulfill their roles in a manner consistent with the public interest. Regulatory oversight is critical to maintain confidence in the operations of an exchange and to support overall market quality, including liquidity, transparency and transaction costs. This oversight is also an important tool for securities regulators to manage systemic risk. Systemic risk has been identified by the International Organization of Securities Commissions (IOSCO) as one of the three objectives of securities regulation, the others being: protecting investors and ensuring that markets are fair, efficient, and transparent.

In considering whether to recognize an exchange, the Commission will assess how the exchange meets certain criteria including, among others, that the exchange:

- has a governance structure with a board of directors that provides for fair and meaningful representation, one of the components of which is appropriate representation of independent directors;
- provides for fair access to the services of the exchange, for example by not charging fees that unreasonably condition or limit access to any service provided by the exchange;
- has arrangements in place to appropriately regulate listed issuers seeking to raise capital;
- regulates the trading of its participants, either directly or indirectly through a regulation services provider;
- has systems with appropriate capacity and integrity that are subject to regular testing and reviews;
- has sufficient financial resources for the proper performance of its functions and to meet its responsibilities; and
- cooperates and shares information with the OSC and other regulators.

A copy of the current criteria for recognition is attached at Schedule A to this notice.

As part of the recognition process, the Commission will also impose terms and conditions on the relevant entity. These terms and conditions impose ongoing requirements that reflect the criteria and impose requirements specific to the structure and operations of the exchange. The terms and conditions are also key to ensuring that the OSC continues to have the appropriate level of oversight of the ongoing operations and structure of the exchange. This framework is important so that market quality and market integrity are maintained.

### (b) *On-going Oversight of Recognized Exchanges*

Once an exchange is recognized, the Commission continues to regulate and oversee its operations to ensure that the standards set at the time of recognition continue to be met.

Our ongoing oversight program of an exchange has three main components:

- the review of information filed regarding significant changes in the exchange's operations;
- the review and approval of changes to the exchange's rules; and
- periodic oversight reviews of the exchange.

### 3. CURRENT STRUCTURE AND REGULATORY REQUIREMENTS

#### (a) Corporate Structure and Regulation of TMX Group and TSX

TMX Group is a holding company that, through its key subsidiaries, operates cash and derivatives markets trading products in the equities, fixed income and energy asset classes. TSX, its wholly-owned subsidiary, operates the Toronto Stock Exchange and TSX Venture Exchange. Additional subsidiaries include Montréal Exchange Inc. (MX) and Natural Gas Exchange Inc. (NGX).

TMX Group and TSX are regulated by the Commission pursuant to a Commission order recognizing each as an exchange (Recognition Order). The Recognition Order specifies the terms and conditions that both TMX Group and TSX must comply with on an ongoing basis. Following the demutualization of the Toronto Stock Exchange in 2000 and the initial public offering of shares in TMX Group in 2002, the Commission recognized both TMX Group and TSX as exchanges. TMX Group was recognized as an exchange, in addition to TSX, because in the Commission's view, TMX Group was also performing functions that resulted in it carrying on business as a stock exchange.

#### (b) Share Ownership Restriction

In anticipation of the demutualization of the Toronto Stock Exchange, the Act was amended in 1999 to include restrictions on the ownership of the shares of Toronto Stock Exchange Inc. Section 21.11 of the Act was added to provide that no person or company may beneficially own or exercise control or direction over more than five percent of the voting shares of Toronto Stock Exchange Inc., without the Commission's prior approval. Section 21.11(5) of the Act further authorizes the Commission to make a regulation prescribing any percentage of ownership of the voting shares of Toronto Stock Exchange Inc. for the purposes of this shareholding restriction.

The purpose of the share ownership restriction was to prevent any one shareholder or group of shareholders from exercising substantial influence over the Toronto Stock Exchange without prior approval by the Commission. The restrictions were also consistent with similar restrictions, at similar thresholds, that had been imposed on the shares of exchanges in other jurisdictions that had also demutualized.

In 2002, Toronto Stock Exchange Inc. was reorganized and renamed as TSX and a new parent company, TMX Group, was created. The Commission approved TMX Group's acquisition of all of the shares of TSX, following which TMX Group concluded an initial public offering of its own shares. As a condition of its approval for TMX Group's acquisition of TSX's shares, the Commission ordered that the share ownership restriction applicable to the shares of Toronto Stock Exchange Inc. apply to the shares of TMX Group, as the beneficial owner of the exchange. The Commission also made a regulation prescribing 10 percent as the new maximum percentage ownership position that any person or company could own or exercise control over without the Commission's prior approval.<sup>1</sup>

In response to public comment at the time regarding the increase in the share ownership restriction from five percent to 10 percent, TSX characterized the purpose of the restrictions as follows:

As the Toronto Stock Exchange is the primary stock exchange in Canada for senior issuers, and TSX Venture Exchange is the primary stock exchange for junior issuers, TSX Inc. believes that it is in the public interest that it not become controlled by any one person or company, whether domestic or foreign. It is TSX Inc.'s understanding, based on the fact that section 21.11(1) of the Act currently contains ownership limits on TSX Inc., that the Commission took a similar view regarding the merits of maintaining a widely-held Toronto Stock Exchange when, in 1999, it included in the Act the language provided in section 21.11(1). Continuing ownership restrictions, albeit at an increased limit, effectively maintain the widely-held status of the Toronto Stock Exchange.<sup>2</sup>

Staff note that the purpose of the share ownership restriction is not to restrict foreign ownership of TSX but to ensure that TSX remains widely held. Under the terms of the current restrictions, foreign institutions can own all of the outstanding shares of TMX Group, provided no single foreign institution owns more than 10 percent without prior Commission approval.

### 4. THE PROPOSED TRANSACTION BETWEEN TMX GROUP AND LSEG

The Proposed Transaction will be implemented through a court-approved plan of arrangement under the *Business Corporations Act* (Ontario). Under the plan, shareholders in TMX Group will receive 2.9963 shares of LSEG in exchange for each share of TMX Group. On closing, LSEG shareholders will own 55 percent of the expanded share capital of LSEG and TMX Group shareholders will own 45 percent of LSEG. The Application refers to LSEG following the Proposed Transaction as "Mergeco",

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<sup>1</sup> Ont.Reg. 261/02, September 3, 2002

<sup>2</sup> (2002) 25 OSCB 6132, September 13, 2002.

the parent company of LSEG's and TMX Group's current subsidiaries. Shares of Mergeco will be listed for trading on both the Toronto Stock Exchange and the London Stock Exchange.

Mergeco will be jointly headquartered in London and Toronto. The executive management and senior leadership of Mergeco will be drawn from a balance of leaders from both organizations and will be represented in its co-headquarters of London and Toronto as well as other core centres, including Calgary, Colombo, Milan, Montreal, Rome and Vancouver.

The Application provides that the operating exchanges currently held by both TMX Group and by LSEG will continue to operate distinctly and under their existing business names. The Application also provides that the Proposed Transaction will not affect the Commission's current regulation of TMX Group, TSX, or any other subsidiary of TMX Group.

The Application also includes information regarding LSEG and the regulatory treatment of LSEG in the United Kingdom and Italy.

The Application sets out a number of undertakings that Mergeco will give to the Commission following the Proposed Transaction. These undertakings are detailed in the Application and include, in part:

- Provisions for the proposed governance of Mergeco and composition of its Board of Directors, both before and after the fourth anniversary of the Proposed Transaction
- That Mergeco will allocate sufficient financial and other resources to TMX Group and TSX to ensure that they can carry out their functions consistent with the public interest and the terms of the Recognition Order
- That TSX continue to be locally managed, subject to the strategic direction of Mergeco, and TSX will maintain its core operations in Canada; and
- That Mergeco will not sell or otherwise dispose of any voting or equity shares of TMX Group or TSX without the Commission's prior approval.

Regarding the proposed governance of Mergeco, Mergeco undertakes that, for the first four years following the Proposed Transaction, Mergeco's board will consist of 15 directors, seven of whom will be "Canadian directors". For the purposes of the undertakings, "Canadian directors" is defined to mean a director who is ordinarily resident in Canada or, if at least five directors are ordinarily resident in Canada, one Canadian citizen.

The number of Canadian directors on Mergeco's board may be reduced if Mergeco expands its operations through a transaction with another party and takes on directors from the other party's board as a result or if Mergeco adds directors who are resident outside Canada and Europe. In this case, the number of Canadian directors on the reconstituted board of Mergeco would reflect at least the same proportion of Canadian directors on the original Mergeco board, applied to the number of original Mergeco directors who remain on the reconstituted board, subject to a minimum of three Canadian directors.<sup>3</sup>

Following the fourth anniversary of the Proposed Transaction, the number of Canadian directors on Mergeco's board may be reduced to no less than: (i) an appropriate number in light of the overall significance of the Canadian business to Mergeco; or (ii) three.

The Application also provides that Mergeco will be responsible for setting and overseeing the implementation of the strategic objectives of its operating subsidiaries. The Application provides, however, that the day-to-day operations of the individual subsidiaries will remain the responsibility of the boards of those companies.

The Application filed by TMX Group, TSX and LSEG requests:

- (i) a Commission order pursuant to section 21.11 of the Act approving the beneficial ownership by LSEG of all of the common shares of TMX Group; and
- (ii) that the Commission amend and restate the Recognition Order of TMX Group and TSX to reflect: (a) changes as a result of the Proposed Transaction; and (b) terms and conditions to be followed by Mergeco regarding the proposed listing of Mergeco shares on TSX.

As discussed above, the Commission has discretion to grant the requested approvals if it is satisfied that it is in the public interest to do so. In determining whether it is in the public interest to grant the approvals, the Commission will consider whether

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<sup>3</sup> The Application refers to the following numerical example to illustrate the possible reduction: if Canadian Directors constitute seven of a 15-member board before the change, and the change results in nine of those 15 directors continuing as directors, with six new directors joining the board, Canadian directors must constitute at least four (7/15 of nine) of the new 15-member board.

TMX Group and TSX continue to meet the criteria for recognition attached at Schedule A. The Commission will also consider the terms and conditions that may be required to enable it to maintain regulatory oversight of the exchange operations and the requirements that should be imposed as part of any approvals.

## 5. ISSUES FOR DISCUSSION

There are a number of issues that the Commission will examine in considering the Application. Many of these issues relate to the Commission's role in ensuring that an appropriate framework for the effective and robust oversight of TMX Group and TSX remains in place after the Proposed Transaction occurs.

The following is a discussion of some specific key issues on which we wish to solicit public comment. We also welcome comment on any other issues not discussed here. In providing comments, Staff expressly request that commenters support their comments with available evidence.

### *(i) Recognition Criteria and the Public Interest*

As indicated in Section 2 above, in assessing the Application, the Commission will consider the recognition criteria attached at Schedule A to this Notice. The Commission will also consider the provisions necessary to enable it to maintain its regulatory oversight.

**Question 1: In exercising its discretion, are there additional public interest considerations that the Commission should assess in reviewing the Application? In identifying such considerations, Staff request that commenters describe why they think those considerations are important, why they should be considered, and how they should be assessed.**

### *(ii) Regulatory Oversight over TMX Group, TSX and Mergeco*

The Commission's continued ability to exercise the appropriate degree of regulatory oversight over the operations of TMX Group and TSX is critical. To the extent that the operations of Mergeco impact the ongoing operations of TMX Group and TSX, the Commission will also need to assess Mergeco's undertakings going forward to ensure the integrity of the Commission's oversight over TMX Group and TSX following the Proposed Transaction.

We have not yet taken a view as to whether undertakings from Mergeco are the appropriate legal means for the Commission to maintain the appropriate degree of oversight. At this point, we wish to assess whether the substance of the proposed Mergeco undertakings, described in Section 4 above, provide the Commission with the degree of oversight necessary to ensure that sufficient regulation of TMX Group and TSX remains with the Commission. We also wish to assess whether or not the proposed functions and responsibilities of Mergeco, as described in the Application, necessitate any additional oversight of Mergeco.

As part of this assessment, Staff will continue to have discussions with other regulators, including staff of the Financial Services Authority in the United Kingdom, about appropriate regulatory cooperation and oversight.

**Question 2: Do Mergeco's proposed undertakings to the Commission provide for a sufficient degree of regulatory oversight by the Commission over the operations of TMX Group, TSX, and Mergeco as necessary? If not, why not? In any event, would there be sufficient oversight of Mergeco by the Commission or by any other regulatory body?**

**Question 3: Are there additional undertakings that Mergeco should provide to the Commission to ensure adequate oversight?**

**Question 4: Do the proposed undertakings by Mergeco provide for appropriate governance over the operations of TMX Group and TSX?**

**Question 5: Are the proposed governance arrangements following the fourth anniversary of the Proposed Transaction sufficient to account for the interests of TMX Group and TSX?**

**Question 6: Should the Commission have the authority to approve any "permitted adjustment" to the composition of the Board of Mergeco before the fourth anniversary of the Proposed Transaction?**

**Question 7: Should the Commission have the authority to approve any adjustments to the composition of the Board of Mergeco after the fourth anniversary of the Proposed Transaction?**

**Question 8: Is the proposed undertaking by Mergeco to allocate sufficient financial and other resources to TMX Group and to TSX adequate or should there be additional undertakings with respect to the continuity of the operations of TMX Group and TSX?**

**(ii) On-going Share Ownership Restrictions**

Following the reorganization of TSX and the initial public offering of shares in TMX Group, the restrictions on the ownership of TSX shares was raised from five percent to 10 percent and, through an order of the Commission, deemed to apply to the shares of TMX Group. The rationale for the restriction was to ensure that TMX Group remained widely held and to provide the Commission with an opportunity to assess and approve the suitability of any prospective owner of a significant shareholding in TMX Group.

The Application proposes that the current share ownership restrictions for TMX Group shares will remain in place following the Proposed Transaction. Consequently, if Mergeco proposed to sell more than 10 percent of the shares of TMX Group, the purchaser would need the Commission's prior approval. In this regard, one of Mergeco's undertakings included in the Application provides that Mergeco will not sell or otherwise dispose of any voting or equity securities of TMX Group or TSX without prior approval by the Commission.

However, the Application does not propose to apply the 10 percent share ownership restrictions to the shares of Mergeco. It does provide that a change in legal or effective control of Mergeco would require the Commission's approval. Legal control of Mergeco results from a person or company holding more than 50 percent of the shares of Mergeco. Effective control of Mergeco results when a person or company acquires sufficient shares of Mergeco that they can elect a majority of directors to its board.<sup>4</sup>

The effect of the share ownership restrictions as described in the Application is that the Commission's authority to approve significant shareholders of Mergeco would be triggered by a change in legal or effective control of Mergeco rather than by a person or company owning or controlling more than 10 percent.

Staff will assess whether the share ownership restrictions in section 21.11(1) of the Act should apply to the shares of Mergeco, as they did to the shares of TMX Group following its initial public offering.

**Question 9: Do the share ownership restrictions as proposed in the Application continue to meet the policy objectives of the Commission reflected in the current share ownership restrictions?**

**Question 10: Should the Commission have the authority to approve ownership or control of more than 10 percent of the shares of Mergeco rather than the 50 percent as proposed? If so, why?**

**(iii) Governance and Core Operations of TMX Group and TSX**

The Application provides that Mergeco will cause TSX to maintain its "core operations" in Canada. The Application identifies the core operations of TSX currently as: (i) its two local Canadian equities data centres; (ii) local Canadian information technology operations and support services; (iii) local Canadian listing and issuer services; (iv) local Canadian trading services; (v) local Canadian compliance and regulation functions; and (vi) local Canadian market data services.

The Application also provides for proposed governance arrangements for TMX Group and TSX. Specifically, the Application provides that at least 50 percent of the directors and members of each of the board committees of TMX Group and TSX will be both ordinarily resident in Canada and independent.

**Question 11: Should TSX's "core operations", as described in the Application, be kept in Canada and if so, why? What would be necessary for these operations to be considered to be "in Canada"?**

**Question 12: Are there operations of TSX, other than those described in the Application, that constitute "core operations"? Why?**

**Question 13: Are the governance arrangements as proposed for TMX Group and TSX adequate to ensure appropriate representation of Canadian interests on the boards of TMX Group and TSX?**

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<sup>4</sup> As indicated in the Application, establishing a change in effective control of Mergeco is a question of fact in the circumstances and not subject to a bright line standard.

**(iv) Assessment of Proposed Transaction**

Part III of the Application sets out the applicants' assessment of the benefits of the proposed arrangement. These benefits include deeper liquidity for securities traded on TSX, greater access to Canadian markets, benefits to market participants, intermediaries and advisors, and an improved competitive position to attract foreign issuers to list in Canada.

**Question 14: Do commenters agree or disagree with TMX's assessment of the Proposed Transaction?**

**Question 15: What impact will the Proposed Transaction have on issuers' ability to raise capital and on investors wanting to trade securities?**

**Question 16: What are the detriments of the Proposed Transaction, if any? Please provide relevant data where available.**

**(v) Clearing and settlement**

TMX Group has interests, directly and indirectly, in several clearing and settlement organizations in Canada; The Canadian Derivatives Clearing Corporation (CDCC), CDS Clearing and Depository Services Inc., and its parent company, The Canadian Depository for Securities Limited (collectively, CDS), and Natural Gas Exchange Inc. (NGX).

CDCC is a wholly-owned subsidiary of MX and presently clears and settles trades executed on MX. In December 2009, CDCC entered into deliberations with the Investment Industry Association of Canada to develop a central counterparty and netting utility for Canada's fixed income market. TMX Group holds an 18.1% ownership interest in CDS, the national clearing agency and depository for equity and debt securities.<sup>5</sup> It clears and settles trades carried out on TSX, TSX Venture and other Canadian marketplaces.

**Question 17: Do commenters believe that there are any issues associated with foreign ownership and control of Canadian clearing and settlement systems and, in particular, systems that are systemically important to the Canadian financial markets? If so, what measures should be considered to address these concerns?**

**Question 18: Should trades or other transactions conducted on a Canadian marketplace be required to clear and settle through a clearing agency recognised in a Canadian jurisdiction?**

**Question 19: Are there any other clearing and settlement issues that are raised by the Proposed Transaction?**

**(vii) Strategic asset or infrastructure**

Given the public discussion of the Proposed Transaction to date, we would like to solicit feedback on whether TMX Group, TSX, or any other part of the TMX Group, is a strategic asset or infrastructure for Canada and, if so, what this should mean in the context of the Commission's review of the Proposed Transaction.

