



Woods & Co.

June 4, 2012

Secretary of the Commission,
Ontario Securities Commission,
20 Queen Street West,
Toronto, Ontario, M5H 3S8
comments@osc.gov.on.ca.

Dear Sir/Madam,

MAPLE GROUP ACQUISITION CORPORATION – Notice and Request for Comment

On May 3, 2012, the Commission published proposed orders which will recognize Maple as an exchange and enable Maple to acquire Alpha and CDS. The Commission has requested comment on whether the proposed orders, including their terms and conditions, form a basis on which the Commission could conclude that the Maple Proposal is in the public interest.

I would like to make two comments on the proposed orders. One regarding the CDS monopoly that will be created and one regarding the listings monopoly that will be created.

CDS Monopoly

In my letter of November 7, 2011 regarding the Maple proposal, I indicated that, in my experience, there is no effective way to mitigate or alleviate the anti-competitive features of a CDS monopoly that is operated as a “for-profit” business and owned by one exchange, in a silo model.

I am amazed that the Commission now proposes to allow Maple to create exactly such a “for-profit” monopoly in Canada, without publishing any policy discussion around why such a “for-profit” monopoly is in the public interest (and in the face of strong opposition from independent dealers and other members of the industry). As the Commission knows, the US capital markets – which are the largest and most liquid in the world – do not have a “for-profit” monopoly operating the clearing and settlement system. Various European markets have “for-profit” silos and have much higher clearing and settlement costs. Why is the Commission abandoning the utility model that has served Canada so well in the past? Why is the Commission allowing Maple to move us away from a North American model and adopt a European “silo” model? Why is the Commission allowing Canada’s CDS to change from being a low-cost utility to becoming a high-cost, regulated monopoly? There is absolutely nothing in the Commission’s notice that describes on what grounds the Commission has concluded that the Maple Proposal

might be in the public interest. How then can we, the public, determine whether the proposed orders, including their terms and conditions, form a basis on which the Commission could conclude that the Maple Proposal is in the public interest?

I urge the Commission to publish its reasoning, and matters considered, so that we can understand why the Commission thinks a regulated monopoly is better for Canada than the status quo. All we have to go on right now are the assertions of the Maple Group, who clearly think a regulated monopoly, owned by them, is in their best interest. But I have never seen a regulated monopoly that innovates, or has fees as low as, an open, competitive marketplace.

In the absence of any such public policy arguments from the Commission, as before, I urge the Commission to reject the Maple Group's proposal to consolidate CDS into TMX and to insist that CDS remains a "not-for-profit" business that is operated for the benefit of all the stakeholders in Canada's capital markets (not just the Maple Group members), which includes all of the marketplaces that use the CDS.

Listings Monopoly

Through the acquisition of Alpha, the Maple Exchange will create a de-facto listings monopoly in Canada. Although the Canadian National Stock Exchange (CNSX) will continue to exist as an independent and alternative listing venue, the Commission should be already aware that the Maple dealers in Canada have done almost everything in their power to prevent CNSX from succeeding.

The Commission appears to realise that the prior business practices of some members of the Maple Group (e.g., as demonstrated in their operation of Alpha ATS) creates a need for the Commission to put very serious checks and balances in place. This is reflected in SCHEDULE 6: TERMS AND CONDITIONS APPLICABLE TO ORIGINAL MAPLE SHAREHOLDERS of the proposed recognition order. In particular, Sections 45 and 46 in that Schedule are designed to impose restrictions on the Maple shareholders and dealers, with respect to trading and clearing services provided by Maple.

However, there is no equivalent restrictions in respect of listing services. The Maple dealers have clearly demonstrated that they are prepared to prevent their clients from accessing the services of a competing exchange.

In particular, I suggest that the Commission should bear in mind the anti-competitive actions of some Maple dealers who have prevented fair access to competing exchanges, over a number of years, while actively facilitating access to their own Alpha exchange – even though Alpha has not yet listed a single security. Several of the Maple shareholder-owned discount brokerage firms still do not offer their clients electronic order-entry to CNSX, some seven years after CNSX was granted stock exchange status.

If the Commission is going to allow the Maple Shareholders to become the owners of an exchange monopoly in Canada, there must be some additional checks and balances in place. At the least, Schedule 6 should contain additional conditions which require that:

Each original Maple shareholder or, in the case of a Maple dealer or an original Maple shareholder with a dealer affiliate, its affiliated entities or dealer affiliates, must at all times ensure that their clients:

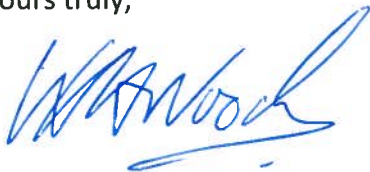
- 1) are provided with equivalent access to the listing services provided by any recognised exchange in Canada that is not Maple (i.e., the Maple dealers will not preference Maple for listings if the client wants to list on an alternative exchange in Canada); and
- 2) are provided with equivalent access to trade equivalent securities listed on non-Maple stock exchanges in Canada as the relevant Maple shareholder, Maple dealer or affiliate provides in respect of securities listed on Maple.

Conclusion

With these additional conditions regarding listing services, the Commission's proposed orders will have created a regulated monopoly that may be able to deal with all the conflicts of interest raised by the Maple Groups' ownership of the TSX, TSXV and CDS. However, the Commission has not explained why a regulated monopoly, rather than free and open competition, is in the best interests of the public in Canada. In the absence of such explanation, it is not possible to comment on whether the proposed orders, including their terms and conditions, form a basis on which the Commission could conclude that the Maple Proposal is in the public interest.

I am grateful for this opportunity to comment on the proposed Maple orders. Please do not hesitate to contact me if I can be of any further assistance.

Yours truly,



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