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Mr. John Stevenson
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Via email: jstevenson@osc.gov.on.ca

Dear Mr. Stevenson,

1. Introduction

I am writing this letter in response to the Notice and Request for Comment relating to the TMX Group Inc. and TSX Inc. Proposed Transaction with London Stock Exchange Group PLC (the "Proposed Merger") published in (2011) 34 OSCB 5714. I am an Associate Professor at the Faculty of Law, University of Toronto and Academic Director of the Centre for the Legal Profession. I am also Chair of the Ontario Securities Commission's Investor Advisory Panel and wish to make explicit that I am not writing in my capacity as Chair or on behalf of the Panel. Rather, I have been retained by the TMX Group to provide my independent views on the Proposed Transaction.

My submission relates to the issue of stock exchange mergers from the standpoint of the investor protection mandate of the Commission. It does not evaluate the merits of one merger proposal over any other. In particular, the view offered here is that the Proposed Merger can and should be sanctioned by the Commission as it is wholly consistent with its mandate of protecting investors and maintaining fair and efficient capital markets and confidence in those markets.[1] Globalization of securities trading, and the interconnectedness of capital markets that has occurred with the emergence of electronic trading platforms and stock exchange expansion that has occurred to date, is a reality that securities regulation needs to embrace in more than piecemeal fashion. Indeed, securities regulators' legislative mandate enables them to sanction the Proposed Merger.

[1] *Securities Act,* R.S.O. 1990, c. S.5, s. 1.1.

In order to elucidate this argument, the submission analyzes the mandate of the Commission in the context of the Proposed Merger.[2] The discussion is disaggregated into three parts which accord with certain aspects of the Commission's authority: maintaining market efficiency, protecting investors and ensuring that market participants' conduct is consistent with the public interest. My analysis sets forth the means by which the Commission can ensure that it upholds its investor protection mandate while sanctioning the Proposed Merger, which will undoubtedly create greater efficiencies in the capital markets. These means include: first, fashioning the terms of the associated recognition order and relevant undertakings; and, second, utilizing its enforcement powers which include its public interest powers.

The discussion proceeds on the understanding that self-regulation is a linchpin in the securities regulatory system. Without self-regulation, i.e. the devolution of authority from the Commission to stock exchanges and other SROs, markets would not function as efficiently. With regards to stock exchanges, if the burden of regulation fell solely on the Commission, significant barriers to the buying and selling of securities on the secondary markets would arise. Thus, the devolution of authority which permits self-regulation is necessary but only with Commission oversight which is also necessary. Via the recognition process, the Commission oversees the stock exchange's regulation of the operations and standards of practice and business conduct of its members.[3] The concept of oversight is central to the discussion below given that the Proposed Merger in my view permits and indeed creates an effective oversight regime of the merged entity and parent holding company ("Mergeco") and the TMX Group.

It is worth noting at the outset that with demutualization, the TSX became a for-profit corporation (and later a public corporation) and was therefore no longer an organization owned by its members. In an explicit effort to enhance the competitiveness of the Canadian capital markets while adhering to the concept of self-regulation, the Commission permitted the proposed demutualization pursuant to its oversight and recognition process.[4] Regardless of whether the Proposed Merger succeeds, demutualization was surely the most significant transformation that the TSX has undergone. The life of a public corporation can be complex, but it often involves the likelihood of an acquisition or merger. The fact that the TMX Group is contemplating an international merger is unsurprising and indeed expected given a global trend towards mergers[5] and the duty of the board to act in the best

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[2] It is true that maintaining confidence in the capital markets can be isolated as a third aspect of the mandate. However, I view market confidence as derivative of investor protection and market efficiency. Once these two goals are achieved, market confidence is likely to persist.

[3] *Securities Act,* R.S.O. 1990, c. S.5, s. 21 (1), 21.2 (1), 21.2.1 (1), 21.1 (1)(3).

[4] Ontario Securities Commission, "Notice of Proposed Criteria for Recognition in Connection with the TSE Demutualization" (1999) 22 OSCB 828. See also Timothy Baikie, "Toronto Stock Exchange - From Toronto Stock Exchange to TSE Inc.: Toronto's Experience with Demutualization" *Demutualization of Stock Exchanges: Problems, Solutions and Case Studies* (Manila: Asian Development Bank, 2002) at 283.

[5] Some of these include: Euronext EV (Netherlands) with NYSE Group Inc. (U.S.) in 2006; OMX AB (Sweden) with Nasdaq Stock Market Inc. (U.S.) – 2007; OMX AB (Sweden) with DIFC (U.A.E) in 2007; and International Securities Exchange Holdings Inc. (U.S.) with Eurex AG (Germany) in 2007.

interests of the corporation and its various stakeholders.[6] I turn now to examine the mandate of the Commission in the context of the Proposed Merger.