**Question 20: Is TMX Group, TSX, or any other part of TMX Group a strategic asset or infrastructure? If so, please explain the criteria by which you make such an assessment.**

**Question 21: If so, what implications should this have for the Commission's review of the Proposed Transaction? Why?**

**6. PUBLIC CONSULTATION**

The Application raises significant public policy issues that are important to market participants and the Ontario capital market. As a result, the Commission has decided that a Public Consultation should be held to give interested parties an opportunity to provide their views to the Commission.

The Public Consultation will be led by a panel of the Commission and will consider the public policy issues described in this notice together with any other public policy issues which are relevant to the Application and fall within the Commission's mandate. The consideration of these issues in the course of the Public Consultation will assist the Commission in making its decision whether to approve the beneficial ownership by LSEG of all the common shares of TMX Group and in determining the changes to the Recognition Order that are necessary to ensure the appropriate level of oversight of the exchange and ensure that the exchange operates in the public interest. Ultimately, it is the Commission as a whole that will make the decision on the Application following the Public Consultation.

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<sup>5</sup> CDS's shareholders are the six large Schedule 1 banks (66.7%), the Investment Industry Regulatory Organization of Canada (15.2%) and TMX Group (18.1%).

Interested parties wishing to participate in the Public Consultation must first submit written comments on the Application, following the written comment process set out below. If you are interested in participating in the Public Consultation, please submit your request, with contact information, as part of your written comments. The appropriateness and extent of any participation in the Public Consultation will be determined by the Commission. Please also note that, for purposes of the Public Consultation, participants will be expected to provide additional insight regarding their comments, rather than simply repeating the substance of their written comments.

Date(s) for the Public Consultation have not yet been established, although we anticipate that it will be held in July 2011. Once the date(s) have been finalized, a notice to the public will be published with additional details, and parties who have expressed an interest in participating in the Public Consultation will be contacted directly.

**7. WRITTEN COMMENT PROCESS**

We are seeking comment on all aspects of the Application and are also seeking specific comment on the issues and questions identified above.

You are asked to provide your comments in writing, via e-mail and delivered on or before **June 29, 2011** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca).

Confidentiality of submissions will not be maintained and a summary of written comments received during the comment period will be published.

Questions on this Notice may be referred to:

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## 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* and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, including, but not limited to, the requirements relating to:

- (a) Access Requirements;
- (b) Public Interest Rules;
- (c) Compliance Rules;
- (d) Information Transparency;
- (e) Trading Fees for Marketplaces;
- (f) Record Keeping Requirements for Marketplaces; and
- (g) Capacity, Integrity and Security of Marketplace Systems.

### 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 governing body (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 Public Interest Rules and Compliance Rules as referred to in paragraphs 1.1(b) and (c), 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 equitably allocated and are consistent with the Access Requirements referred to in paragraph 1.1(a) and the Trading Fees for Marketplaces requirements referred to in paragraph 1.1(e).
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

## **PART 11 OUTSOURCING**

### **11.1 Outsourcing**

Where the exchange has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

## **PART 12 INFORMATION SHARING AND REGULATORY COOPERATION**

### **12.1 Information Sharing and Regulatory Cooperation**

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission and its staff, recognized self-regulatory organizations, other recognized exchanges, investor protection funds, and other appropriate regulatory bodies, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.



**London**  
Stock Exchange Group



May 13, 2011

**VIA EMAIL & DELIVERED**

Ontario Securities Commission  
20 Queen Street West, Suite 800  
Toronto, Ontario  
M5H 3S8

Attention: Susan Greenglass, Director, Market Regulation

Dear Ms. Greenglass:

**Re: TMX Group Inc. - Proposed Merger with London Stock Exchange Group PLC**

In connection with the proposed merger (the "Merger") of TMX Group Inc. ("TMX Group") with London Stock Exchange Group PLC ("LSEG"), pursuant to an agreement (the "Merger Agreement") dated February 9, 2011, LSEG, TMX Group and TSX Inc. ("TSX") hereby apply for the following: (i) an order of the Ontario Securities Commission (the "Commission") approving the beneficial ownership by LSEG of all of the common shares of TMX Group; and (ii) an amended and restated recognition order of TMX Group and TSX reflecting: (a) changes relating to the Merger with LSEG and (b) the terms and conditions to be followed by LSEG in connection with the proposed listing of LSEG ordinary shares on Toronto Stock Exchange. In this application "Mergeco" means LSEG after giving effect to the Merger and "Merged Group" means Mergeco and its subsidiaries worldwide (and, for the avoidance of doubt, includes TMX Group and its subsidiaries).

We also hereby make application on behalf of TMX Group's wholly-owned subsidiary, TSX Venture Exchange Inc. ("TSX Venture"), for an order amending and restating the Commission's amended exemption order of TSX Venture dated August 12, 2005 (the "Existing Venture Exemption Order") to reflect changes in the recognition orders of TSX Venture issued by the Alberta Securities Commission (the "ASC") and the British Columbia Securities Commission (the "BCSC") relating to the Merger. We also hereby make application on behalf of TMX Group's wholly-owned subsidiary, Bourse de Montréal Inc. (the "Bourse"), for an order amending and restating the Commission's amended exemption order of the Bourse dated May 1, 2008 (the "Existing Bourse Exemption Order") to reflect changes in the recognition order of the Bourse issued by the Autorité des marchés financiers (the "Autorité") relating to the Merger.

As a threshold matter, it is important to note that the Merger will have no impact on the Canadian regulatory oversight regime applicable to TMX Group, TSX and their Canadian subsidiaries other than to strengthen it pursuant to commitments made in the Merger Agreement. The Commission will continue as the lead regulator of TMX Group and TSX (as will the Autorité in respect of the Bourse and Canadian Derivatives Clearing Corporation ("CDCC"), the ASC and BCSC in respect of TSX Venture and the ASC in respect of Natural Gas Exchange Inc. ("NGX")). The changes to the TMX Group and TSX recognition order being proposed have the principal objective of ensuring the continuation of the strong local elements of Toronto Stock Exchange operations and regulation. Indeed, the Merger satisfies a main goal of TMX Group for its exchanges and clearing agencies: to solidify and enhance their international position in the midst of a rapidly globalizing and consolidating industry on a basis that best supports the interests of the Canadian financial community.

We also note that under the proposed transaction, the TMX Group exchanges and clearing agencies will continue to operate in the same manner as before; that is, the Merger does not involve any mergers of any of the regulated exchanges themselves with those operated by LSEG, but rather a pooling of the ownership of LSEG and TMX Group.

This application has been divided into nine parts:

- I. Merger Description
- II. Information Regarding LSEG
- III. Benefits of the Merger
- IV. Ownership Restrictions
- V. Governance, Undertakings and Proposed Amendments to Recognition Order
- VI. Self-Listing Conditions will apply to Mergeco Shares Traded on Toronto Stock Exchange and Exchangeable Shares
- VII. Items in Recognition Order that are not Impacted
- VIII. Amended Exemption Orders in Respect of TSX Venture and The Bourse
- IX. Enclosures

**I. MERGER DESCRIPTION**

**A. Implementation**

The Merger will be implemented by way of a court-approved plan of arrangement under the *Business Corporations Act* (Ontario). Under the terms of the plan of arrangement, TMX Group shareholders will receive 2.9963 Mergeco ordinary shares for each TMX Group share. TMX Group resident Canadian shareholders that are not exempt from taxation may receive, at their election, 2.9963 exchangeable shares in an indirect Canadian subsidiary of Mergeco ("Exchangeco") for each TMX Group share, each exchangeable by the holder at any time into an Mergeco ordinary share. LSEG shareholders will therefore at closing own 55 per cent and TMX Group shareholders 45 per cent of Mergeco, which will be renamed after closing. Mergeco will be listed on both London Stock Exchange and Toronto Stock Exchange; Exchangeco will be listed on Toronto Stock Exchange.

The sole purpose of Exchangeco and the exchangeable shares is to provide TMX Group resident Canadian shareholders that are not exempt from taxation the ability to receive shares at closing on a tax-free roll-over basis and to permit those shareholders to receive beneficial tax treatment on dividends on those shares. The exchangeable shares provide the holder with a security having, as nearly as is practicable, economic terms and voting rights that are the same as the Mergeco ordinary shares. The exchangeable shares are subject to redemption by Exchangeco in certain circumstances, including at any time seven years after the closing of the Merger. This exchangeable share structure is substantially similar to structures the Commission is familiar with pursuant to the Exemption for Certain Exchangeable Security Issuers under section 13.3 of National Instrument 51-102 – *Continuous Disclosure Obligations* and this structure would meet the requirements for the exemption thereunder.

**B. Mergeco Board**

At closing, Mergeco will be the parent holding company of the various exchange entities and related businesses that operate within the Merged Group. LSEG currently does not, and Mergeco will not, carry on any active business operations. All active business operations will be carried on by the respective subsidiaries of the Merged Group.

At closing, the board of Mergeco will consist of 15 directors, eight to be nominated by LSEG, including three from Italy, and seven to be nominated by TMX Group. Wayne Fox, currently Chair of TMX Group, will be the Chairman of the board of Mergeco, and the current Chair of LSEG, Chris Gibson-Smith, and LSEG's Italian Deputy Chair will be Deputy-Chairmen. The executive board members of Mergeco will be:

- Chief Executive Officer – Xavier Rolet, currently Chief Executive Officer of LSEG (based in London);
- President – Thomas Kloet, currently Chief Executive Officer of TMX Group (based in Toronto);
- Chief Financial Officer – Michael Ptasznik, currently Chief Financial Officer of TMX Group (based in Toronto);  
and
- Director – Raffaele Jerusalmi, currently Chief Executive Officer of Borsa Italiana S.p.A. (based in Milan).

The Mergeco Board will be responsible for setting and overseeing implementation of the Merged Group's strategic objectives and will be accountable for the financial and operational performance of the Merged Group. Accordingly, responsibilities of the Mergeco board will include: (i) approval of the Merged Group's long term objectives and commercial strategy; (ii) approval of the Merged Group's annual operating and capital expenditure budgets; (iii) approval of changes to the Merged Group's corporate and capital structure; (iv) the Merged Group's financial reporting, including internal controls; and (v) risk management for the Merged Group.

Mergeco will be jointly headquartered in London and Toronto. The executive management and senior leadership of Mergeco will be drawn from a balance of leaders from both organizations and will be represented in its co-headquarters of London and Toronto as well as other core centres, including Calgary, Colombo, Milan, Montreal, Rome and Vancouver.

The various operating exchanges in the combined group will continue under their existing highly recognized brand names. Mergeco will also continue to maintain local boards of directors of the regulated legal entities in Europe and Canada (including for TMX Group, TSX, the Bourse, TSX Venture and CDCC).

The day-to-day operations of the individual companies in the Merged Group are, and will remain, the responsibility of the boards of directors of those companies. In this regard, each subsidiary board is responsible for (i) financial matters relating to the individual entity, including approving accounts and recommending budgets for approval by the Mergeco board; (ii) ensuring compliance with local regulatory requirements, including approving matters relating to licenses to operate and recognition orders and operating of local markets; and (iii) ensuring the integrity of local capital markets and that local customer bases are maintained.

Commitments for Canadian participation in the boards of directors of TMX Group and TSX are also provided for in connection with the Merger as described in Section V(B)(i)(1) and Section V(B)(ii)(1).

### **C. Corporate Structure**

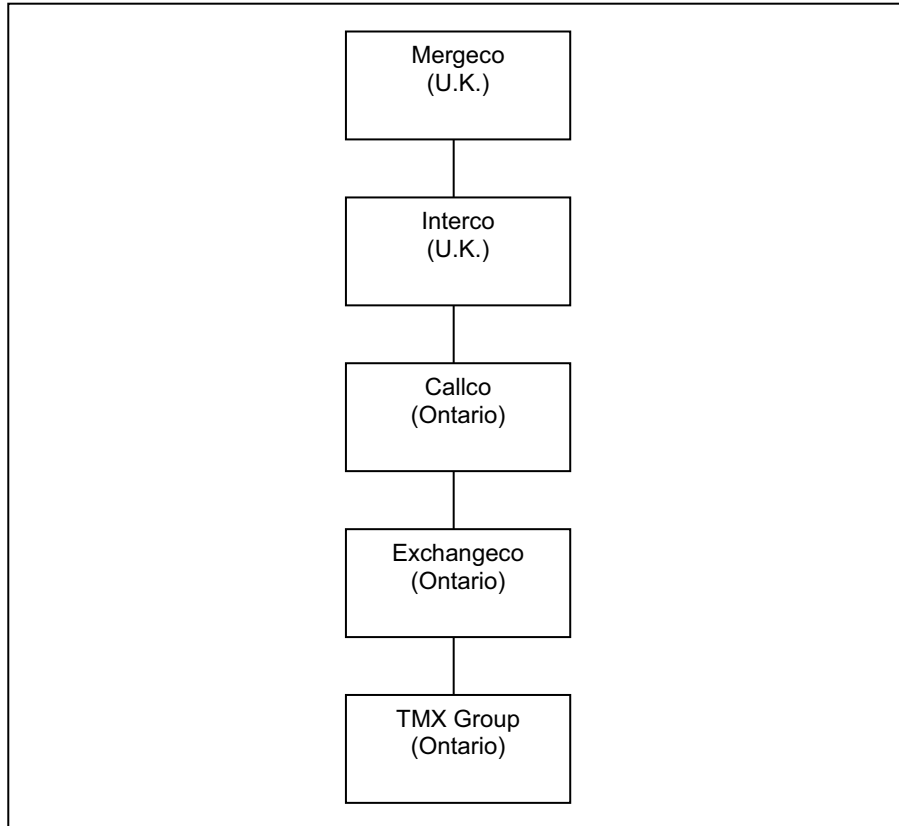
The first chart below shows the corporate entities involved in the Merger immediately upon the completion of the Merger. The Exchangeco, Callco and Interco entities referenced in the chart all exist solely to support the exchangeable share structure and for associated tax reasons and have no separate business function or operations. Each of the subsidiary entities of Mergeco is wholly-owned, except in the case of Exchangeco, which will issue the exchangeable shares to electing former shareholders of TMX Group (and which are non-voting in respect of Exchangeco and instead confer voting rights in respect of Mergeco).<sup>1</sup>

The second chart below shows the Merged Group after the Merger, focusing on key operating entities and business lines.

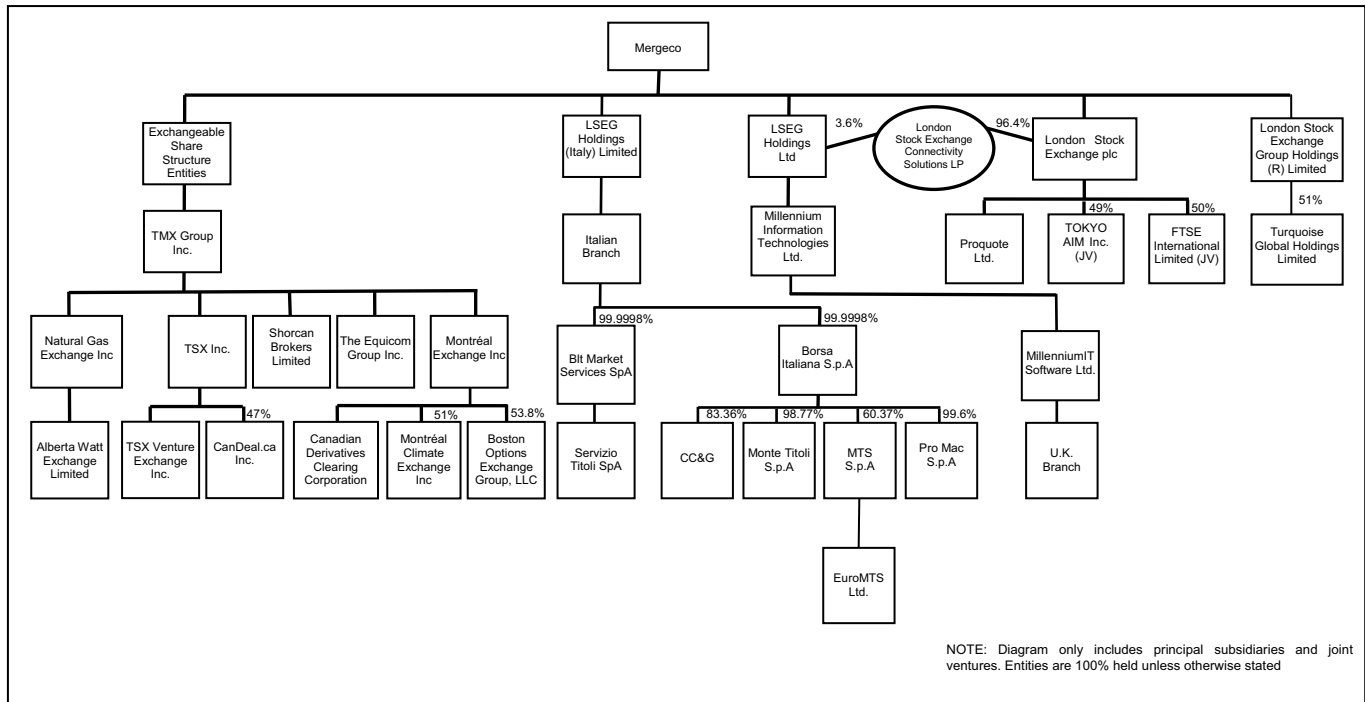
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<sup>1</sup> There are other trust and similar vehicles that will be established for purposes of holding and conferring voting rights on behalf of the holders of exchangeable shares.

Corporate Entities Involved in Merger



Merged Group Structure



## II. INFORMATION REGARDING LSEG<sup>2</sup>

LSEG is a diversified international exchange business which operates a wide range of markets in the European Union. It is headquartered in London, U.K. with significant operations in Italy and Sri Lanka and employs approximately 1,500 people. Through its advanced trading platforms and diverse listing services, LSEG offers domestic and international issuers and investors, both institutional and retail, access to Europe's highly liquid capital markets. LSEG offers its customers an extensive range of real-time and reference data information products and robust post-trade services and also develops high performance technology trading and surveillance platforms and capital markets software.

### A. Capital Markets

LSEG provides a highly attractive international venue for the public listing of shares, bonds and other securities by companies seeking to raise capital from investors, both at the time of their initial listing and through subsequent offerings. The key equity markets operated by LSEG are the U.K.'s Main Market and Italy's MTA Market and AIM (for small and growing companies).

