



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

AND

**IN THE MATTER OF
TMX GROUP INC.**

AND

TSX INC.

ORDER

(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (Commission) issued an order dated April 3, 2000, varied on January 29, 2002, September 3, 2002, August 12, 2005, December 16, 2005, August 10, 2006 and May, 16 2008 granting and continuing the recognition of TSX Group Inc., which later changed its name to TMX Group Inc. (TMX Group), and TSX Inc. (TSX), as a stock exchange pursuant to section 21 of the Act (Recognition Order);

AND WHEREAS Schedule A to the Recognition Order contains a term and condition (Current Term and Condition) requiring TSX to comply with a protocol between TSX and the Commission, as amended from time to time, concerning Commission approval of changes in the rules, policies and other similar instruments (Rules) of TSX;

AND WHEREAS the protocol referred to in the Current Term and Condition is a memorandum of understanding between the TSX and the Commission respecting the *Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals* dated October 23, 1997 and approved by the Ontario Minister of Finance on December 18, 1997 (Existing MOU);

AND WHEREAS the Executive Director has applied for an order pursuant to section 144 of the Act to vary the Recognition Order to replace the Current Term and Condition with a term and condition that refers to a new process for the review and approval of Rules that will be attached to the Recognition Order and that will also apply to changes to the information in the Form 21-101F1 required to be filed under NI 21-101 *Marketplace Operations*;

AND WHEREAS the new process for the review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto that will be attached to the Recognition Order is intended to supersede the Existing MOU;

AND WHEREAS the Commission is of the opinion that it would not be prejudicial to the public interest to vary the Recognition Order to expand the term and condition and the process in the manner described;

IT IS ORDERED by the Commission pursuant to section 144 of the Act that the Recognition Order be varied as follows:

1. Item 16 of Schedule A to the Recognition Order is repealed and replaced with the following:
“16. **RULES, RULEMAKING AND FORM 21-101F1**

TSX will comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto set out in Appendix II, as amended from time to time.”; and

2. Appendix II is added to Schedule A of the Recognition Order, in the form set out in Appendix A to this order.

DATED this 22nd day of June, 2012, and effective on July 1, 2012.

“P.L. Kennedy”

Commissioner

“Margot C. Howard”

Commissioner

APPENDIX A

“APPENDIX II

PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director.

2. Definitions

For the purposes of this Protocol:

- (a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.
- (b) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.
- (c) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that
 - (i) does not have an impact on the Exchange’s market structure, members, issuers, investors or the capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (d) *Housekeeping Rule* means a new Rule or an amendment to a Rule that
 - (i) does not have an impact on the Exchange’s market structure, members, issuers, investors or the capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (e) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.
- (f) *Rule* includes a rule, policy and other similar instrument of the Exchange.
- (g) *Significant Change* means an amendment to the information in Form 21-101F1 other than
 - (i) a Housekeeping Change,
 - (ii) a Fee Change, or
 - (iii) a Rule,and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.
- (h) *Significant Change subject to Public Comment* means a Significant Change that
 - (i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or
 - (ii) in Staff’s view, has an impact on the Exchange’s market structure or members, or on issuers, investors or the capital markets or otherwise raises public interest concerns and should be subject to public comment.

3. Scope

- (a) The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

4. Board Approval

- (a) The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

5. Waiving or Varying the Protocol

- (a) The Exchange may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.
- (b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:
 - (i) written notice that Staff object to granting the waiver or variation; or
 - (ii) written notice that the waiver or variation has been granted by Staff.

6. Materials to be Filed and Timelines

- (a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will file with Staff the following materials:
 - (i) a cover letter that, together with the notice for publication filed under paragraph 6(a)(ii), if applicable, fully describes:
 - (A) the proposed Fee Change, Public Interest Rule or Significant Change;
 - (B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;
 - (C) the rationale for the proposal and any relevant supporting analysis;
 - (D) the expected impact of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;
 - (E) whether a proposed Public Interest Rule or Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;
 - (F) a discussion of the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;
 - (G) details of any consultations undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, including the internal governance process followed to approve the Rule or Change;
 - (H) if the Public Interest Rule or Significant Change will require members and service vendors to modify their own systems after implementation of the Rule or Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;
 - (I) a discussion of any alternatives considered; and
 - (J) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;
 - (ii) for a proposed Public Interest Rule or Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 6(a)(i) above, except that the following may be excluded from the notice:
 - (A) supporting analysis required under subparagraph 6(a)(i)(C) above that, if included in the notice, would result in the public disclosure of intimate financial, commercial or technical information;
 - (B) the information on systemic risk required under subparagraph 6(a)(i)(E) above;
 - (C) the information on the internal governance processes followed required under subparagraph 6(a)(i)(G) above;