2. Mandate of the Commission

(a) Efficient Markets

One aspect of the Commission's statutory mandate is to ensure that markets function efficiently. Efficiency as a regulatory objective has historically taken a back seat to investor protection, likely because of the historical focus in the regulatory regime on ensuring that investors in the capital markets are protected from issuers that may be selling worthless securities or from registrants who may be making value-losing recommendations to less-informed investors. Yet for well over a decade, the concept of efficiency has been an explicit goal of the regulation.[7] Greater market efficiencies have motivated the implementation of comprehensive exemptions from the prospectus requirement, the short-form prospectus rules and even the rules relating to the oversight of self-regulatory organizations (SROs) to name a few.

There is no one definition of "efficiency" that can be utilized in every instance, but "efficiency" in the securities regulation context at least refers to the effectiveness with which a market channels capital to its highest, most productive uses, providing the lowest cost of capital to issuers which, in this case, are not simply the exchanges at issue, but also the issuers that list on the exchange. It may also refer to informational efficiency, otherwise known as the "efficient markets hypothesis," which relies on the concept of whether the observed market price of a security reflects all information relevant to pricing the security. Finally, efficiency can be achieved in some sense if the benefits outweigh the costs of a proposed policy initiative.

It is clear that there are efficiencies to be gained from stock exchange mergers for the benefit of various stakeholders (including listed entities, shareholders and investors generally). These efficiencies are directly relevant to the fulfillment of the Commission's mandate. Empirical research documents that the expansion of stock exchanges, whether through mergers or other means, yields economic benefits in terms of pooling resources and economies of scale.[8] The combined exchanges operate from a common trading platform, providing the potential to increase both bond and equities trading.[9] Furthermore,

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[6] See the Canada Business Corporations Act, section 122 and relevant case law including: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 SCR 560) and *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 S.C.R. 461.

[7] The amendments to the *Securities Act* followed the Daniel's taskforce report called "Responsibility and Responsiveness" which recommended an explicit mandate section be added to the Act. See *Securities Act,* R.S.O. 1990, c. S.5, s. 1.1 (b), 2.1. Ontario Securities Commission, "The Province of Ontario Task Force on Securities Regulation Interim Report" (1994) 17 OSCB 913 online: *Investor Voice* < http://www.investorvoice.ca/Research/Daniels_17OSCB913_1994.pdf>.

[8] Iftekhar Hasan and Marku Malkamäki, "Are expansions cost effective for stock exchanges? A global perspective" (2001) 25 Journal of Banking and Finance 2339.

[9] Roberta S. Karmel, "The Once and Future New York Exchange: The Regulation of Global Exchanges" (2007) 70 Brooklyn Law School Legal Studies Research Papers Working Papers Series (SSRN)..

a combined exchange can lead to reductions in: exchange fees, commissions, the costs of clearing and settlement as well as costs implicit in the bid-ask spread.[10]

Consistent with this literature, the Proposed Merger will permit economies of scale in technology and product development. It will allow a wider array of products and services to be offered to investors and will allow investors to access a deeper pool of international capital (20 trading markets and platforms across North America and Europe).[11] As the TMX Group Inc. management circular dated May 25, 2011 explains, "deeper liquidity will make Canadian capital markets more attractive to all investors, including additional foreign investment that chooses to access the Canadian market, and this will lower execution cost for investors and therefore the cost of capital and financing for issuers that list on Canadian exchanges…" [12] Finally, in the face of increased competition from foreign exchanges for Canadian-based issuers as well as increased competition for business from foreign exchanges for these issuers, it is important for the TMX Group board to ensure that the corporation remains competitive for the benefit of all stakeholders, including listed issuers, shareholders and investors.

Given the undisputed efficiencies to be gained in the Proposed Merger, as well as the importance of maintaining the competitiveness of the Canadian markets, the crucial question for the Commission is whether its investor protection objective would be sacrificed if the Proposed Merger were to proceed. The argument here is that they will most certainly not be sacrificed first, because the complementary nature of investors' interests and market efficiency; second, because of the regulatory flexibility inherent in the oversight process; and, third, because of the enduring and continually applicable enforcement powers of the Commission. I turn to examine these points below.

(b) Investor Protection

The term "investor protection" does not have a single meaning. Generally speaking, it refers to the objective of ensuring that investors are protected by law from expropriation by the managers and controlling shareholders of firms[13] and from market participants such as

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[10] Marco Pagano and Jorge Padilla, "Efficiency gains from the integration of exchanges: Lessons from the Euronext 'Natural Experiment'" *Euronext* (2005). Pagano and Padilla continue that stock market integration can further reduce costs by helping, "…intermediaries to defray fixed order processing costs…reduces the adverse selection costs, due to the presence of informed traders… the inventory holding costs of market makers, as it makes the order flow more predictable and lowers the costs of rebalancing market-makers' inventories after the execution of large orders…induces entry by market professionals…and thereby leads to greater competitive pressure both in quote-setting…" See also Hasan and Malkamäki, "Are expansions cost effective for stock exchanges? A global perspective" (2001) 25 Journal of Banking and Finance 2339 and Ulf Nielsson, "Stock exchange merger and liquidity: The case of Euronext" (2009) 12 Journal of Financial Markets 229 at 233.