LSEG also operates a range of electronic trading platforms that provide high speed order and quote-driven matching services for investors that wish to buy and sell securities. Some of these platforms are operated by recognized exchanges while others are run by authorized firms, such as "alternative trading systems" (known in Europe as multilateral trading facilities or "MTFs"), which undertake both lit and dark trading of securities.

The key listing and trading venues in LSEG are:

- London Stock Exchange plc (the "LSE"), a Recognised Investment Exchange ("RIE") regulated by the U.K.'s Financial Services Authority ("FSA"), which offers listing services and operates several equity and bond markets including the "Main Market", AIM and the "International Order Book" for international equities;
- Borsa Italiana S.p.A. ("Borsa Italiana"), LSEG's Italian exchange business, regulated by Commissione Nazionale per le Società e la Borsa ("Consob"), Italy's main securities regulator, which offers listing services and operates a range of equity, derivative and bond markets, including MTA (the main Italian equity trading platform), IDEM (its Italian derivatives market, trading contracts based on equities and related indices) and IDEX (its Italian energy derivatives segment, trading contracts based on commodities and related indices);
- Turquoise Global Holdings Limited ("Turquoise"), an MTF regulated by the FSA, which offers lit and dark trading in pan-European and U.S. equities. Turquoise is planning to launch shortly a European derivatives offering running on TMX Group's SOLA® technology,<sup>3</sup> and
- Società per il Mercato dei Titoli di Stato S.p.A. ("MTS S.p.A."), which controls and operates a series of electronic trading platforms for European fixed income securities, including EuroMTS Limited, a U.K. incorporated entity which is an MTF regulated by the FSA.

### B. Post-trade

LSEG's post-trade entities are:

- Cassa di Compensazione e Garanzia S.p.A. ("CC&G"), a majority-owned subsidiary of LSEG, which is a clearing house regulated by the Banca d'Italia and Consob that guarantees trades between counterparties and manages counterparty risk in a range of assets and instruments, including cash equities, derivatives, energy products and government bonds. CC&G's services are used primarily for trading taking place on Borsa Italiana. LSEG's U.K. trading platforms use the services of third party clearers such as LCH.Clearnet and EuroCCP.
- Monte Titoli S.p.A. ("Monte Titoli"), a majority-owned subsidiary of LSEG, which is a settlement system and securities depository regulated by Banca d'Italia and Consob that provides settlement and custody services, primarily for Italian securities, to a broad client basis and has a wide range of connections to international markets and central counterparties. LSEG's U.K. trading platforms use the services of third party settlement systems and depositories such as Euroclear.

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<sup>2</sup> The information in Part II has been provided by LSEG.

<sup>3</sup> As has recently been announced, LSEG is shortly going to combine EDX London Limited into Turquoise, utilizing TMX Group's market leading derivatives trading technology, SOLA®.



**C. Information Technology**

LSEG's information and technology services include:

- the provision of high speed, real time pre-trade and post-trade data, trade confirmation, reconciliation and reporting services, corporate news information and co-location services; and
- the sale and license of exchange-related technology and services to a variety of global capital markets businesses through its Millennium Information Technologies Ltd. ("MillenniumIT") business in Sri Lanka.

MillenniumIT has recently implemented new trading platforms at the LSE and Turquoise, which have made it the fastest trading platform in Europe, with average round-trip latencies well below 200 microseconds.<sup>4</sup>

**D. Regulation of Markets**

LSEG recognizes the importance of ensuring its markets continue to be well regulated and that they have the appropriate standards of transparency, orderliness and integrity. In relation to both admission to its primary markets and secondary market trading, LSEG's regulated entities impose balanced and proportionate regulatory standards to maintain high levels of investor confidence. More specifically:

- LSE and Borsa Italiana have rules for issuers whose securities are admitted to their markets; both to ensure their suitability to be traded on a public market and to govern the issuers' continuous disclosure of corporate information to investors.
- Each regulated entity in LSEG has rules for its trading participants that govern their trading activity on each of its platforms.
- Trading prices and volumes are monitored by LSE and Borsa Italiana to identify any asymmetry of information in the market or evidence of possible leaks of price sensitive information, which might necessitate the issuers making further announcements to the market.
- Each regulated entity in LSEG uses sophisticated surveillance technology to monitor the group's markets in real-time and on a post-trade basis. This surveillance ensures the ongoing orderliness of the markets, monitors compliance with the rules of the platforms and detects possible market manipulation and market abuse.
- Each regulated entity in LSEG ensures that trading taking place on each of the group's trading platforms, whether executed electronically or bilaterally and then reported to it under its rules, has the appropriate level of pre-trade and post-trade transparency.
- To ensure reliable, continuous price formation, the high speed trading technology used by the regulated entities in LSEG utilizes a variety of automatic controls, such as volatility interruptions and auction extensions.

In addition to the rules applicable on LSEG's various trading platforms, users of each platform must also comply with the regulations promulgated by local regulatory authorities, such as the FSA (in the case of the platforms authorized or recognized in the U.K.) and Consob (in the case of the platforms based in Italy).

All of the regulated entities within LSEG work closely with their respective statutory regulators to maintain high regulatory standards throughout LSEG. Further information on LSEG can be found in its 2010 annual report or on its corporate website located at [www.londonstockexchange.com](http://www.londonstockexchange.com).

**E. Regulation of LSEG**

**(i) U.K. Regulation of LSEG**

LSEG is the ultimate parent company of LSE, which is an RIE, and of Turquoise and EuroMTS Limited, both of which are FSA "authorized firms". This section briefly describes how the RIE and authorized firm regulatory regimes apply to LSEG itself as the owner of U.K. regulated subsidiaries, and accordingly how they would apply to Mergeco post-Merger.

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<sup>4</sup> At the 99th percentile, which means a calculation of the mean average latency across 99 per cent of all messages.

The regulatory regime for RIEs is relatively concise, high level and principles-based and obliges RIEs to meet certain recognition requirements on an ongoing basis. An RIE's compliance with the recognition requirements is supervised by the FSA in a close and continuous manner. This regime contrasts with the much more detailed, rules-based regime to which all FSA authorized firms are subject, based largely on harmonized European Union requirements.

LSEG is a U.K.-listed, unregulated holding company that does not itself perform any regulated activities and accordingly does not itself require either recognition as an RIE or authorization as a firm. The FSA therefore does not have direct regulatory control over LSEG but does have to approve certain changes in ownership of LSEG as the ultimate parent of the U.K. regulated subsidiaries, as described in Part IV – Ownership Restrictions. In addition, the FSA has regulatory influence over the individual board members of LSEG as follows.

The FSA's regime for authorized firms requires the approval of the individuals such as directors, non-executive directors or senior managers employed by an unregulated parent undertaking or holding company whose decisions, opinions or actions are regularly taken into account by the governing body of the authorized firm. As a result, the FSA interviews and approves the key board members (typically the Chairman, Chief Executive Officer and Senior Independent Directors) of unregulated holding companies of high impact authorized firms such as banks. The presence of the two FSA authorized firms in the LSEG group therefore gives the FSA the ability to require the board members of LSEG to be formally approved.

RIEs are exempt from authorization and therefore from the requirement that their key holding company board members be approved. However, in recent years the FSA has adopted the practice of interviewing prospective board members of RIE holding companies to establish their suitability, in a manner very similar to the approach taken for high impact authorized firms. The RIE recognition requirements specifically allow the FSA to take into account LSE's connection with any person and require that individuals in a position to exercise significant influence over an RIE, whether directly or indirectly, be suitable. Therefore, the FSA is able to use its regulatory influence over LSE, the RIE, as the basis for its assessment of the suitability of LSEG board members.

On an annual basis, the FSA meets with LSEG to discuss the risk mitigation program for the regulated entities in LSEG. The FSA's risk assessment is a high level review aimed at assessing the significance of the risks posed by the regulated entities to the FSA's statutory objectives (market confidence, financial stability, consumer protection and the reduction of financial crime). The program assesses the impact on their statutory objectives if a particular risk actually materialized and the probability of the risk materializing.

**(ii) Italian Regulation of LSEG**

Following the Merger, Mergeco will also be the parent company of Borsa Italiana, CC&G, Monte Titoli and MTS S.p.A., all of which are companies regulated by Consob and Banca d'Italia. Specifically, Borsa Italiana is supervised by Consob only, while MTS S.p.A., CC&G and Monte Titoli are under Consob and Banca d'Italia supervision.

Italian law requires that any direct or indirect shareholders of more than 5 per cent in market operators (such as Borsa Italiana and MTS S.p.A.), in central depositories (such as Monte Titoli) and in central counterparties (such as CC&G) or any persons who otherwise control these entities, be persons of integrity and make a declaration to Consob (and Banca d'Italia for the companies it supervises) accordingly. If those shareholders are legal persons then it is the directors of the shareholder companies that must be persons of integrity and must make appropriate declarations. Where the parent undertaking is an overseas company, Italian law allows for the integrity requirement to be met through a substantially equivalent requirement that is imposed by an appropriate overseas competent authority. In 2007, after the merger between LSEG and Borsa Italiana, in which LSEG became the parent undertaking, the FSA wrote a letter, which was sent to Consob and Banca d'Italia, confirming the status of LSE as an RIE and stating the requirement for an RIE to be "fit and proper" taking into account its connections with any person, including its owners. This U.K. requirement met the Italian equivalence test for LSEG, the ultimate holding company of the Italian regulated companies.

**III. BENEFITS OF THE MERGER**

**Overview**

The proposed merger of TMX Group (which operates Canada's principal equities and derivatives markets) and LSEG (which operates leading markets in the U.K. and Italy) is intended to attract new investment to Canadian public issuers and contribute directly to the success of Canada's capital markets. This in turn underpins economic activity and growth in Canada (as well as achieving similar effects in the U.K. and Europe).

Canadian capital markets have operated on the international stage for some time, attracting global issuers and investors to TMX Group's exchanges. This has helped to strengthen the performance of these exchanges and has contributed to enhanced financial sector activity. We believe that the Merger will further enhance this effort. TMX Group's exchanges will be able to take advantage of LSEG's global footprint (notably, a European and international sales force, deep customer

relationships in key foreign markets and connections to global investors) to promote the TMX Group issuers and products and investment in Canada internationally. In addition, the trans-Atlantic link (both in terms of people and technology) will help simplify European and international investor access to Canadian markets, deepening the capital pool available to Canadian publicly listed issuers and enhancing activity on TMX Group's domestic equity and derivatives exchanges.

The resulting increase in demand and liquidity in the Merged Group's Canadian platforms is expected to reduce trading costs and lower the cost of capital for issuers listed on Toronto Stock Exchange and TSX Venture, permitting more effective and efficient financing for Canadian issuers of all sizes. The increased trading and investment activity that we expect to generate on TMX Group's Canadian markets will facilitate access to capital for smaller capitalized and early stage corporations to fund important new development projects and will allow larger capitalized corporations to raise the financing required to fund large projects and strategic initiatives. We anticipate that this will in turn promote job expansion and innovation in Canada.

An increased demand for securities of issuers listed on Toronto Stock Exchange and TSX Venture is expected to similarly increase the demand for derivatives related to those securities (including options) that trade on the Bourse and for clearing them on CDCC.<sup>5</sup> CDCC will also benefit from being part of a larger organization with additional clearing assets and expertise. In addition, CDCC will benefit from enhanced opportunities to create a trans-Atlantic over-the-counter ("OTC") derivatives clearing services offering. In this regard, and in response to the financial crisis, in September 2009 the G-20 made a commitment that all standardized OTC derivative contracts should be cleared through central counterparties by the end of 2012 at the latest.

The following sections describe the benefits of the Merger to TMX Group and its Canadian stakeholders in detail.

**A. Greater Visibility Promotes Canada**

Given the mobility of and competition for international capital, TMX Group needs to continually work to increase awareness of, and simplify access to, Canadian markets to ensure that Canada obtains its fair share or more of global asset allocation. We believe that the Merger will help achieve these objectives.

LSEG's global footprint, in particular its existing strong customer relationships in key foreign markets<sup>6</sup>, and an established LSEG global sales force (with offices across Europe and Asia) will increase the visibility of TMX Group's capital markets around the world, helping it to promote Canada internationally and attract new investment to Canada.

**B. Greater Accessibility to Canadian Markets Improves Liquidity**

One of the keys to international investor access to Canadian markets is connectivity: that is, the mechanism that enables a market participant to send orders to the exchange. Different messaging protocols, arranging for telecommunications lines and technology latency are key impediments to connectivity. TMX Group has addressed these issues within North America in recent years by providing a standard FIX messaging protocol, using physical points of presence in key U.S. hubs with telecommunication lines connecting into Canadian hubs as well as continually improving trading system speed of execution. These steps, among others, have made access to TMX Group's exchanges and listed issuers more attractive and easier and have resulted in a significant increase in the number of TMX Group's U.S.-based customers.<sup>7</sup>

To maximize Canada's potential, it is critical to open new pathways and streamline access to TMX Group's markets for a broader cross-section of international investors. To that end, Europe represents one of the world's largest capital pools. The total global managed assets in Europe, including the U.K., is estimated to be \$18 trillion (of which the U.K. constitutes \$2.8 trillion, or 16 per cent), while in Canada it is estimated to be \$0.7 trillion.<sup>8</sup>

Through the Merger we plan to establish connectivity between European and Canadian data centres and to implement common technology and application platforms. This will facilitate access to Canada for European investors and, when combined with proactive and more effective marketing of Canadian opportunities to European investors, is expected to increase capital and order flow into Canada from Europe's significant capital pool.

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<sup>5</sup> Currently, all equities options traded on the Bourse are based on securities listed on Toronto Stock Exchange.

<sup>6</sup> LSEG has issuers from over 20 countries admitted to its markets and over 400 trading members based in the European Economic Area.

<sup>7</sup> For example, the number of U.S.-based data subscribers increased 51 per cent from 2006 to 2008. This coincided with the connection of TMX Group to the U.S.-based Secure Financial Transaction Infrastructure (SFTI) telecommunication network in June, 2007.

<sup>8</sup> The European statistics are as reported by the European Fund and Asset Management Association in "Asset Management in Europe Facts and Figures: EFAMA's Third Annual Review" (April 2010) and converted to Canadian dollars. The Canadian statistic is as reported by the Investment Funds Institute of Canada in "IFIC Monthly Analytical Package: February 2011" (March 15, 2011).

**C. Deeper Liquidity and Demand**

Market liquidity is an asset's ability to be bought or sold in a timely manner without causing a significant movement in its price. On an exchange, liquidity is measured by the number and size of buy and sell orders posted and available for execution on its platforms. Deep liquidity pools have the benefit of more efficient pairing of buyers and sellers, which results in tighter spreads between bid and ask prices on an exchange.

The increase in visibility of and accessibility to TMX Group markets described above is expected to lead to deeper liquidity pools by attracting more international order flow. We believe this will narrow spreads and lower market impact costs, thereby lowering the cost of trading to investors, in particular investment funds that take large positions. It should also have the effect of lowering the cost of capital for listed issuers because increased investor demand and reduced transaction costs should lead to higher valuations for the securities of those issuers. As stated in the Department of Finance's 2007 budget document *Creating a Canadian Advantage in Global Capital Markets*, "the more liquid and efficient are domestic equity and bond markets, and the wider the range of Canadian derivative instruments, the lower the cost of raising capital for Canadian business of all sizes."<sup>9</sup>

As this enhanced capital pool can be accessed domestically, we also expect that this will reduce the need for issuers to seek foreign investment through a listing on a foreign exchange. The listing standards set by Toronto Stock Exchange and TSX Venture will not change as part of the Merger and dual-listing between LSEG and TMX Group exchanges will not occur automatically as a result of the Merger. As is currently the case, an issuer will make its own determination as to whether it would derive benefit from a dual-listing. An issuer will be required to follow local rules and regulations to qualify for a listing on a particular exchange.

**D. Global Positioning**

TMX Group exchanges offer a unique value proposition in key areas. For example, TMX Group's exchanges are recognized as leaders in the small and medium enterprise ("SME") space, and are world leaders in the facilitation of public venture capital financing for early-stage companies; TMX Group is a global centre and leader in the mining sector and in energy and resource financing; TMX Group is expanding its presence and leadership into new growth segments, such as clean technology; and TMX Group exchanges list some of the world's most profitable and stable financial institutions.

These benefits have made TMX Group exchanges an attractive listings destination for international companies. However, there are limitations on TMX Group's ability to seek and secure new foreign listings given TMX Group's relative size and the modest international footprint of its operations. The addition of LSEG's expertise in global sales and its global footprint (which includes a significant London-based sales force and offices in Italy, Tokyo, Hong Kong and Beijing) will help TMX Group to market the value of listing on Canadian exchanges to international issuers more extensively.

For domestic Canadian investors, a broadening of TMX Group's issuer base will offer new investment opportunities. The enhanced international exposure that will come to TMX Group through the Merger, and the increase in foreign listings on TMX Group exchanges that we expect will follow, should benefit Canadian investors through a wider choice of investments on TMX Group's domestic exchanges. A broadened issuer base should also benefit the Bourse, as new listings on Toronto Stock Exchange create opportunities for new derivative products to be traded on the Bourse.

We also expect that TMX Group's inter-dealer bond broker, Shorcan Brokers Limited, as well as NGX, will derive new and increased business from this enhanced global profile as these services become exposed to a greater international audience.

**E. Benefits to Market Participants, Intermediaries and Advisors**

Increased capital flow from a global investment base will also benefit Canadian market participants more broadly. As opportunities for capital raising by domestic and foreign issuers increase in Canada, the demand for financial advisory services and related professionals such as investment bankers, securities lawyers, accountants, analysts and geologists is expected to increase, benefiting the Canadian financial services sector as a whole.

Additional capital flow will also have a positive impact on Canadian market intermediaries by creating more opportunities to provide related services such as transaction clearing, depositary, registration, transfer agency and trade execution services.

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<sup>9</sup> Canada, Department of Finance, *Budget 2007: Creating a Canadian Advantage in Global Capital Markets* (2007) at 13.

## **F. Improved Competitive Position**

The exchange environment is becoming increasingly competitive as a result of the emergence of new trading platforms and demands from customers for increased speed of trade execution and data delivery and for lower trading costs. The technology required to operate leading-edge exchanges in this increasingly competitive, time-sensitive environment is extremely sophisticated and constitutes a major fixed cost for companies that operate exchanges. Furthermore, it takes time to develop and deliver such technology reliably.