- (D) the reasonable estimate of time needed for members and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 6(a)(i)(H), so long as the notice for publication contains a statement that the Exchange did not or could not make a reasonable estimate; and
 - (E) the discussion of alternatives required under subparagraph 6(a)(i)(I) above.
- (iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
 - (iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.
- (b) The Exchange will file the materials set out in subsection 6(a)
 - (i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and
 - (ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.
 - (c) For a Housekeeping Rule, the Exchange will file with Staff the following materials:
 - (i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;
 - (ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;
 - (iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
 - (iv) a notice for publication on the OSC website and in the OSC Bulletin that contains the information in paragraph (ii) above as well as the implementation date for the Rule, and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.
 - (d) For a Housekeeping Change, the Exchange will file with Staff the following materials:
 - (i) a cover letter that indicates that the Change was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and
 - (ii) blacklined and clean copies of Form 21-101F1 showing the Change.
 - (e) The Exchange will file the materials set out in subsection 6(d) by the earlier of
 - (i) the Exchange's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and
 - (ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

7. Review by Staff of notice and materials to be published for comment

- (a) Within 5 business days of the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a refile of the notice and materials.
- (b) Where the notice and materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.

- (c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 8.

8. Publication of a Public Interest Rule or Significant Change Subject to Public Comment

- (a) As soon as practicable after the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.
- (b) If public comments are received
 - (i) the Exchange will forward copies of the comments promptly to Staff; and
 - (ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

9. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes

- (a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within
 - (i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and
 - (ii) seven business days from the date of filing of a proposed Fee Change.
- (b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 9(a).
- (c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule or Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 6 for all other Changes.
- (d) The Exchange will respond to any comments received from Staff in writing.
- (e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to re-submit it for review and approval in accordance with this Protocol.
- (f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection 9(g), to the Commission, for a decision within the following timelines:
 - (i) for a Public Interest Rule or a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;
 - (ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

- (iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.
- (g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 9(f),
- (i) if the proposed Fee Change, Public Interest Rule or Significant Change is complex or introduces a novel feature to the Exchange or the capital markets;
 - (ii) if comments received through the public comment process raise significant public interest concerns; or
 - (iii) in any other situation where, in Staff's view, Commission approval is appropriate.
- (h) Staff will promptly notify the Exchange of the decision.
- (i) If a Public Interest Rule or Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:
- (i) a notice indicating that the proposed Rule or Change is approved;
 - (ii) the summary of public comments and responses prepared by the Exchange, if applicable; and
 - (iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

10. Review Criteria for a Fee Change, Public Interest Rule and Significant Change

- (a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:
- (i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;
 - (ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;
 - (iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and
 - (iv) the Exchange adequately addressed any comments received.

11. Effective Date of a Fee Change, Public Interest Rule or Significant Change

- (a) A Fee Change, Public Interest Rule or Significant Change will be effective on the later of:
- (i) the date that the Exchange is notified that the Change or Rule is approved;
 - (ii) if applicable, the date of publication of the notice of approval on the OSC website; and
 - (iii) the date designated by the Exchange.

12. Significant Revisions and Republication

- (a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule or a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.
- (b) If a Public Interest Rule or Significant Change subject to Public Comment is republished under subsection 12(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

13. Withdrawal of a Fee Change, Public Interest Rule or Significant Change

- (a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.
- (b) If the notice of withdrawal relates to a Public Interest Rule or Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.
- (c) If a Public Interest Rule or Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 9(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

14. Effective Date of a Housekeeping Rule or Housekeeping Change

- (a) Subject to subsections 14(c) and 14(d), a Housekeeping Rule will be effective on the later of
 - (i) the date of the publication of the notice to be published on the OSC website in accordance with subsection 14(e), and
 - (ii) the date designated by the Exchange.
- (b) Subject to subsections 14(c) and 14(d), a Housekeeping Change will be effective on the date designated by the Exchange.
- (c) Staff will review the materials filed by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange filed the documents in accordance with subsections 6(c) and 6(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.
- (d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, file the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.
- (e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin and on the OSC website as soon as is practicable.

15. Immediate Implementation of a Public Interest Rule or Significant Change

- (a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.
- (b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.
- (c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 15(b). If the disagreement is not resolved, the Exchange will file the Public Interest Rule or Significant Change in accordance with the timelines in section 6.

16. Review of a Public Interest Rule or Significant Change Implemented Immediately

- (a) A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 15 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 9, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

17. Application of Section 21 of the *Securities Act* (Ontario)

- (a) The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol."