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VIA EMAIL

The Secretary
Ontario Securities Commission
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comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
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Dear Sirs/Mesdames:

RE: CSA Staff Notice and Request for Comment 23-323 (“2018 RFC”)

TMX Group Limited (“**TMX Group**”) would like to take this opportunity to provide feedback on the length of the comment period which accompanies the 2018 RFC concerning the proposed Trading Fee Rebate Pilot Study (“**Proposed Pilot**”) published on December 18, 2018.

We believe that the Proposed Pilot has the potential to materially impact equity market structure and those that participate within equities markets, including marketplaces, dealers, investors and issuers. In this letter, we focus specifically on the length of the unusually, and we believe inappropriately, short comment period and we urge the Ontario Securities Commission (the “**Commission**”) to reconsider the length of the comment period in advance of the period expiry date. TMX Group intends to submit a full response on the substantive issues raised by the 2018 RFC at a later date.

We have carefully reviewed the 2018 RFC and its Appendix B “Model Draft Order”. We would note that orders made by the Commission under s. 21(5)/s.21.0.1 (“**s.21 Orders**”) of the *Securities Act* (Ontario) (the “**Act**”) are binding and a failure to comply with s.21 Orders could lead to possible enforcement action and substantive penalties. We would also note that, following what is commonly known in the industry as the Ainsley decision, the Ontario Legislature, by virtue of the *Securities Amendment Act, 1995*, authorized the Commission to make rules under s. 143(1) of the *Act* and to adopt policies under s. 143.8 of the *Act*. The difference between rules and policies, according to the Commission’s document “Rule-making in Ontario”¹ (“**Backgrounder**”), is that rules are of a “binding nature” and a “person or a company that contravenes a rule may be subject to enforcement action”. Unlike rules, policies “may not be prohibitive or mandatory in character”. Therefore, while rules mandate, policies inform. Policies can, for example, “inform market participants of (a) how the Commission may exercise its discretionary authority, (b) how the Commission interprets Ontario securities law, and (c) the practices followed by the Commission in performing its duties under the Act.” Rules would mandate these same actions.

Based on the 2018 RFC, the s.21 Orders the Commission intends to issue to enact the Proposed Pilot would mandate industry-wide participation for all marketplaces and marketplace participants with no ‘opt-out’ provisions. The Proposed Pilot would also be prohibitive in nature in that it would prohibit marketplaces from paying rebates on a mandated set of securities. Unlike other Commission orders made under section 21 of the *Act* that intend to narrowly address the activities of a specific marketplace, the 2018 RFC indicates that the Commission would be issuing multiple orders to impose a market structure change that would have the effect of altering National Instruments 21-101 and 23-101, and that will directly impact investors, issuers, participants and all equities marketplaces.

According to s.143.2(4) of the *Act*, proposed binding rules that mandate participation and impose prohibitions must be published for public comment for no less than 90 days. Given the breadth of impact and mandatory nature of the s.21 Orders the Commission intends to issue to enact the Proposed Pilot, we submit that the Commission would be, in essence, rule-making if it were to issue these s.21 Orders. In our view therefore, the 2018 RFC warrants a 90-day comment period.

In addition to the analysis provided above, there are also practical considerations that should appropriately inform the length of 2018 RFC comment period. The Proposed Pilot has the potential to materially impact equity market structure and Canada’s capital markets, including marketplaces, dealers, investors and issuers. On this basis alone, it is important to ensure that industry stakeholders are afforded enough time to perform a comprehensive review of the 2018 RFC, prepare a thoughtful response, and satisfy their internal review requirements (e.g., review by internal legal counsel where applicable as well as senior management). In our view, a 45-day comment period that coincides with a winter holiday season which is traditionally characterized by office closures and sparse staffing across the industry, is not sufficient for this purpose and may result in a less meaningful and representative comment process.

We expect that one of the reasons that the Commission provided such a short comment period for the 2018 RFC may be its desire to align the Proposed Pilot with the Transaction Fee Pilot that the US Securities and Exchange Commission (“**SEC**”) expects to begin in the United States later this year (“**US Pilot**”). We would note that there is no need for the Canadian Securities Administrators (“**CSA**”) to match the projected timeline of the US Pilot as the SEC has already

¹ http://www.osc.gov.on.ca/documents/en/Securities-Category0/backgrounder_rule_making.pdf

contemplated and accommodated for a delay period if a Canadian pilot were to begin after the US Pilot. The SEC's final rule indicates that if the Canadian pilot is delayed, all interlisted securities will be placed in a control group until the Canadian pilot starts, at which point the SEC will mirror the Canadian no-rebate bucket and control group split. We would also note that if the Canadian pilot were to start later than the US Pilot, the delay would have the benefit of allowing the CSA to observe the initial impact of the US Pilot and to learn from any US Pilot implementation challenges, before starting a Canadian pilot.

Based on the above, we urge the Commission to extend the comment period to 90 days. This extension is appropriate given the nature of the 2018 RFC and the potential market impact of the Proposed Pilot, and will allow for a better quality and more representative response from the many industry participants that will be impacted by the material changes being proposed to Canadian equity market structure.

TMX Group appreciates your consideration of this matter.

Respectfully submitted,



Deanna Dobrowsky

cc: Maureen Jensen, OSC Chair
Tim Moseley, OSC Vice Chair
Grant Vingoe, OSC Vice Chair
AnneMarie Ryan, OSC Lead Director
Kevin Sampson, TMX Group