In our industry, there have been several waves of combinations, as exchange operators around the world have begun to strengthen their collective positioning by joining forces. These combinations have occurred in response partly to an increase in competition and partly due to developments in technology, which have facilitated new entrants and resulted in changing demands from exchange customers, including demand for new products and services. Pooling ownership has allowed exchange operators to combine their resources to achieve greater economies of scale in connection with investments in technology and other areas needed to serve investors and market participants at competitive prices, while extending their reach internationally. Many of these combinations have occurred across national boundaries and even across continents.

Exchanges that develop their own technology position themselves on the leading edge of the industry. Developing this technology is extremely resource intensive. For example, Singapore Exchange Limited is reporting that it will spend U.S.\$195 million<sup>10</sup> on its new trading infrastructure, creating a platform that is approximately twenty times faster than TMX Group's current TSX Quantum® trading engine. Efficiencies result when the technology development costs are shared across an exchange group that can use technology on multiple platforms and build on existing expertise within the group's businesses to develop technology more quickly. The combined technology know-how of the Merged Group will allow TMX Group and its Canadian exchanges to compete more effectively for liquidity by facilitating crucial technology developments to meet customer demand for speed and functionality. Combined technology development and deployment by the Merged Group will benefit from economies of scale that result from having many exchanges and marketplaces on common technology and should enable TMX Group to deliver leading edge technology to its customers more quickly and cheaply.

Further gains are realized when technology can be sold to non-affiliated marketplaces. This is the current successful model of LSEG through its MillenniumIT business, which develops, sells and deploys software such as trading systems, smart order routers and risk management technology to customers globally. The parties expect to be able to extend this approach following the Merger.

The Merger provides the combined organization with an immediate, larger customer base. We expect that existing TMX Group products will benefit from this broadened scope including, for example, the SOLA® trading technology. The SOLA® trading technology, which was developed and is supported by TMX Group's technology team based in Montreal, is currently used by LSEG for its derivatives trading platforms and is being deployed in LSEG's Turquoise multilateral trading facility to support futures and options trading on that marketplace. After the Merger, the TMX Group technology team will benefit from the strengths of its new affiliate, MillenniumIT, which operates a technology sales and deployment infrastructure that can help to accelerate the global commercialization of SOLA® to interested marketplaces. The Merger will allow Canadian expertise in trading software to flourish, as a highly-skilled workforce will be in demand to develop enhancements to SOLA® technology and other Merged Group technology.

## **G. Enhanced Product Offerings**

The Merger allows for the sharing of a global suite of products and services that can be provided to investors and market participants in a streamlined way, creating new levels of efficiency and simplicity. These products and services will include provision of access to local and intercontinental telecommunication lines, North American and European market data and pre-existing investment products that are currently not readily available to trans-Atlantic customers.

In particular, TMX Group will be able to offer its customers new products and services that have already been developed, implemented, and proven by LSEG. One such example is the UnaVista post-trade information management platform, which can be imported and customized for use by Canadian market intermediaries. We believe that Canadian participants could benefit from aspects of the UnaVista platform that perform data validation, matching, reconciliation, and other back-office functions. Access to existing LSEG products will significantly lessen the investment necessary, and shorten the time to market, for TMX Group to bring such products and services to its customers.

Another example of this type of opportunity is the access to FTSE International Limited ("FTSE") indices. LSEG's 50 per cent ownership stake in FTSE will assist in the development of TMX Group's relationship with FTSE, facilitating the creation of FTSE index-based exchange traded funds ("ETFs") and index-based derivatives in Canada. Currently, in order for a Canadian investor to trade FTSE indices, multiple intermediaries must be engaged to ultimately place the order on the foreign

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<sup>10</sup> Gaurav Raghuvanshi "Singapore Exchange to Launch New Trading Engine in August" *The Wall Street Journal* (19 January 2011), online: <http://online.wsj.com/article/BT-CO-20110119-703441.html>.

marketplace as these are only traded on European venues, and foreign-exchange costs for trading in British pounds or euros are applied to the trade. After the Merger, the combined group could more readily bring together FTSE and Canadian ETF providers that could then list FTSE index-based ETFs on Toronto Stock Exchange and options on those ETFs could also be traded on the Bourse. Listing these products on a Canadian exchange would enable domestic investors to trade on a Canadian venue, in Canadian dollars, using one (Canadian) intermediary. In addition, we could develop FTSE index-based derivative products to be traded on the Bourse.

#### **H. Small and Medium Enterprise Companies**

The biggest proportion of the TMX Group exchange equity market listings are SMEs.<sup>11</sup> These smaller-cap companies are the lifeblood of the Canadian capital markets and are expected to be future key contributors to Canadian economic growth. We expect to see continued growth and success in this market. We believe that the improved international profile and liquidity that the Merger is expected to generate, together with LSEG's evidenced commitment to and expertise in SME markets, will only help the continued growth and success of these markets.

For example, LSEG is the operator of AIM. Since AIM's launch, over 3,200 companies have raised a combined £73 billion.<sup>12</sup> This demonstrates a strong institutional commitment to SMEs seeking efficient financing options.

It is also important to note that the Merger will not in any way reduce the access of issuers to TMX Group markets. It is an important commercial function for Toronto Stock Exchange and TSX Venture to facilitate listing for issuers that meet required listing standards (which, as noted above, will not change as a result of the Merger) and increase the overall number of listings. As an example, if a mining company in Northern Ontario, a gas exploration company in Alberta or a forestry company in British Columbia proposes to list on one of the TMX Group exchanges post-Merger, it will go through exactly the same listing process as is currently the case. We also expect, as a result of the Merger, to be able to offer that company access to new investors from Europe that will be attracted to TMX Group's Canadian exchanges through broader reach of TMX Group's exchange brands and easier connectivity to TMX Group's exchanges.

Accordingly, the highly successful listing model that brings companies to TSX Venture, and helps them graduate to Toronto Stock Exchange, will continue to flourish and will allow these SMEs to continue to develop on Canadian exchanges.

#### **I. Canadian Centres for Mind and Management**<sup>13</sup>

The Merger provides opportunities for Canadian leadership around the world. It will result in the development of special centres of excellence across the new combined entity. For the combined group, the global listings business unit and global finance function will be headquartered in Toronto and run by executives based in Toronto; the global derivatives business unit will be headquartered in Montreal and run by executives based in Montreal; and the global energy business unit will be headquartered in Calgary and run by executives based in Calgary. For this purpose, a business unit or support function is "headquartered" in the jurisdiction where both:

- (i) the most senior executive officer of Mergeco (other than the Chief Executive Officer or President) responsible for that business unit or support function; and
- (ii) executives who are responsible for managing the development and execution of the policy and direction for that business unit or support function sufficient to permit that executive officer to execute his or her responsibilities from that location;

perform their respective duties and responsibilities and are resident.

The Calgary and Vancouver offices will remain the joint headquarters for TSX Venture and will also coordinate the Merged Group's marketing efforts for SME listings.<sup>14</sup> This domestic leadership as part of the global enterprise allows for the export of Canadian expertise generally, while retaining Canadian talent and enables Canadian talent to improve its international experience. The current TMX Group Chief Executive Officer, Tom Kloet, will become the President of Mergeco (reporting to the Chief Executive Officer) and will manage all global business units while remaining Chief Executive Officer of TMX Group.

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<sup>11</sup> 82 per cent of Toronto Stock Exchange and TSX Venture issuers have a market capitalization of less than \$250 million.

<sup>12</sup> In 2009, U.K.-based AIM companies directly contributed £12 billion to the U.K. GDP and supported 240,000 jobs according to a Grant Thornton report entitled "Economic impact of AIM and the role of fiscal incentives" (September 2010).

<sup>13</sup> The arrangements described in this section are provided for in the Merger Agreement as undertakings proposed to be provided to the Commission and in proposed amendments to the recognition order of TMX Group and TSX, all as described in detail in Part V of this application, and pursuant to four year undertakings proposed to be provided under the Merger Agreement in connection with the application for *Investment Canada Act* approval.

<sup>14</sup> Under the direction of the Head of the Global Listings business unit. The marketing efforts for large capitalization listings will be coordinated by the Heads of Listings in each of London and Milan, under the direction of the Head of the Global Listings business unit.

The core operations of TSX will also be maintained in Canada. The core operations of TSX currently include: (i) its two local Canadian equities data centres; (ii) local Canadian information technology operations and support services; (iii) local Canadian listing and issuer services; (iv) local Canadian trading services; (v) local Canadian compliance and regulation functions; and (vi) local Canadian market data services. TSX will be locally managed and the head office and executive office of each of TMX Group and TSX will be in Toronto. In addition, the most senior executives of TSX responsible for each of listing and issuer services, trading, market data and compliance and regulation functions (or their equivalents from time to time) will be ordinarily resident in Ontario and based in Toronto.<sup>15</sup>

Support functions such as finance, information technology, human resources and legal will also continue to be provided by local staff. Any reduction in our collective workforce which may arise as a result of the Merger is expected to occur mainly through attrition and to be shared in broadly equal proportions across LSEG and TMX Group.<sup>16</sup>

#### **J. Summary of Benefits to Canadian Stakeholders**

The Merger, by enhancing TMX Group's global reach and competitiveness and activities in a rapidly changing global exchange industry, will enhance the profile of Toronto, Montreal, Vancouver and Calgary as financial centres and increase the international profile of TMX Group as a leader in natural resource, mining, energy and clean-technology listings, as well as SME listings. The benefits for Canadian stakeholders include:

- more awareness and brand recognition of Canadian capital markets on the world stage;
- more and cheaper capital for Canadian companies to grow, innovate and prosper;
- more products and services available for Canadian investors;
- an improved competitive position to attract foreign issuers to list in Canada; and
- a more effective capital market which underpins a strengthened economy, driving innovation and jobs.

Our vision for the merged group aligns with the vision of the Toronto Financial Services Alliance ("TFSA"), a group that has identified many opportunities for Toronto and its financial services community. The TFSA's objectives of building Toronto's international brand and increasing awareness of its financial sector align directly with the goals of, and benefits to be derived from, the Merger. A global business such as the Merged Group co-headquartered in Toronto contributes directly to the strength of Toronto as a financial centre. Also significant is the fact that Toronto will become the headquarters of the global listings business unit for the Merged Group, under the management of a Toronto-based executive. The heads of the commercial listing operations across the Merged Group will functionally report into that Toronto-based executive.

It also aligns with the vision of Finance Montreal. Finance Montreal was created in November 2010 by the financial services industry at the invitation of the Government of Quebec. Its principal objective is to foster initiatives and a business environment geared towards strengthening Montreal and Quebec's financial sector, to trigger new activities, and to encourage the creation of new businesses and the location of major international companies in Quebec. The continued growth of the derivatives industry is a high priority for this business group. We believe that the designation of Montreal as the headquarters for the Merged Group's global derivatives business unit will directly contribute to the growth of the Montreal financial services sector and Montreal's continued specialization and expertise in the derivatives sector, providing opportunities for both the Bourse's derivatives business and CDCC's clearing business.

The Merger will also contribute directly to Alberta's aspirations to create a global energy trading and clearing hub. Calgary will remain the NGX headquarters, but will also become the headquarters of the global energy business unit of the Merged Group.

Vancouver will also remain, with Calgary, the co-headquarters of TSX Venture, and will coordinate, with Calgary, the Merged Group's marketing efforts for SME listings. As described above, the Merger will also bring the prospect of enhanced capital raising opportunities for TSX Venture-listed issuers, including those based in Alberta and British Columbia.

In short, Canadian issuers, investors, market intermediaries and the wider Canadian economy will benefit as a result of the expanded global reach and scope of TMX Group through the Merger.

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<sup>15</sup> The commitments regarding the business continuity of TMX Group and TSX are similar to commitments that already exist with respect to the Bourse and TSX Venture.

<sup>16</sup> This was the case in LSEG's combination with Borsa Italiana, where the impact on the workforce was broadly equal.

#### IV. OWNERSHIP RESTRICTIONS

##### A. Share Ownership Restrictions Applicable to TMX Group and Approval Requested

This section describes the share ownership restrictions applicable to TMX Group and TSX and the approval requested by LSEG and TMX Group in this regard.

Pursuant to section 21.11 of the *Securities Act* (Ontario) (the “OSA”), Ontario regulation 261/02 made thereunder, the order of the Commission of September 3, 2002 made thereunder and section 7 of the recognition order of TMX Group and TSX, there are restrictions, which are generally referred to as “share ownership restrictions”, attached to the shares of TMX Group. Those restrictions (the “TMX Share Restrictions”) are set forth in Schedule B of the articles of TMX Group, section 3.1 of which provides as follows:

Without the prior approval of the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than ten per cent (10%) of any class or series of Voting Shares or any other percentage as may be from time to time prescribed by the OSA, the Regulation, or the Ontario Orders.

(Section 3.2 of Schedule B provides for the approval of the Autorité on the same basis.) Under section 1.1 of Schedule B, terms used in Schedule B such as “beneficially own” have the meanings given to those terms in the OSA and “acting jointly or in concert” is to be interpreted in a manner consistent with the OSA.

Schedule B also provides for comprehensive enforcement mechanisms that are applicable in the event of a contravention of the TMX Share Restrictions (the “Enforcement Mechanisms”). After a determination of a contravention by the TMX Group directors, some of the Enforcement Mechanisms are that no person may vote the Voting Shares of the contravening persons or companies, dividends on the Voting Shares are limited or prohibited and TMX Group is required to send a notice requiring the sale of Voting Shares held in contravention. In the event that such a required sale is not made, the further Enforcement Mechanisms then applicable include the prohibition of the exercise of any right or privilege attached to the Voting Shares and the right of TMX Group to sell or redeem Voting Shares held in contravention and to remit the net proceeds to the holder. In addition to the Enforcement Mechanisms, there are sanctions and remedies for the offence of a contravention of section 21.11 of the OSA, including fines, imprisonment and remedial orders of the Commission and the courts (the “OSA Sanctions”).

In the Merger, LSEG will acquire beneficial ownership of all of the common shares of TMX Group, which are all of its Voting Shares. As is explained in Part I above, LSEG will make the acquisition indirectly through three subsidiaries, Interco, Callco and Exchangeco; LSEG will own all the voting shares of Interco, Interco will own all the voting shares of Callco and Callco will own all the voting shares of Exchangeco. The TMX Share Restrictions require the approval of the Commission for that acquisition.<sup>17</sup> The Commission may, by order, give that approval and may impose such terms and conditions as it considers appropriate.

For the reasons set forth in this application, including the benefits of the Merger to Ontario and Canada, the application of the TMX Share Restrictions following the Merger and the proposed undertakings of Mergeco and the proposed amendments to the recognition order of TMX Group and TSX, we submit that the Commission should give the approval on the basis set forth in this application.

##### B. Application of Share Ownership Restrictions Post-Merger

Following the Merger, the TMX Share Restrictions will remain in force. In this regard, under the proposed amended and restated recognition order of TMX Group and TSX, section 7 of the current recognition order, which provides for TMX Group share ownership restrictions, will continue to apply, unmodified, and the TMX Share Restrictions will continue to meet the requirements of that section. In particular, as is more fully explained below, after the Merger:

- (i) the TMX Share Restrictions will require the approval of the Commission for a legal, or *de jure*, change of control of Mergeco;
- (ii) the TMX Share Restrictions will require the approval of the Commission for an effective, or *de facto*, change of control of Mergeco; and
- (ii) the Enforcement Mechanisms and the OSA Sanctions will apply in the event of any such change of control that is not approved by the Commission.

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<sup>17</sup> As TMX Group owns all of the shares of TSX, pursuant to this application we hereby also apply for the approval from the Commission required pursuant to section 21.11(4) of the OSA.



The Commission must approve a legal or *de jure* change of control of Mergeco. This is because of the combination of (i) the TMX Share Restrictions, which restrict “beneficially own[ing]” TMX Group common shares and (ii) the application to the TMX Group common shares of subsections 1(2) to 1(7) of the OSA, which provide for deemed beneficial ownership, deemed control and other related matters. If, after the Merger, a person or company were to hold more than 50 per cent of the ordinary shares<sup>18</sup> of Mergeco, the votes carried by those ordinary shares of Mergeco would be entitled, if exercised, to elect a majority of the board of directors of Mergeco. Therefore, that person or company would be deemed to control Mergeco, or to have what is commonly known as legal control or *de jure* control. As a result, a person or company that has legal control of Mergeco would be deemed to own beneficially all of the TMX Group common shares, because those shares will be owned by a subsidiary of Mergeco.<sup>19</sup>

The Commission must approve an effective or *de facto* change of control of Mergeco. This is because the TMX Share Restrictions restrict the “exercise [of] control or direction over” TMX Group common shares. If, after the Merger, a person or a company were to acquire effective control of Mergeco, that person or company would exercise control or direction over all of the TMX Group common shares, because Mergeco will indirectly own all of the TMX Group common shares. “Control or direction” is not defined in the OSA but both subordinate instruments and decisions and statements of the Commission confirm that “control or direction” over shares means the power to vote the relevant shares or the power to make investment decisions in relation to the relevant shares and that those powers may be exercised indirectly. A person or company has effective control over another company, at a minimum, if the person or company has in fact the power to elect a majority of the board of directors of the other company. Since, however, the question of effective control is one of fact, other circumstances, in the judgment of the Commission, can also justify the conclusion.

Following the Merger, the Enforcement Mechanisms, which are one component of the TMX Share Restrictions, and the OSA Sanctions will continue to apply. As a result, in the event of a legal or effective change of control of Mergeco that is not approved by the Commission, TMX Group will be required or permitted to take action under the Enforcement Mechanisms against any person or company who contravenes the TMX Share Restrictions and the Commission may initiate the application of the OSA Sanctions.

### **C. U.K. Approval Requirements Applicable to Mergeco**

This section describes U.K. share ownership approval requirements that currently apply to LSEG and which will apply to Mergeco following the Merger.

A person proposing to acquire, or increase, control over Mergeco must obtain the consent of the FSA before they do so through a formal process.<sup>20</sup> The acquisition or increase of control without that FSA consent is a criminal offence.

Acquisition of control of Mergeco means:

- acquiring 10 per cent of the shares or voting power in Mergeco<sup>21</sup>; or
- acquiring shares or voting power in Mergeco as a result of which the acquiror is able to exercise a significant influence over the management of any of its U.K. regulated subsidiaries.

Prior approval, following the same process as for acquisitions of control, will also be required where a person wishes to increase their control over Mergeco above certain additional thresholds, being 20 per cent or more, 30 per cent or more<sup>22</sup>, 50 per cent or more, or to become a parent undertaking (if different from the increase to more than 50 per cent).

In all cases, levels of control are assessed by reference to the aggregate holdings of a person and any other person with whom he has agreed to jointly exercise his shareholding or voting power.

In assessing the request to acquire, or increase, control over Mergeco, the FSA must:

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<sup>18</sup> Currently, the only voting shares of LSEG are its ordinary shares (the equivalent of common shares of a Canadian company). If LSEG were to issue other voting shares, the provisions of subsection 1(3) would apply in the same way to all voting shares in the aggregate.

<sup>19</sup> The deemed control of Mergeco arises under OSA subsection 1(3) and the deemed beneficial ownership of all of the TMX Group common shares arises under OSA subsections 1(5) and 1(6). Exchangeco, the owner of all of the common shares of TMX Group, Interco and Calco will be subsidiaries of Mergeco (under OSA subsection 1(4)) and Mergeco, Interco, Exchangeco and Calco will be affiliates of each other (under OSA subsection 1(2)); furthermore, for a company that controls Mergeco, Mergeco, Interco, Calco and Exchangeco would all be affiliates (under OSA subsections 1(2) - 1(4)).

<sup>20</sup> As explained in Section II(E)(i), two U.K. regulatory regimes – that for RIEs and that for FSA authorized firms – are applicable to Mergeco and this Section IV(C) describes how the combined requirements of those regimes apply.

<sup>21</sup> The threshold of 10 per cent applies in relation to an FSA-authorized firm. For a RIE alone, the initial threshold is 20 per cent.

<sup>22</sup> This threshold applies in relation to an FSA-authorized firm.

- consider the suitability of the proposed acquiror – broadly speaking, this goes to an assessment of the fitness and propriety of the acquiror based on a range of criteria including potential impact on the continuing ability of any of Mergeco's U.K. regulated subsidiaries to meet its obligations; and
- have regard to the influence that the proposed acquiror will have over the U.K. regulated subsidiaries of Mergeco.

For an acquisition of, or increase in, control of Mergeco, the FSA will have broad discretion in deciding whether to approve or to refuse the request for approval based on a broad range of criteria and to approve subject to conditions.

In addition to the specific process for acquisition of the levels of control described above, the FSA has a number of broad recognition requirements which the LSE, as a RIE, must meet on an ongoing basis, and will therefore be of relevance in any acquisition or increase of control of Mergeco. These high level requirements provide the FSA with discretion to take account of any holding in Mergeco where it has concerns about the impact of the holding upon the LSE.

In relation to contravening acquisitions, the FSA may issue restriction notices, which may direct that the shares or voting power held by the acquiror are, until further notice, subject to one or more of the following:

- any transfer of shares or voting power in Mergeco, without a court order, is void;
- no voting power in Mergeco is to be exercisable;
- no further shares in Mergeco are to be issued pursuant to any right held by, or any offer made to, the acquiror; and
- except in a liquidation, no payment is to be made of any sums due from Mergeco on any such shares, whether in respect of capital or otherwise.

To provide additional context, we note that the four main shareholders of LSEG are Borse Dubai Limited, Qatar Investment Authority, Unicredito Italiano S.p.A. and Intesa Sanpaolo S.p.A, which hold 20.6 per cent, 15.1 per cent, 6.0 per cent and 5.3 per cent, respectively, of the LSEG ordinary shares. After the Merger, Borse Dubai Limited will hold approximately 11.3 per cent, Qatar Investment Authority will hold approximately 8.3 per cent, Unicredito Italiano S.p.A. will hold approximately 3.3 per cent and Intesa Sanpaolo S.p.A, will hold approximately 2.9 per cent of the ordinary shares of Mergeco.

#### **D. Post-Merger Share Ownership Restrictions**

In this section, we describe why, in TMX Group's view, and LSEG's view, it is unnecessary and inappropriate for share ownership restrictions like the TMX Share Restrictions to be made to apply directly to Mergeco.

##### **(i) Mergeco Change of Control Will Require Commission Approval**

Following the Merger, the Commission will continue to have the power to approve or reject the type of change in share ownership that is of most significance in regulatory terms, being that which results in a change of control of Mergeco. Indeed, this power is consistent with many regulatory regimes in Canada and elsewhere, which regulate a change of control rather than specific lower levels of share ownership.

As described in Section IV(B) above, the Commission has the power to approve or reject both a legal change of control of Mergeco and an effective change of control of Mergeco. In this regard, effective control is ultimately a question of fact. Accordingly, the Commission would finally determine this matter in any particular case, subject only to review by courts that show deference to the Commission's expertise. This is likely to require any would-be investor in Mergeco ordinary shares to proceed cautiously in order to avoid triggering a change of control and becoming subject to the Enforcement Mechanisms.

For changes in share ownership of Mergeco that do not result in a change of control of Mergeco, Commission approval would not be required. However, such share ownership changes are restricted and regulated under U.K. laws.

##### **(ii) Impact of U.K. Takeover Code**

As a U.K. public company, an offer for Mergeco ordinary shares will be subject to the U.K. Takeover Code (the "Code"). Under the terms of the Code if a person acquires an interest in shares resulting in that person having an interest in Mergeco ordinary shares carrying in aggregate 30 per cent or more of the voting rights of Mergeco, that person must make a mandatory cash offer for the rest of the shares and must acquire more than 50 per cent of the shares or the offer will lapse. Such an offer is also not permitted to contain regulatory conditions. The practical effect of these requirements is that any person planning to

cross the 30 per cent threshold through buying shares will have to obtain approval of the Commission first.<sup>23</sup> Accordingly, the range of potential changes in Mergeco share ownership that do not trigger a change of control of Mergeco (thereby requiring Commission approval) should in practice be limited to those involving less than 30 per cent of the Mergeco ordinary shares. As described immediately below, there is additional oversight by the FSA of changes in share ownership that involve less than 30 per cent of the Mergeco ordinary shares.

**(iii) U.K. Rules Applicable to Mergeco**

As noted in Section IV(C) above, the FSA must approve the acquisition of shares or voting power in Mergeco at the level of 10 per cent and at higher levels. Accordingly, even changes in share ownership that involve less than 30 per cent of the Mergeco ordinary shares and that do not otherwise trigger a change of control of Mergeco (thereby requiring approval of the Commission), are still well regulated.

In this regard, we note that the TMX Share Restrictions are incorporated in the articles of TMX Group. Accordingly, compliance with the TMX Share Restrictions is enforced by TMX Group.

The TMX Share Restrictions are therefore of a different character from the statutory share ownership rules administered by the FSA in respect of LSEG, which do not involve enforcement directly by LSEG itself. In the U.K., it is not the practice to restrict the transfer of shares of publicly traded companies like LSEG, but rather changes in share ownership are typically approved, or rejected, subsequent to transfer.

Where a strong Ontario regulatory regime in respect of a change of control of Mergeco continues to apply, it would also be, in our view, inappropriate as a matter of comity to add Canadian style share ownership restrictions to the articles of a U.K. holding company, the share ownership of which is well regulated by the FSA, a responsible U.K. regulator.

Another possible approach would be a memorandum of understanding between the Commission and the FSA of the type regularly entered into by regulatory bodies dealing with cross-border issues. This memorandum of understanding could include a reference to consultation that could take place between the FSA and the Commission in respect of share ownership changes in Mergeco that do not otherwise require Commission consent.<sup>24</sup>

**(iv) Mergeco Governance Structure Addresses Conflicts**

A main purpose for originally establishing the TMX Share Restrictions was to address conflicts concerns arising in connection with the demutualization of Toronto Stock Exchange, because Toronto Stock Exchange would be operating on a for-profit basis and the participating organizations of Toronto Stock Exchange would be its initial shareholders. This was particularly a concern for the small shareholders/participating organizations who were worried about a concentration of influence among the larger participating organizations.

The governance structure proposed for Mergeco addresses issues relating to conflicts of interest and concentrated ownership among industry participants. Following completion of the Merger, the board of directors of Mergeco will comprise a majority of independent members. In addition, as Mergeco will be listed on Toronto Stock Exchange, it will be subject to mandatory Canadian securities laws governance requirements and it has also committed to complying with Canadian securities laws standards.<sup>25</sup> As Mergeco will be listed on London Stock Exchange, it will also be subject to U.K. corporate governance requirements. Furthermore, the proposed recognition orders for each of TMX Group and TSX will include requirements that at least 50 per cent of each of their boards of directors be both Canadian and independent. Independence for this purpose would (as does the current recognition order for TMX Group and TSX) incorporate both the securities law standard under National Instrument 52-110 - Audit Committees and additional standards that would exclude executive officers and employees of participating organizations and others affiliated with participating organizations.

**(v) Effect of Regulatory Structure**

In connection with the Merger, and as described in more detail in Section V(A) below, Mergeco will be providing comprehensive undertakings directly to the Commission, including those relating to the governance and operation of TMX Group and TSX. These undertakings, which are directly enforceable against Mergeco as a matter of Ontario securities law,

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<sup>23</sup> The only exception to this rule is where a person obtains a more than 30% holding through the issue of new ordinary shares to that person by Mergeco, provided that a vote of independent shareholders has approved that issue. This sort of transaction (and approval) is very rare, as shareholders are in effect being asked to allow a person to obtain a controlling position without paying a control premium.

<sup>24</sup> See also the consultation report entitled "Regulatory Issues arising from Exchange Evolution" of the Technical Committee of the International Organization of Securities Commissions (November 2006), at p. 25: "[a]s groups come to operate in a more integrated way, a major challenge for regulators will be to ensure that the elements of the group for which they have legal responsibility comply with their national regulatory requirements but also find ways to collaborate with other regulators that enable regulation to be conducted effectively, and also efficiently."

<sup>25</sup> See s. 5.7(b) of the Merger Agreement.

would remain in force unaffected by any change in ownership of Mergeco, including the emergence of a larger non-controlling shareholder of Mergeco whose acquisition of Mergeco ordinary shares did not require approval by the Commission. The Commission would also have the authority under section 21 of the OSA to require changes to the recognition order of TMX Group and TSX to impose additional requirements if the Commission felt it necessary in order to address the impact of such a non-controlling shareholder.

**(vi) TMX Share Restrictions Appropriately Balanced in Context of the Merged Group**

In the context of TMX Group and TSX as part of the Merged Group, we believe that the manner in which the TMX Share Restrictions and U.K. rules will continue to apply post-Merger achieves the right balance between Ontario regulatory oversight and U.K. regulatory oversight for an international group structured as the Merged Group will be. Accordingly, in TMX Group's view, and in LSEG's view, it is not necessary or appropriate to apply share ownership restrictions like the TMX Share Restrictions directly to Mergeco.

**V. GOVERNANCE, UNDERTAKINGS AND PROPOSED AMENDMENTS TO RECOGNITION ORDER**

The TMX Group board determined that it would enter into a strategic combination transaction only if it believed it would result in the enhancement of Canadian capital markets. In particular, the TMX Group board, in considering such a transaction, sought one that would: (i) be advantageous to shareholders and to all other stakeholders, including Canadian investors, issuers listed on TMX Group's exchanges and potential issuers, and securities dealers and other market intermediaries; (ii) achieve benefits for Canada, including through continuing effective participation of residents of Canada in the governance and management of Mergeco; and (iii) preserve under the Canadian securities regulatory regime requirements for the local governance, management and operation of TMX Group's exchanges and clearing agencies and the ongoing regulation of them by Canadian securities regulators.

The board of directors of TMX Group approved the Merger with LSEG after determining that these requirements were satisfied.

First, the Merger Agreement provides for substantive business continuity commitments regarding the future of TMX Group's Ontario and Canadian operations and Canadian participation in the governance of Mergeco. These commitments both protect the value inherent in TMX Group's exchanges and, as described in Part III above, open new opportunities for growth that we believe will have far reaching benefits across the full spectrum of the Canadian business and financial services sectors.

Second, the Merger Agreement preserves the existing regulatory regime applicable to TMX Group's business and strengthens it further pursuant to regulatory commitments provided for in the Merger Agreement. Accordingly, the Merger Agreement ensures the full and complete continued autonomy of Canadian regulatory authorities to exercise their existing powers and oversight responsibilities over TMX Group's exchanges. In addition, issuers on TMX Group exchanges will see no change to their processes or regulatory relationships and obligations.

Accordingly, consistent with their fiduciary obligations, the board of directors of TMX Group approved the Merger because they feel it is in the best interests of the Canadian capital markets and is consistent with their public interest mandate, and is therefore in the best interests of TMX Group.<sup>26</sup>

The business continuity and regulatory commitments referenced above have been reflected in the proposed undertakings to be provided by Mergeco to the Commission and in the proposed changes to the TMX Group and TSX recognition order, each of which is described in further detail below.

Among other things, these commitments ensure that:

- the head office and executive offices of TMX Group and TSX will continue to be located in Toronto;
- TSX will maintain its core operations in Canada and will be locally managed<sup>27</sup>;
- the chief executive officer of TMX Group and TSX will be ordinarily resident in Ontario;
- the most senior executives of TSX responsible for each of listing and issuer services, trading, market data and compliance and regulation functions will be ordinarily resident in Ontario and their principal place of business will be in Toronto;

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<sup>26</sup> See *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paragraph 82: In each case, the question is whether, in all circumstances, the directors acted in the best interests of the corporation, having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen.

<sup>27</sup> These commitments regarding the business continuity of TMX Group and TSX are similar to provisions that already exist with respect to TMX Group's subsidiaries in Quebec, Alberta and British Columbia.

- at least 50 per cent of the directors and members of each of the committees of the board of directors of TMX Group and TSX will be ordinarily resident in Canada and independent;
- Mergeco will allocate sufficient financial and other resources to TMX Group and TSX to ensure that they can carry out their functions in a manner that is consistent with the public interest and the terms and conditions of their recognition order;
- all Canadian regulation functions will be carried on in Canada; and
- Mergeco will not do anything to cause TSX to cease to be the Canadian national exchange for the listing of issuers and the trading of their securities without approval of the Commission.

The board of directors of TMX Group also recognized and took into account that these types of provisions would be important to the Commission in its consideration of whether the Merger with LSEG is in the public interest and accordingly whether the Commission should provide its consent to the ownership by Mergeco of all the common shares of TMX Group.

The following describes the undertakings proposed to be provided by Mergeco to the Commission and the proposed changes to the recognition order in detail.

**A. Mergeco Undertakings**

This section describes the undertakings proposed to be provided by Mergeco as a condition of the order of the Commission approving the acquisition by Mergeco of all of the TMX Group common shares. The undertakings will themselves constitute "Ontario securities law" as defined in the OSA. Therefore, any breach by Mergeco of the undertakings would be a breach of Ontario securities law and subject to the enforcement remedies under the OSA. The undertakings will also be considered a contract between Mergeco and the Commission. Accordingly, if Mergeco were to breach the undertakings, the Commission would also be able to seek contractual remedies.

**(i) Corporate Governance**

**(1) *Corporate Governance until the Fourth Anniversary of the Undertakings***

Mergeco will undertake that until the fourth anniversary of the undertakings, the board of directors of Mergeco will consist of 15 directors, subject to permitted adjustment. Mergeco will ensure that appropriate nominations are made by the board of directors of Mergeco at each annual general meeting of Mergeco to ensure that the board of directors of Mergeco will consist of at least seven directors who are "Canadian Directors", assuming that the election of those nominees is approved by the shareholders of Mergeco. In the event that any of those nominees is not elected by the shareholders of Mergeco, the Mergeco directors will identify and appoint alternative directors to the Mergeco board of directors so that at least seven Mergeco directors are Canadian Directors as soon as reasonably practicable thereafter and will ensure that those alternative directors are nominated by the board of directors of Mergeco for election at the next annual general meeting of Mergeco.

For the purposes of the undertakings, a "Canadian Director" means a director who is ordinarily resident in Canada or, if at least five directors are ordinarily resident in Canada, one may be a Canadian citizen who is not ordinarily resident in Canada (provided that, before the fourth anniversary of these undertakings, that individual is ordinarily resident anywhere other than in Europe).

Subject to permitted adjustment, the Canadian Directors of Mergeco will include:

- (i) the most senior executive officer of the Merged Group (excluding, for greater certainty, the Chair of the board of directors) who is ordinarily resident in Canada (the "Senior Canadian Officer");
- (ii) at least four independent Canadian Directors (who may include, for greater certainty, the Chair of the board of directors of Mergeco), at least three of whom will be independent directors of TMX Group at the relevant time; and
- (iii) residents of Québec in a number equal to 25 per cent of the independent Canadian Directors (rounded down).

For the purposes of these undertakings, a Canadian Director is independent if he or she is independent within the meaning of the existing TMX Group and TSX recognition order and a Merged Group executive who principally performs his or her duties and resides in Canada is ordinarily resident in Canada from the time at which he or she begins to perform those duties and reside in Canada.

The composition and number of the Canadian Directors are permitted to be adjusted either if the Merged Group expands its operations through a transaction with another party and adds directors from the other party's board of directors to the Mergeco board of directors or if Mergeco adds directors who are resident outside Canada and Europe, on the basis that, after the addition:

- (i) Canadian Directors represent at least the same proportion of those individuals who both were directors of Mergeco before the change and continue as directors of Mergeco after the change (rounded down) as Canadian Directors represented of directors of Mergeco before the change, subject to a minimum of three Canadian Directors;
- (ii) one of the Canadian Directors will be the Senior Canadian Officer;
- (iii) at least 50 per cent of the Canadian Directors will be independent directors (who may include, for greater certainty, the Chair of the board of directors of Mergeco) who will be independent directors of TMX Group at the relevant time; and
- (iv) of those independent Canadian Directors, 25 per cent (rounded down) will be residents of Québec.

By way of a numerical example, if Canadian Directors constitute seven of a 15-member board before the change, and the change results in nine of those 15 directors continuing as directors, with six new directors joining the board, Canadian directors must constitute at least four (7/15 of nine) of the new 15-member board.

The Canadian Directors who are members of committees of the board of directors of Mergeco will be substantially proportionate to the percentage of Canadian Directors from time to time and at least one standing committee of the board of directors of Mergeco will be chaired by an independent Canadian Director.

These adjustment provisions reflect the possibility that Mergeco may enter into future transactions given the nature of the exchange industry and the fact that Mergeco is a public company and are intended to ensure that Canadian interests are taken into account.

## **(2) Corporate Governance after the Fourth Anniversary of the Undertakings**

On or after the fourth anniversary of the date of the undertakings, the number of Canadian Directors will be permitted to be reduced to a minimum that is the greater of:

- (i) the number that the Mergeco board of directors, in the exercise of its fiduciary duties and having regard to the interests of all stakeholders in all the jurisdictions in which the Merged Group operates from time to time, determines to be appropriate in light of the overall current and prospective significance of the Canadian business to the Merged Group business as a whole, having regard to both relevant financial measures and non-financial factors, including the strategic significance of the Canadian business to the Merged Group business and the development of the Merged Group business since the LSEG/TMX Group combination; and
- (ii) three;  
and:
- (iii) of those Canadian Directors, at least 50 per cent will be independent directors who will be independent directors of TMX Group at the relevant time; and
- (iv) of those independent Canadian Directors, 25 per cent (rounded down) will be residents of Québec.

The nomination procedure provided for under "Corporate Governance until the Fourth Anniversary of these Undertakings" above will also apply to the election or appointment of Canadian Directors after the fourth anniversary of these undertakings, including on the basis of permitted adjustment or reduction of the number or composition of the Canadian Directors .

There will be appropriate representation of Canadian Directors on committees of the board of directors of Mergeco, as determined by the Mergeco board of directors in the exercise of its fiduciary duties and having regard to the interests of all stakeholders in all the jurisdictions in which the Merged Group operates from time to time.

(ii) **Allocation of Resources**

Mergeco will allocate sufficient financial and other resources to TMX Group and TSX to ensure that each of TMX Group and TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order. Mergeco will notify the Commission immediately upon becoming aware that it is or will be unable to allocate such resources to either of TMX Group or TSX to ensure that each of TMX Group and TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order.

(iii) **Continuity of Operations**

Mergeco will cause TSX to be locally managed, subject to the strategic and policy direction of Mergeco.<sup>28</sup>

Mergeco will cause TSX to maintain its core operations in Canada, except to the extent that, in accordance with its obligations with respect to "Change in Operations" under its recognition order, TSX ceases or otherwise changes its operations.

Mergeco will not do anything to cause TSX to cease to be the Canadian national exchange for the listing of issuers and the trading of their securities without the prior approval of the Commission and complying with any terms and conditions it may impose in the public interest in connection with any change to TSX's operations.

(iv) **Financial Information**

Mergeco will prepare as mandated for Mergeco under applicable securities legislation and file with the Commission unaudited interim consolidated financial statements of Mergeco, and audited annual consolidated financial statements of Mergeco, within periods as are mandated for Mergeco under applicable securities legislation.

(v) **Compliance**

Mergeco will do everything within its control to cause each of TMX Group and TSX to carry out its activities as an exchange recognized under section 21 of the OSA and to comply with the terms and conditions in its recognition order.

(vi) **Access to Information**

Mergeco will and will cause its subsidiaries to permit the Commission to have access to and to inspect all data and information in its or their possession that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of each of TMX Group and TSX with the terms and conditions in its recognition order.

Mergeco will permit the Commission to have access to and to inspect all data and information in its possession that is required for the assessment by the Commission of the compliance of Mergeco with its undertakings to the Commission.

(vii) **Change in Ownership of TMX Group or TSX**

Mergeco will not sell or otherwise dispose of any voting or equity securities of TMX Group or TSX (except, for greater certainty, to their direct or indirect wholly-owned subsidiaries) without the prior approval of the Commission.

(viii) **Failure to Comply**

If Mergeco fails to perform any of its undertakings, then, after any period that the Commission in its discretion grants Mergeco to remedy the failure, the Commission may, without limiting or restricting the exercise of any other remedies the Commission may have under statute, at common law, in equity or otherwise, require the recognition order of TMX Group or of TSX to be changed, including, without limitation, by revoking it.

(ix) **Term**

The undertakings of Mergeco to the Commission will cease to have effect if:

- (i) the Commission revokes the TMX Group and TSX recognition order for any reason other than the failure by Mergeco to fulfill its undertakings with the Commission;
- (ii) TMX Group and TSX cease to carry on business after complying with any terms and conditions the Commission may impose; or

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<sup>28</sup> The reference to being subject to the "strategic and policy direction of Mergeco" reflects the fact that TMX Group and TSX will operate as part of the Merged Group and that the board of Mergeco is ultimately responsible for setting and overseeing implementation of the Merged Group's strategic objectives.

- (iii) TMX Group and TSX cease to be subsidiaries of Mergeco.

**B. Proposed Amendments to Recognition Order**

**(i) TMX Group**

The provisions of the recognition order related to TMX Group will remain in effect, except as modified by the following additional provisions.

**(1) *Corporate Governance***

At least 50 per cent of the directors and members of each of the committees of the board of directors of TMX Group will be both ordinarily resident in Canada and independent.

TMX Group shall maintain the Finance and Audit Committee of its board of directors.

**(2) *Offices***

The head office and executive offices of TMX Group will be located in Toronto.

**(3) *Senior Management***

The chief executive officer of TMX Group will be ordinarily resident in Ontario and his or her principal place of business will be in Toronto. For greater certainty, that officer will be subject to the strategic and policy direction of Mergeco.

**(ii) TSX**

The provisions of the recognition order related to TSX will remain in effect, except as modified by the following additional provisions.

**(1) *Corporate Governance***

At least 50 per cent of the directors and members of each of the committees of the TSX board of directors will be both ordinarily resident in Canada and independent.

**(2) *Offices***

The head office and the executive offices of TSX will be located in Toronto.

**(3) *Senior Management***

The chief executive officer, and the most senior executives of TSX responsible for each of listing and issuer services, trading, market data, and compliance and regulation functions (or their equivalents from time to time), will be ordinarily resident in Ontario and their principal place of business will be in Toronto. For greater certainty, those most senior executives will be subject to the strategic and policy direction of Mergeco.

**(4) *Continuity of Operations***

TSX will be locally managed, subject to the strategic and policy direction of Mergeco.

TSX will maintain its core operations in Canada, except to the extent that, in accordance with its obligations outlined in the next paragraph, TSX ceases or otherwise changes its operations.

**(5) *Change in Operations***

TSX will not cease to operate or suspend, discontinue or wind up all or a significant portion of TSX's operations, or dispose of all or substantially all of TSX's assets, without (i) providing the Commission at least six months' prior notice of TSX's intention; and (ii) complying with any terms and conditions that the Commission may impose in the public interest for the orderly discontinuance of TSX's operations or the orderly disposition of TSX's assets.

**(6) *Regulation Functions to be Carried on in Canada***

The recognition order will be revised to ensure that all regulation functions will be carried on in Canada.



**(7) Self-Listing Conditions**

The requirements of section 22 of the recognition order will be revised to provide that Appendix I of the recognition order will apply to the listing on TSX of Mergeco and Exchangeco. We also propose changing the heading to "Affiliate Listing Conditions".

**(8) Outsourcing**

The requirements of section 23 of the recognition order regarding outsourcing that currently apply to third parties shall also apply to associates and affiliates of TMX Group that are incorporated, or that primarily carry on business, outside Canada.

**(9) Related Party Transactions**

The provisions of section 24 of the recognition order regarding related party transactions will govern material agreements and transactions between TSX and TMX Group and any affiliate of TMX Group, in addition to subsidiaries and associates of TMX Group.

**(iii) Appendix I**

Appendix I to the recognition order will remain in effect, except as modified to reflect the fact that TMX Group will no longer be a listed issuer on TSX, and that Mergeco and Exchangeco each propose to become a listed issuer on TSX. See Part VI immediately below.

**VI. SELF-LISTING CONDITIONS WILL APPLY TO MERGECO SHARES TRADED ON TORONTO STOCK EXCHANGE AND EXCHANGEABLE SHARES**

As described above, the Merger contemplates that each of Mergeco and Exchangeco will list its shares on Toronto Stock Exchange. In 2002, to address issues that could arise due to the listing of TSX Group Inc. on Toronto Stock Exchange, TSX established a reporting structure whereby it notified the Commission of conflicts of interest or potential conflicts of interest. This structure is set out in section 22 and Appendix I of the recognition order. In connection with the initial listing of TSX Group Inc. shares on Toronto Stock Exchange, section 2 of Appendix I of the recognition order provides that the Commission is in a position to approve or disapprove of the initial listing of TSX Group Inc. on the Toronto Stock Exchange.

We submit that it would be appropriate for the Commission to apply the initial listing arrangements set out in section 2 of Appendix I of the recognition order to the listing of the Mergeco shares and Exchangeco shares. These arrangements will enable Commission staff to approve or disapprove the listing of the Mergeco and Exchangeco shares on Toronto Stock Exchange. We submit that these arrangements remain relevant and appropriate for the listing of Mergeco shares and Exchangeco shares on Toronto Stock Exchange.

**VII. ITEMS IN RECOGNITION ORDER THAT ARE NOT IMPACTED**

There are a number of items in the recognition order that will not be impacted by the Merger. With respect to Part I of Schedule "A" of the recognition order, section 2 ("Fitness"), section 3 ("Allocation of Resources"), section 4 ("Financial Information"), section 5 ("Compliance"), section 6 ("Access to Information") and section 7 ("Share Ownership Restrictions") will not be impacted by the Merger.

With respect to Part II of Schedule "A" of the recognition order, section 9 ("Fees"), section 10 ("Access"), section 11 ("Fitness"), section 12 ("Financial Viability"), section 14 ("Systems"), section 15 ("Purpose of Rules"), section 16 ("Rules and Rule-Making"), section 17 ("Financial Statements"), section 18 ("Sanction Rules"), section 19 ("Due Process"), section 20 ("Information Sharing"), section 21 ("listed Company Rules") and section 25 ("Clearing and Settlement") will not be impacted by the Merger.

We also note that the Commission has recently updated its criteria for exchange recognition. We confirm that TMX Group and TSX continue to meet the criteria for exchange recognition as it has been updated by the Commission, and that they will continue to meet those criteria post-Merger.

**VIII. AMENDED EXEMPTION ORDERS IN RESPECT OF TSX VENTURE AND THE BOURSE**

**A. TSX Venture Exchange Inc.**

**(i) Recognition Order Amendments**

On November 26, 1999, as amended on July 31, 2001, September 3, 2002, and August 12, 2005, and varied on June 1, 2008, TSX Venture was recognized by the ASC as an exchange in Alberta under subsection 52(2) of the *Securities Act* (S.A. 1981, c. S-6.1, as amended) and by the BCSC as an exchange in British Columbia under subsection 24(2) of the *Securities Act* (British Columbia).

TSX Venture and LSEG are making application to the ASC and BCSC to amend and restate TSX Venture's recognition orders to reflect the Merger. Amendments to the TSX Venture recognition orders are proposed in three areas: corporate governance, regulation functions, and outsourcing. Under the proposed amendments, the corporate governance provisions would be modified to add a condition that at least 50 per cent of the directors and members of each of the committees of the TSX Venture board of directors will be both ordinarily resident in Canada and independent. The regulatory functions provisions would also be modified to add a condition that the regulation functions of TSX Venture will be carried on in Canada. The outsourcing provision would also be modified to add that the outsourcing requirements in the recognition orders that apply to third parties also apply to affiliates and associates of TMX Group that are incorporated, or that primarily carry on business, outside Canada.

(ii) **Exemption Order Amendments**

We respectfully request that the Commission make an order amending and restating the Existing Venture Exemption Order to reference the amended and restated TSX Venture recognition orders that are being revised in relation to the Merger. We are not proposing any substantive changes to the terms and conditions of the Existing Venture Exemption Order.

**B. Bourse de Montréal Inc.**

(i) **Recognition Order Amendments**

On December 17, 2002, as amended on May 13, 2003, the Bourse was recognized by the Commission des valeurs mobilières du Québec as a self-regulatory organization. Under a decision dated April 10, 2008, as amended on November 22, 2010, the Bourse was authorized by the Autorité to carry on business as an exchange in Quebec and was recognized by the Autorité as a self-regulatory organization.

The Bourse and LSEG are making application to the Autorité to amend and restate the Bourse's recognition order to reflect the Merger. Amendments to the Bourse recognition order are proposed in two areas: corporate governance and outsourcing. Under the proposed amendments, the corporate governance provisions would be modified to add a condition that at least 50 per cent of the directors and members of each of the committees of the Bourse board of directors will be both ordinarily resident in Canada and independent. The outsourcing provision would also be modified to add that the outsourcing requirements in the recognition order that apply to third parties also apply to affiliates and associates of TMX Group that are incorporated, or that primarily carry on business, outside Canada.

(ii) **Exemption Order Amendments**

We respectfully request that the Commission make an order amending and restating the Existing Bourse Exemption Order to reference the amended and restated Bourse recognition order that is being revised in relation to the Merger. We are not proposing any substantive changes to the terms and conditions of the Existing Bourse Exemption Order.

**IX. ENCLOSURES**

Appendix A – Draft LSEG undertakings; and

Appendix B – Draft recognition order, blacklined to identify proposed amendments.

Yours truly,

*"Sharon C. Pel"*

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Senior Vice President, Group Head of  
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cc: Jacinthe Bouffard, Autorité des marchés financiers

Appendix A – Draft LSEG Undertakings

[LSEG Letterhead]

●, 2011

Howard Wetston, Q.C.  
Chair and Chief Executive Officer  
Ontario Securities Commission  
20 Queen Street West, Suite 1903  
Toronto, Ontario  
M5H 3S8

Dear Sir:

**Re: TMX Group Inc. - Merger with London Stock Exchange Group PLC**

We are writing to provide certain undertakings to the Ontario Securities Commission (the “Commission”) in support of the application of London Stock Exchange Group PLC (“LSEG”), TMX Group Inc. (“TMX Group”) and TSX Inc. (“TSX”) filed under section 21.11(4) of the *Securities Act* (Ontario) (the “Application”) in connection with TMX Group’s merger (the “Merger”) with LSEG. In connection with the Merger, TMX Group will become an indirect subsidiary of LSEG. In support of the Application, LSEG undertakes to the Commission as set out below. LSEG understands that the Commission is relying on these undertakings to rule on the Application. In these undertakings, “Mergeco” means LSEG after giving effect to the Merger and “Merged Group” means Mergeco and its subsidiaries worldwide.

**1. Corporate Governance until the Fourth Anniversary of these Undertakings**

Mergeco undertakes that the board of directors of Mergeco will consist of 15 directors, subject to permitted adjustment. Mergeco will ensure that appropriate nominations are made by the board of directors of Mergeco at each annual general meeting of Mergeco to ensure that the board of directors of Mergeco will consist of at least seven directors who are “Canadian Directors”, assuming that the election of those nominees is approved by the shareholders of Mergeco. In the event that any of those nominees is not elected by the shareholders of Mergeco, the Mergeco directors will identify and appoint alternative directors to the Mergeco board of directors so that at least seven Mergeco directors are Canadian Directors as soon as reasonably practicable thereafter and will ensure that those alternative directors are nominated by the board of directors of Mergeco for election at the next annual general meeting of Mergeco.

For the purposes of these undertakings, a “Canadian Director” means a director who is ordinarily resident in Canada or, if at least five directors are ordinarily resident in Canada, one Canadian citizen (provided that, before the fourth anniversary of these undertakings, that individual is ordinarily resident anywhere other than in Europe).

Subject to permitted adjustment, the Canadian Directors of Mergeco will include:

- (i) the most senior executive officer of the Merged Group (excluding, for greater certainty, the Chair of the board of directors) who is ordinarily resident in Canada (the “Senior Canadian Officer”);
- (ii) at least four independent Canadian Directors (who may include, for greater certainty, the Chair of the board of directors of Mergeco), at least three of whom will be independent directors of TMX Group at the relevant time; and
- (iii) residents of Québec in a number equal to 25 per cent of the independent Canadian Directors (rounded down).

For the purposes of these undertakings, a Canadian Director is independent if he or she is independent within the meaning of the existing TMX Group recognition order and a Merged Group executive who principally performs his or her duties and resides in Canada is ordinarily resident in Canada from the time at which he or she begins to perform those duties and reside in Canada.

The composition and number of the Canadian Directors are permitted to be adjusted either if the Merged Group expands its operations through a transaction with another party and adds directors from the other party’s board of directors to the Mergeco board of directors or if Mergeco adds directors who are resident outside Canada and Europe, on the basis that, after the addition:

- (i) Canadian Directors represent at least the same proportion of those individuals who both were directors of Mergeco before the change and continue as directors of Mergeco after the change (rounded down) as Canadian Directors represented of directors of Mergeco before the change, subject to a minimum of three Canadian Directors;
- (ii) one of the Canadian Directors will be the Senior Canadian Officer;
- (iii) at least 50 per cent of the Canadian Directors will be independent directors (who may include, for greater certainty, the Chair of the board of directors of Mergeco) who will be independent directors of TMX Group at the relevant time; and
- (iv) of those independent Canadian Directors, 25 per cent (rounded down) will be residents of Québec.

By way of a numerical example, if Canadian Directors constitute seven of a 15-member board before the change, and the change results in nine of those 15 directors continuing as directors, with six new directors joining the board, Canadian directors must constitute at least four (7/15 of nine) of the new 15-member board.

The Canadian Directors who are members of committees of the board of directors of Mergeco will be substantially proportionate to the percentage of Canadian Directors from time to time and at least one standing committee of the board of directors of Mergeco will be chaired by an independent Canadian Director.

## **2. Corporate Governance after the Fourth Anniversary of these Undertakings**

On or after the fourth anniversary of the date of these undertakings, the number of Canadian Directors is permitted to be reduced to a minimum that is the greater of:

- (i) the number that the Mergeco board of directors, in the exercise of its fiduciary duties and having regard to the interests of all stakeholders in all the jurisdictions in which the Merged Group operates from time to time, determines to be appropriate in light of the overall current and prospective significance of the Canadian business to the Merged Group business as a whole, having regard to both relevant financial measures and non-financial factors, including the strategic significance of the Canadian business to the Merged Group business and the development of the Merged Group business since the LSEG/TMX Group combination; and
- (ii) three;  
and:
- (iii) of those Canadian Directors, at least 50 per cent will be independent directors who will be independent directors of TMX Group at the relevant time; and
- (iv) of those independent Canadian Directors, 25 per cent (rounded down) will be residents of Québec.

In the event that the Mergeco board of directors, in the exercise of its fiduciary duties and having regard to the interests of all stakeholders in all jurisdictions in which Mergeco operates from time to time, determines that a material change in circumstances makes inappropriate the requirement of three Canadian Directors provided for in the immediately preceding paragraph, Mergeco may apply to the Commission for a change in that requirement and the Commission may, in the public interest, consider that change.

The nomination procedure provided for under "Corporate Governance until the Fourth Anniversary of these Undertakings" above will also apply to the election or appointment of Canadian Directors on the basis of permitted adjustment or reduction of the number or composition of the Canadian Directors after the fourth anniversary of these undertakings.

There will be appropriate representation of Canadian Directors on committees of the board of directors of Mergeco, as determined by the Mergeco board of directors in the exercise of its fiduciary duties and having regard to the interests of all stakeholders in all the jurisdictions in which the Merged Group operates from time to time.

## **3. Allocation of Resources**

Mergeco undertakes that Mergeco will allocate sufficient financial and other resources to TMX Group and TSX to ensure that each of TMX Group and TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order. Mergeco will notify the Commission immediately upon becoming aware that it

is or will be unable to allocate such resources to either of TMX Group or TSX to ensure that each of TMX Group and TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order.

**4. Continuity of Operations**

Mergeco will cause TSX to be locally managed, subject to the strategic and policy direction of Mergeco.

Mergeco will cause TSX to maintain its core operations in Canada, except to the extent that, in accordance with its obligations with respect to "Change in Operations" under its recognition order, TSX ceases or otherwise changes its operations.

Mergeco will not do anything to cause TSX to cease to be the Canadian national exchange for the listing of issuers and the trading of their securities without the prior approval of the Commission and complying with any terms and conditions it may impose in the public interest in connection with any change to TSX's operations.

**5. Financial Information**

Mergeco will prepare as mandated for Mergeco under applicable securities legislation and file with the Commission unaudited interim consolidated financial statements of Mergeco, and audited annual consolidated financial statements of Mergeco, within periods as are mandated for Mergeco under applicable securities legislation.

**6. Compliance**

Mergeco will do everything within its control to cause each of TMX Group and TSX to carry out its activities as an exchange recognized under section 21 of the *Securities Act* (Ontario) and to comply with the terms and conditions in its recognition order.

**7. Access to Information**

Mergeco will and will cause its subsidiaries to permit the Commission to have access to and to inspect all data and information in its or their possession that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of each of TMX Group and TSX with the terms and conditions in its recognition order.

Mergeco will permit the Commission to have access to and to inspect all data and information in its possession that is required for the assessment by the Commission of the compliance of Mergeco with its undertakings to the Commission.

**8. Change in Ownership of TMX Group or TSX**

Mergeco will not sell or otherwise dispose of any voting or equity securities of TMX Group or TSX (except, for greater certainty, to their direct or indirect wholly-owned subsidiaries) without the prior approval of the Commission.

**9. Failure to Comply**

If Mergeco fails to perform any of its undertakings, then, after any period that the Commission in its discretion grants Mergeco to remedy the failure, the Commission may, without limiting or restricting the exercise of any other remedies the Commission may have under statute, at common law, in equity or otherwise, require the recognition order of TMX Group or of TSX to be changed, including, without limitation, by revoking it.

**10. Term**

These undertakings will cease to have effect if:

- (i) the Commission revokes the TMX Group and TSX recognition order for any reason other than the failure by Mergeco to fulfill its undertakings with the Commission;
- (ii) TMX Group and TSX cease to carry on business after complying with any terms and conditions the Commission may impose; or
- (iii) TMX Group and TSX cease to be subsidiaries of Mergeco.

**11. General**

These undertakings will take effect at the effective date of the Merger.

Yours truly,

**[Xavier Rolet]  
[Chief Executive]  
[London Stock Exchange Group PLC]**

Appendix B – Draft recognition order, blacklined to identify proposed amendments

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

AND

IN THE MATTER OF  
~~TSX~~ ~~TMX~~ GROUP INC. AND TSX INC.

AMENDMENT TO RECOGNITION ORDER  
(Section 144)

**WHEREAS** the Commission issued an order dated April 3, 2000 granting and continuing the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange pursuant to section 21 of the Act;

**AND WHEREAS** the Commission issued an amended and restated order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. ("RS Inc.") to perform its market regulation functions;

**AND WHEREAS** the Commission issued an amended and restated order dated September 3, 2002 to reflect the name change of TSE to TSX Inc. ("TSX") and a reorganization under which TSX became a wholly-owned subsidiary of TSX Group Inc. ("~~TSX,~~ which later changed its name to TMX Group Inc. ("TMX Group")"), a holding company, and granted ~~TSX~~ ~~TMX~~ Group recognition as a stock exchange pursuant to section 21 of the Act, in each case effective on the closing of the reorganization ("~~Previous Order~~");

**AND WHEREAS** the Commission ~~<has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order>~~ ~~<to reflect changes to the definition of an independent director>~~; issued an amended and restated order dated August 12, 2005 ~~> to reflect changes to the definition of an independent director~~ ~~< (the "Amended and Restated Order")~~;

**AND WHEREAS** the Commission issued an order dated December 16, 2005 to vary the financial viability and financial statement terms and conditions of the Amended and Restated Order to adjust the financial ratios to reflect a change in accounting policy of TMX Group and TSX, and to make other suitable revisions (together with the Amended and Restated Order, the "First Amended Recognition Order");

**AND WHEREAS** the Commission issued an order dated August 10, 2006 to: (i) vary the financial viability terms and conditions of the First Amended Recognition Order to adjust the current ratio and to make revisions to the financial leverage ratio; and (ii) to vary paragraph 13(d) of the First Amended Recognition Order to provide TSX the ability to seek the approval of the Commission to perform its regulation functions, not performed by RS Inc., through any other party, including its affiliates or associates (together with the First Amended Recognition Order, the "Second Amended Recognition Order");

**AND WHEREAS** the Commission issued an order effective June 1, 2008 to vary the Second Amended Recognition Order to refer to the Investment Industry Regulation > Organization of Canada (<"IIROC") (together with the Second Amended Recognition Order, the "Previous Order");

**AND WHEREAS** the Commission >has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order ~~< to reflect changes pursuant to the merger of TMX Group with London Stock Exchange Group PLC ("LSEG", and "Mergeco" after giving effect to the merger)~~;

IT IS ORDERED, pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

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

AND

IN THE MATTER OF  
TSXTMX GROUP INC. AND TSX INC.

RECOGNITION ORDER  
(Section 21)

**WHEREAS** the Commission granted and continued the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange on April 3, 2000 following the continuance of the TSE under the Business Corporations Act (Ontario);

**AND WHEREAS** the Commission granted the TSE an amended and restated recognition order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. ("RS Inc.") as a regulation services provider ("RSP") under National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules ("ATS Rules");

**AND WHEREAS** the Commission granted the TSE an amended and restated recognition order dated September 3, 2002 to reflect the name change of TSE to TSX and a reorganization under which TSX became a wholly-owned subsidiary of TSXTMX Group;

**AND WHEREAS** the Commission granted TSX and TMX Group an amended and restated order dated August 12, 2005 to reflect changes >to the definition of an independent director<;

**AND WHEREAS** the Commission granted TSX and TMX Group an amendment to the Amended and Restated Order dated December 16, 2005 to vary certain financial viability and financial statement terms and conditions and to make other suitable revisions;

**AND WHEREAS** the Commission granted TSX and TMX Group an amendment to the First Amended Recognition Order dated August 10, 2006 to vary certain financial viability terms and conditions and to provide TSX the ability to seek the approval of the Commission to perform its regulation functions, not performed by RS Inc., through any other party, including its affiliates or associates;

**AND WHEREAS** the Commission granted TSX and TMX Group an amendment to the August 2006 Recognition Order effective June 1, 2008 to refer to IIROC;

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect changes ~~<to the definition of an independent director>~~ pursuant to the merger of TMX Group with LSEG;

**AND WHEREAS** the Commission considers it appropriate to set out in an order the terms and conditions of each of TSX's and TSXTMX Group's continued recognition as a stock exchange, which terms and conditions are set out in Schedule "A" attached;

**AND WHEREAS** TSX and TSXTMX Group have agreed to the terms and conditions applicable to each of them set out in Schedule "A";

**AND WHEREAS** the Commission has determined that continuing to recognize TSX and TSXTMX Group is not prejudicial to the public interest;

The Commission hereby amends each of TSX's and TSXTMX Group's recognition as a stock exchange so that the recognition pursuant to section 21 of the Act continues with respect to TSX and TSXTMX Group, in each case effective, subject to the terms and conditions attached as Schedule "A", on the date hereof.

DATED April 3, 2000, as amended on January 29, 2002, on September 3, 2002, on August 12, 2005, on December 16, 2005, on August 10, 2006, on June 1, 2008 and on ●, 2011. August 12, 2005.

**[The attached terms and conditions also include the amendments made in the Variation Orders dated December 16, 2005, August 10, 2006 and June 1, 2008.]**

"Susan Wolburgh Jenah"

"Paul M. Moore"



SCHEDULE "A"

TERMS AND CONDITIONS

**PART I--TSX~~TMX~~ GROUP**

**1. 1. CORPORATE GOVERNANCE**

(a) ~~TSX~~TMX~~~~ Group's governance structure shall provide for:

- (i) Fair and meaningful representation on its board of directors and any governance committee thereof, having regard to, among other things, ~~TSX~~TMX~~~~ Group's ownership of TSX;
- (ii) Appropriate representation of independent directors on ~~TSX~~TMX~~~~ Group's committees; and
- (iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of ~~TSX~~TMX~~~~ Group generally.

(b) ~~TSX~~TMX~~~~ Group shall ensure, on an annual basis and each time that an individual joins the board of directors, that at least fifty per cent (50%) of its directors are independent. For purposes of this recognition order, a director is independent if he or she is independent within the meaning of section 1.4 of Multilateral Instrument 52-110--Audit Committees, as amended from time to time. The board of directors will adopt standards which may be amended from time to time with the prior approval of the Commission, setting out criteria to determine whether individuals are independent, including criteria to determine whether an individual has a material relationship with ~~TSX~~TMX~~~~ Group and is therefore considered not to be independent. These standards will be made available on the TSX website.

In the event that at any time ~~TSX~~TMX~~~~ Group fails to meet such requirement, it shall promptly remedy such situation.

**(c) ~~TMX~~ Group shall ensure that at least fifty per cent (50%) of the directors and members of each of the committees of the board of directors will be both ordinarily resident in Canada and independent.**

**(d) ~~TMX~~ Group shall maintain the Finance and Audit Committee of its board of directors.**

**2. OFFICES**

**The head office and the executive offices of ~~TMX~~ Group will be located in Toronto.**

**3. SENIOR MANAGEMENT**

**The chief executive officer of ~~TMX~~ Group will be ordinarily resident in Ontario and his or her principal place of business will be in Toronto. For greater certainty, that officer will be subject to the strategic and policy direction of Mergeco.**

**4. 2. FITNESS**

~~TSX~~TMX~~~~ Group will take reasonable steps to ensure that each officer or director of ~~TSX~~TMX~~~~ Group is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

**5. 3. ALLOCATION OF RESOURCES**

(a) ~~TSX~~TMX~~~~ Group will, subject to paragraph 3~~5~~(b) hereof and for so long as TSX carries on business as a stock 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 the terms and conditions of Part II of this Schedule "A".

(b) ~~TSX~~TMX~~~~ Group will notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TSX to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part II of this Schedule "A".

**6. 4. FINANCIAL INFORMATION**

~~TSX~~TMX~~~~ Group will file with the Commission unaudited quarterly consolidated financial statements of ~~TSX~~TMX~~~~ Group within 45 days of each quarter end and audited annual consolidated financial statements of ~~TSX~~TMX~~~~ Group within 90 days of each year,

or such shorter periods as are mandated for reporting issuers to file such financial statements under applicable securities legislation.

**7.      ~~5.~~ COMPLIANCE**

TSX**TMX** Group will carry out its activities as a stock exchange recognized under section 21 of the Act. TSX**TMX** Group will do everything within its control to cause TSX to carry out its activities as a stock exchange recognized under section 21 of the Act and to comply with the terms and conditions in Part II of this Schedule "A".

**8.      ~~6.~~ ACCESS TO INFORMATION**

(a) TSX**TMX** Group will and will cause its subsidiaries to permit the Commission to have access to and to inspect all data and information in its or their possession that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of TSX with the terms and conditions in Part II of this Schedule "A".

(b) TSX**TMX** Group will permit the Commission to have access to and to inspect all data and information in its possession that is required for the assessment by the Commission of the compliance of TSX**TMX** Group with the terms and conditions in Part I of this Schedule "A".

**9.      ~~7.~~ SHARE OWNERSHIP RESTRICTIONS**

The restrictions on share ownership set out in section 21.11(1) of the Act, as amended from time to time by regulation, shall apply to the voting shares of TSX**TMX** Group, and the articles of TSX**TMX** Group shall 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 the net proceeds of the sale or redemption to the person entitled thereto.

**PART II--TSX**

**10.      ~~8.~~ CORPORATE GOVERNANCE**

(a) To ensure diversity of representation, TSX will ensure that the composition of its board of directors provides a proper balance between the interests of the different entities using its services and facilities.

(b) TSX's governance structure shall provide for:

- (i) Fair and meaningful representation on its board of directors and any governance committee thereof, in the context of the nature and structure of TSX;
- (ii) Appropriate representation of independent directors on TSX's committees; and
- (iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of TSX generally.

© TSX shall ensure, on an annual basis and each time that an individual joins the board of directors, that at least fifty per cent (50%) of its directors are independent. For purposes of this recognition order, a director is independent if he or she is independent within the meaning of section 1.4 of Multilateral Instrument 52-110–Audit Committees, as amended from time to time. The board of directors will adopt standards which may be amended from time to time with the prior approval of the Commission, setting out criteria to determine whether individuals are independent, including criteria to determine whether an individual has a material relationship with TSX and is therefore considered not to be independent. These standards will be made available on the TSX website.

In the event that at any time TSX fails to meet such requirement, it shall promptly remedy such situation.

**(d) TSX shall ensure that at least fifty per cent (50%) of the directors and members of each of the committees of the board of directors will be both ordinarily resident in Canada and independent.**

**11.      OFFICES**

**The head office and the executive offices of TSX will be located in Toronto.**

**12. SENIOR MANAGEMENT**

**The chief executive officer, and the most senior executives of TSX responsible for each of listing and issuer services, trading, market data, and compliance and regulation functions (or their equivalents from time to time), will be ordinarily resident in Ontario and their principal place of business will be in Toronto. For greater certainty, those most senior executives will be subject to the strategic and policy direction of Mergeco.**

**13. 9-FEES**

(a) Any and all fees imposed by TSX on its Participating Organizations shall be equitably allocated. Fees shall not have the effect of creating barriers to access and shall be balanced with the criteria that TSX have sufficient revenues to satisfy its responsibilities.

(b) TSX's process for setting fees shall be fair and appropriate.

**14. 10-ACCESS**

(a) The requirements of TSX shall permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy TSX's criteria to access the trading facilities of TSX.

(b) Without limiting the generality of the foregoing, TSX shall:

- (i) establish written standards for granting access to trading on its facilities;
- (ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and
- (iii) keep records of:
  - (A) each grant of access including, for each entity granted access to its trading facilities, the reasons for granting such access; and
  - (B) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

**15. 11-FITNESS**

TSX will take reasonable steps to ensure that each officer or director of TSX is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

**16. 12-FINANCIAL VIABILITY**

(a) TSX shall maintain sufficient financial resources for the proper performance of its functions.

(b) TSX shall calculate monthly the following financial ratios:

- (i) a current ratio, being the ratio of current assets (excluding the portion of future tax asset related to deferred revenue – initial and additional listing fees) to current liabilities (excluding deferred revenue – initial and additional listing fees),
- (ii) a debt to cash flow ratio, being the ratio of total debt used to finance TSX's operations (including any line of credit drawdowns, term loans, debentures and capital lease obligations, but excluding liabilities such as accounts payable, deferred revenue, income taxes payable and employee benefit liabilities) to adjusted EBITDA for the most recent twelve months, where adjusted EBITDA is earnings before interest, taxes, depreciation and amortization, adjusted to include initial and additional listing fees received and to exclude initial and additional listing fees reported as revenue, and
- (iii) a financial leverage ratio, being the ratio of adjusted total assets to adjusted shareholders' equity, where adjusted total assets is calculated as total assets on the TSX balance sheet less the portion of future tax asset reported on the TSX balance sheet that is related to deferred revenue-initial and additional listing fees as reported on the TSX balance sheet ("Adjusted Future Tax Asset") and adjusted shareholders' equity is calculated as shareholders' equity as reported on the TSX balance sheet plus deferred revenue – initial and additional listing fees as reported on the TSX balance sheet less Adjusted Future Tax Asset,

in each case as calculated on a consolidated basis and consistently with the consolidated financial statements of TSX.

(c) TSX shall report quarterly (concurrently with the financial statements filed pursuant to paragraph 4721) to Commission staff the monthly calculations of its current ratio, debt to cash flow ratio and financial leverage ratio for the previous quarter.

(d) If TSX fails to maintain or anticipates it will fail to maintain in the next twelve months:

- (i) its current ratio at greater than or equal to 1.1/1,
- (ii) its debt to cash flow ratio at less than or equal to 4.0/1, or
- (iii) its financial leverage ratio at less than or equal to 4.0/1,

it shall immediately notify Commission staff.

(e) If TSX fails to maintain its current ratio, debt to cash flow ratio, or financial leverage ratio at the levels outlined in paragraph 4216(d) above for a period of more than three months:

- (i) its Chief Executive Officer will immediately deliver a letter advising Commission staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the situation, and
- (ii) TSX will not, without the prior approval of the Director, make any capital expenditures in excess of its approved budget, or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been eliminated for at least six months or a shorter period of time as agreed to by Commission staff.

(f) TSX shall not enter into any agreement or transaction either (i) outside the ordinary course of business or (ii) with ~~TSX~~**TMX** Group or any subsidiary or associate of ~~TSX~~**TMX** Group if it expects that, after giving effect to the agreement or transaction, TSX is likely to fail to maintain the current ratio, the debt to cash flow ratio or the financial leverage ratio at the levels outlined in paragraph 4216(d) above.

**17.     ~~13.~~ REGULATION**

(a) TSX shall continue to retain the ~~Investment Industry Regulatory~~*Organization of Canada* (~~IROC~~)**IIROC** as an RSP to provide certain regulation services which have been approved by the Commission. TSX shall provide to the Commission, on an annual basis, a list outlining the regulation services provided by IIROC and the regulation services performed by TSX. All amendments to those listed services are subject to the prior approval of the Commission.

(b) In providing the regulation services, as set out in the agreement between IIROC and TSX (Regulation Services Agreement), IIROC provides certain regulation services to TSX pursuant to a delegation of TSX's authority in accordance with Section 13.0.8(4) of the Toronto Stock Exchange Act and will be entitled to exercise all the authority of TSX with respect to the administration and enforcement of certain market integrity rules and other related rules, policies and by-laws.

(c) TSX shall provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report shall be in such form as may be specified by the Commission from time to time.

(d) TSX shall continue to perform all ~~other~~ regulation functions not performed by IIROC **and shall carry on its regulation functions in Canada, either directly or through IIROC.** TSX shall not perform such regulation functions through any other party, including its affiliates or associates, without prior Commission approval. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 2327 does not contravene this paragraph.

(e) Management of TSX (including the Chief Executive Officer) shall at least annually assess the performance by IIROC of its regulation functions and report thereon to the Board of TSX, together with any recommendations for improvements. TSX shall provide the Commission with copies of such reports and shall advise the Commission of any proposed actions arising therefrom.

**18.     ~~14.~~ SYSTEMS**

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, TSX shall:

(a) on a reasonably frequent basis, and in any event, at least annually,

- (i) make reasonable current and future capacity estimates;

- (ii) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
- (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards and natural disasters;
- (v) establish reasonable contingency and business continuity plans;

(b) annually, cause to be performed an independent review and written report, in accordance with established audit procedures and standards, of its current systems technology plans and whether there are appropriate processes in place to manage the impact of changes in technology on the exchange and parties interfacing with exchange systems. This will include an assessment of TSX's controls for ensuring that each of its systems that support order entry, order routing, execution, data fees, trade reporting and trade comparisons, capacity and integrity requirements is in compliance with paragraph (a) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and

(c) promptly notify the Commission of material systems failures and changes.

**19.     ~~15.~~ PURPOSE OF RULES**

(a) TSX shall, subject to the terms and conditions of this Recognition Order and the jurisdiction and oversight of the Commission in accordance with Ontario securities laws, through IROC and otherwise, establish such rules, policies and other similar instruments ("Rules") that are necessary or appropriate to govern and regulate all aspects of its business and affairs.

(b) In particular, TSX shall ensure that:

- (i) the Rules are designed to:
  - (A) ensure compliance with securities legislation;
  - (B) prevent fraudulent and manipulative acts and practices;
  - (C) promote just and equitable principles of trade;
  - (D) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and
  - (E) provide for appropriate discipline;
- (ii) the Rules do not:
  - (A) permit unreasonable discrimination among clients, issuers and Participating Organizations; or
  - (B) impose any burden on competition that is not reasonably necessary or appropriate; and
- (iii) the Rules are designed to ensure that TSX's business is conducted in a manner so as to afford protection to investors.

**20.     ~~16.~~ RULES AND RULE-MAKING**

(a) TSX shall comply with the existing protocol between TSX and the Commission, as it may be amended from time to time, concerning Commission approval of changes in its Rules.

(b) All Rules of general application, and amendments thereto, adopted by TSX must be filed with the Commission.

**21.     ~~17.~~ FINANCIAL STATEMENTS**

TSX shall file unaudited quarterly consolidated financial statements within 45 days of each quarter end and audited consolidated annual financial statements within 90 days of each year end or such shorter period as is mandated for reporting issuers to file such financial statements under applicable securities legislation. TSX shall provide certain unconsolidated financial information if requested by Commission staff.

**22.     ~~18.~~ SANCTION RULES**

TSX shall ensure, through IIROC and otherwise, that its Participating Organizations and its listed issuers are appropriately sanctioned for violations of the Rules. In addition, TSX will provide notice to the Commission of any violations of securities legislation of which it becomes aware in the ordinary course operations of its business.

**23.     ~~19.~~ DUE PROCESS**

TSX shall ensure that the requirements of TSX relating to access to the trading and listing facilities of TSX, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions for appeals.

**24.     ~~20.~~ INFORMATION SHARING**

TSX shall co-operate by the sharing of information and otherwise, with the Commission and its staff, the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

**25.     ~~21.~~ LISTED COMPANY RULES**

TSX shall ensure, through IIROC and otherwise, that it has appropriate review procedures in place to monitor and enforce issuer compliance with the Rules.

**26.     ~~22.~~ SELF-AFFILIATE LISTING CONDITIONS**

TSX shall be subject to the terms and conditions relating to the listing on TSX of ~~TSX Group~~ Mergeco and [Exchangeco] ("Exchangeco"), an indirect subsidiary of Mergeco, as are set out in the attached Appendix I, as amended from time to time.

**27.     ~~23.~~ OUTSOURCING**

In any material outsourcing of any of its business functions with parties other than ~~TSX~~ TMX Group or an affiliate or associate of ~~TSX Group~~ TMX Group that is incorporated, or that primarily carries on business, in Canada, TSX shall proceed in accordance with industry best practices. Without limiting the generality of the foregoing, TSX shall:

(a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such material outsourcing arrangements;

(b) in entering into any such material outsourcing arrangement:

- (i) assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX; and
- (ii) execute a contract with the service provider addressing all significant elements of such arrangement, including service levels and performance standards;

(c) ensure that any contract implementing such material outsourcing arrangement that is likely to impact on TSX's regulation functions provide in effect for TSX, its agents and the Commission to be permitted to have access to and to inspect all data and information maintained by the service provider that TSX is required to share under paragraph ~~2024~~ or that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of TSX with the terms and conditions in Part II of this Schedule "A"; and

(d) monitor the performance of the service provided under any such material outsourcing arrangement.

**28.     ~~24.~~ RELATED PARTY TRANSACTIONS**

Any material agreement or transaction entered into between TSX and ~~TSX~~ TMX Group or any subsidiary ~~or~~ affiliate, or associate, or affiliate of ~~TSX~~ TMX Group shall be on terms and conditions that are at least as favourable to TSX as market terms and conditions.

**29.     ~~25.~~ CLEARING AND SETTLEMENT**

The Rules impose a requirement on Participating Organizations to have appropriate arrangements in place for clearing and settlement through a clearing agency recognized by the Commission.

**30.     CONTINUITY OF OPERATIONS**

**(a) TSX will be locally managed, subject to the strategic and policy direction of Mergeco.**

**(b) TSX will maintain its core operations in Canada, except to the extent that, in accordance with its obligations with respect to paragraph 31, TSX ceases or otherwise changes its operations.**

**31.     CHANGE IN OPERATIONS**

**(a) TSX will not cease to operate or suspend, discontinue or wind up all or a significant portion of TSX's operations, or dispose of all or substantially all of TSX's assets, without:**

**(i) \_\_\_\_\_ providing the OSC at least six months' prior notice of TSX's intention; and**

**(1) complying with any terms and conditions that the OSC may impose in the public interest for the orderly discontinuance of TSX's operations or the orderly disposition of TSX's assets.**

**APPENDIX I**

**Affiliate Listing-Related Conditions**

**1.     ~~1.~~ UNDERLYING PRINCIPLES**

1.1. TSX carries on the business of the Toronto Stock Exchange.

1.2. ~~TSX Group proposes~~**Mergeco and Exchangeco each propose** to become a listed company on TSX, which will be wholly-owned by ~~TSX Group~~**Mergeco**.

1.3. TSX will report to the Director (the "Director") of the Ontario Securities Commission ("OSC") or other members of the staff of the OSC certain matters provided for in this Appendix I (the "Listing-Related Procedures") with respect to ~~TSX Group~~**Mergeco and Exchangeco** or certain other TSX-listed issuers that raise issues of conflict of interest or potential conflict of interest for TSX.

1.4. The purpose of this reporting process is to ensure that TSX follows appropriate standards and procedures with respect to the initial and continued listing of ~~TSX Group~~**Mergeco and Exchangeco** and Competitors, to ensure that ~~TSX Group is~~**Mergeco and Exchangeco are** dealt with appropriately in relation to, and Competitors are treated fairly and not disadvantaged by, ~~TSX Group~~**Mergeco's and Exchangeco's** listing on TSX. For purposes of these Listing- Related Procedures, "Competitor" means any person, the consolidated business and operations or the disclosed business plans of which are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material line of business of ~~TSX Group~~**Mergeco** or its affiliates.

**2.     ~~2.~~ INITIAL LISTING ARRANGEMENTS**

2.1. TSX will review, in accordance with its procedures, the ~~TSX Group~~**Mergeco and Exchangeco** initial listing application**applications**. A copy of **each of** the application**applications** will be provided by TSX to the OSC's Director, Corporate Finance at the same time that the application is filed with TSX.

2.2. Upon completing its review of the application and after allowing ~~TSX Group~~**Mergeco and Exchangeco** to address any deficiencies noted by TSX, TSX will provide a summary report to the OSC's Director, Corporate Finance, with its recommendation for listing approval, if made. The summary report will provide details of any aspects of the application that were atypical as well as any issues raised in the process that required the exercise of discretion by TSX. Any related staff memoranda, analysis, recommendations and decisions not included in the summary report will be attached for review by the OSC's Director, Corporate Finance. A copy of TSX's current listing manual will also be provided to the OSC's Director, Corporate Finance.

2.3. The OSC's Director, Corporate Finance will have the right to approve or disapprove the listing of the ~~TSX Group~~**Mergeco and Exchangeco** shares. In the event of disapproval, ~~TSX Group~~**Mergeco and Exchangeco** will have the opportunity to

address the concerns of the OSC's Director, Corporate Finance and may resubmit an amended application for listing, or amended parts thereof, to TSX, which will provide a revised summary report and any new materials to the OSC's Director, Corporate Finance in accordance with section 2.2, along with a copy of the amended application.

**3. 3-CONFLICTS COMMITTEE**

3.1. TSX will establish a committee (the "Conflicts Committee") that will review any matters brought before it regarding a conflict of interest or potential conflict of interest relating to the continued listing on TSX of ~~TSX Group~~Mergeco or Exchangeco or the initial listing or continued listing of Competitors (each, a "Conflict of Interest"). Without limiting the generality of the above sentence, continued listing matters include the following:

(a) matters relating to the continued listing of ~~TSX Group~~Mergeco, Exchangeco or a Competitor or of a listing of a different class or series of securities of ~~TSX Group~~Mergeco, Exchangeco or a Competitor than a class or series already listed;

(b) any exemptive relief applications of, or approvals applied for by, ~~TSX Group~~Mergeco, Exchangeco or a Competitor;

(c) any other requests made by ~~TSX Group~~Mergeco, Exchangeco or a Competitor that require discretionary involvement by TSX; and

(d) any listings matter related to a TSX-listed issuer or listing applicant that asserts that it is a Competitor.

3.2. Notwithstanding section 3.1, where a Competitor certifies to TSX that information required to be disclosed to the Conflicts Committee or TSX in connection with an initial listing or continued listing matter of the Competitor is competitively sensitive and the disclosure of that information would in its reasonable view put it at a competitive disadvantage with respect to ~~TSX Group~~Mergeco, TSX will refer the matter to the Director, requesting that the Director review issues relating to the competitively sensitive information. The Conflicts Committee shall consider all other aspects of the matter in accordance with the procedures set out in section 3.8. In addition, at any time that a Competitor believes that it is not being treated fairly by TSX as a result of TSX being in a conflict of interest position, TSX will refer the matter to the Director.

3.3. In any initial listing or continued listing matter of a Competitor, the Competitor may waive the application of these Listing-Related Procedures by providing a written waiver to TSX and the Director. Where a waiver is provided, TSX will deal with the initial listing or continued listing matter in the ordinary course as if no Conflict of Interest exists.

3.4. The Conflicts Committee will be composed of: the Chief Executive Officer of TSX, the general counsel of TSX (the "Committee Secretary"), the senior officer responsible for listings of each of TSX and TSX Venture Exchange Inc., the senior officer responsible for trading operations of TSX, a senior management representative of IIROC and two other persons who shall be independent of TSX (as independent is defined in paragraph 1(a) of Schedule "A" of the terms and conditions of the recognition order). At least one such independent member must participate in meetings of the Conflicts Committee, in order for there to be a quorum.

3.5 TSX shall use its best efforts to instruct senior management and relevant staff at TSX, and relevant senior management and staff at IIROC, in order that they are alerted to, and are able to identify, Conflicts of Interest which may exist or arise in the course of the performance of their functions. Without limiting the generality of the foregoing:

3.5.1. TSX shall provide instruction that any matter concerning ~~TSX Group~~Mergeco or Exchangeco that is brought to the attention of staff at TSX must be immediately brought to the attention of the Committee Secretary.

3.5.2. TSX shall maintain a list in an electronic format, to be updated regularly and in any event at least monthly and reviewed and approved by the Conflicts Committee at least monthly, of all Competitors that are TSX-listed issuers, and shall promptly after the above-noted approval by the Conflicts Committee provide the current list to managers at TSX and IIROC who supervise departments that (i) review continuous disclosure; (ii) review requests/applications for exemptive relief; (iii) perform timely disclosure and monitoring functions relating to TSX-listed issuers; and (iv) otherwise perform tasks and/or make decisions of a discretionary nature. In maintaining this list, TSX shall ensure that senior executives in the issuer services division of TSX regularly prepare and review and update the list and provide it promptly to the Conflicts Committee.

3.5.3. TSX shall provide instruction to staff at TSX that any initial listing or continued listing matter or a complaint of a Competitor or of any TSX-listed issuer or listing applicant that asserts that it is a Competitor must be immediately brought to the attention of the Committee Secretary.



3.5.4. TSX shall provide to staff who review initial listing applications and to senior executives in the issuer services division of TSX a summary of the types of businesses undertaken to a significant degree by TSX Group Mergeco or its affiliates and shall update the list as these businesses change, in order that initial listings staff and senior executives in the issuer services division of TSX may recognize a Competitor.

3.6. The Committee Secretary shall convene a meeting of the Conflicts Committee to be held no later than one business day after a Conflict of Interest has been brought to his or her attention. The Committee Secretary or any member of the Conflicts Committee may also convene a meeting of the Conflicts Committee whenever he or she sees fit, in order to address any conflict issues that may not be related to any one specific matter or issuer.

3.7. TSX shall, at the time a Conflicts Committee meeting is called in response to a Conflict of Interest, immediately notify the OSC's Manager of Market Regulation that it has received notice of a Conflict of Interest and shall provide with such notice: (i) a written summary of the relevant facts; and (ii) an indication of the required timing for dealing with the matter.

3.8. The Conflicts Committee will consider the facts and form an initial determination with respect to the matter. The Conflicts Committee will then proceed as follows depending on the circumstances:

3.8.1. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group Mergeco or Exchangeco or the initial or continued listing of a Competitor on TSX does not exist and is unlikely to arise, it will notify the OSC's Manager of Market Regulation of this determination. If the OSC's Manager of Market Regulation approves such determination, TSX will deal with the matter in its usual course. When it has dealt with the matter, a brief written record of such determination with details of the analysis undertaken, and the manner in which the matter was disposed of, will be made by TSX and provided to the OSC's Manager of Market Regulation. If the OSC's Manager of Market Regulation does not approve the determination and provides notice of such non-approval to TSX, TSX will follow the procedures set out in section 3.8.2.

3.8.2. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group Mergeco or Exchangeco or the initial or continued listing of a Competitor on TSX does exist or is likely to arise or if TSX is provided non-approval notice from the OSC's Manager of Market Regulation under section 3.8.1, TSX shall: (i) formulate a written recommendation of how to deal with the matter; and (ii) provide its recommendation to the OSC's Manager of Market Regulation for his or her approval, together with a summary of the issues raised and details of any analysis undertaken. If the OSC's Manager of Market Regulation approves the recommendation, TSX will take steps to implement the terms of its recommendation.

3.9. Where the OSC's Manager of Market Regulation has considered the circumstances of an issue based on the information provided to him or her by the Conflicts Committee under section 3.8.2, and has determined that he or she does not agree with TSX's recommendation (i) and has requested that TSX reformulate its recommendation, TSX shall do so; or (ii) the OSC's Manager of Market Regulation may direct TSX to take such other action as he or she considers appropriate in the circumstances.

3.10. Where the OSC's Manager of Market Regulation or the Director is requested to review a matter pursuant to section 3.9 or 3.2, respectively, TSX shall provide to the OSC's Manager of Market Regulation or the Director any relevant information in its possession and, if requested by the OSC's Manager of Market Regulation or the Director, any other information in its possession, in order for the OSC's Manager of Market Regulation or the Director to review or, if appropriate, make a determination regarding the matter, including any notes, reports or information of TSX regarding the issue, any materials filed by the issuer or issuers involved, any precedent materials of TSX, and any internal guidelines of TSX. TSX shall provide its services to assist the matter, if so requested by the OSC's Manager of Market Regulation or by the Director.

3.11. TSX will provide to the OSC's Manager of Continuous Disclosure a copy of TSX Group Mergeco's and Exchangeco's annual questionnaire questionnaires and any other TSX Group Mergeco or Exchangeco disclosure documents that are filed with TSX but not with the OSC's Continuous Disclosure department. TSX will conduct its usual review process in connection with TSX Group Mergeco's and Exchangeco's annual questionnaire questionnaires and all prescribed periodic filings of TSX Group Mergeco and Exchangeco. Any deficiencies or irregularities in TSX Group Mergeco's or Exchangeco's annual questionnaire questionnaires or other TSX-issuer prescribed filings will be communicated to the OSC's Manager of Continuous Disclosure and brought to the attention of the Conflicts Committee which shall follow the procedures outlined in this section 3.

#### **4. 4-TIMELY DISCLOSURE AND MONITORING OF TRADING**

4.1 TSX shall use its best efforts to ensure that IIROC at all times is provided with the current list of the TSX-listed issuers that are Competitors.

**5. 5-MISCELLANEOUS**

5.1. Information provided by a Competitor in connection with an initial listing or continued listing matter to the Conflicts Committee will not be used by TSX for any purpose other than addressing Conflicts of Interest. TSX will not disclose any confidential information obtained under these Listing-Related Procedures to a third party other than the OSC unless:

- (a) prior written consent of the other parties is obtained;
- (b) it is required or authorized by law to disclose the information; or
- (c) the information has come into the public domain otherwise than as a result of its breach of this clause.

5.2. TSX will provide disclosure on its website and in the TSX Company Manual to the effect that an issuer can assert that it is a Competitor and will outline the procedures for making such an assertion, including appeal procedures.