[11] For further context, see Chad Fraser, "Canadian stock market: How the potential TMX/LSE merger could affect your investments" *TSI Network Daily* (24 March 2011), online: The Successful Investor Inc. <http://www.tsinetwork.ca/daily/stock-investing/canadian-stock-market-how-the-potential-tmxlse-merger-could-affect-your-investments/>.

[12] TMX Group Inc., *Notice of Annual & Special Meeting of Shareholders of TMX Group Inc. to be held on June 30, 2011*, (Toronto: TMX Group Inc., 25 May 2011) 46.

[13] Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, "Investor Protection: Origins, Consequences, Reform" (1999) 1 The World Bank Financial Sector Discussion Paper

registrants who purchase and sell securities.[14] There are various means employed by securities regulators to ensure that investors are protected, including: timely and accurate disclosure; restrictions on fraudulent practices and high standards of fitness and business conduct.[15] The objective of disclosure, in particular, is to ensure that investors are properly informed prior to making their investment decisions and that they make these decisions on the basis of equal information with others participating in the capital markets.[16] The rules requiring insiders to report their trades and issuers to report material changes "forthwith" are aimed at maintaining a level playing field as between investors and insiders.

Some may argue that while the Proposed Merger enhances the efficiency of the capital markets, even providing benefits to investors, it will not ensure that investors themselves are protected. But, as an initial question, what do investors need to be protected from in the context of the Proposed Merger? One must remember that exchanges themselves have objectives that are consistent with those of securities regulators (hence laying the foundation for the devolution of authority from the regulator to them). These objectives include ensuring that the companies listed on the exchange benefit, which occurs primarily by ensuring that investors in those companies ultimately benefit.[17] Thus, the statement that 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"[18] must be taken at face value. It is the business of the TSX itself that is at stake and the board of directors is bound to act in the best interests of the corporation and its stakeholders in charting a course for the corporation.[19]

This is not to say that from the Commission's perspective considering the implications for investor protection is unnecessary or insignificant in the context of the Proposed Merger. On the contrary, the Commission should analyze such implications, not only because of its legal mandate but also because of the tight relationship between investor protection and market efficiency. In fact, empirical research demonstrates that capital markets left unregulated do not lead to more secure markets. Rather, financial markets require laws, and particularly laws that protect investors, to prosper.[20] Further research has similarly suggested that a stringent legal environment gives rise to fewer private benefits of control.[21] In light of this literature, the Commission's concern with ensuring that it is able

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[14] The term "market participant" is defined in the *Securities Act* (Ontario) to include a number of parties, including: registrants, recognized exchanges, transfer agents, and reporting issuers to name a few.

[15] *Securities Act,* R.S.O. 1990, c. S.5, s. 2.1

[16] J. R. Kimber and Committee on Securities Regulation, *Report of the Attorney-General's Committee on Securities Legislation in Ontario,* (Toronto: Queen's Printer, March 1965). See also J.G. Coleman, H.G. Emerson and D.A. Jackson, *Report of the Committee to Review the Provisions of the Securities Act (Ontario) Relating to Take-over Bids and Issuer Bids,* (23 September 1983).

[17] Paul G. Mahoney, "The Exchange as a Regulator" (1997) 83 Virginia L. R. 1453.

[18] Letter from LSEG and TMX to Susan Greenglass, Director Market Regulation, dated May 13, 2011 at (2011) 34 OSCB 5741.

[19] See Canada Business Corporations Act, section 122 and relevant case law including *Peoples Department Stores Inc. (Trustee of) v. Wise, supra* note 6; *BCE Inc. v. 1976 Debentureholders, supra* note 6.

[20] Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, "Legal Determinants of External Finance" (1997) 52 Journal of Finance 1131. See also La Porta, Lopez-de-Silanes, Shleifer and Vishny, "Law and Finance" (1998) 106 Journal of Political Economy 1113 ["LLSV"].

[21] See T. Nenova, "The Value of Corporate Voting Rights and Control: A Cross-Country Analysis" (2003) 68 Journal of Financial Economics 325. The LLSV studies suggest that investor protection and

to exercise effective oversight with regards to Mergeco (the parent corporation) and the TMX Group is not only understandable but also warranted. We turn now to address specific investor protection concerns that may arise with regards to the Proposed Merger.

The fact that Mergeco is not a Canadian corporation does not, in my view, present investor protection issues primarily because the Commission's three-fold public enforcement powers remain intact and applicable, including: its quasi-criminal power that can be exercised when there is a violation of Ontario securities law;[22] its ability to curtail actions that are not in the public interest;[23] and its ability to seek both a declaration that a person or company has violated Ontario securities law and an associated civil remedy.[24] Furthermore, case law suggests that in exercising its public interest power, the Commission can assert jurisdiction over any entity that has a significant connection to Ontario capital markets.[25] Given broad-based enforcement powers which can have extra-territorial application, Mergeco's non Canadian status does not undermine the extent to which the Commission can protect investors. The Commission will continue to apply its enforcement powers regardless of whether Mergeco is Canadian or not. For similar reasons, the fact that for four years at least seven of 15 directors will be Canadian does not affect the likelihood that investors will (or will not) suffer abuse following the Proposed Merger.

More relevant from an investor protection standpoint are the Mergeco undertakings. The Proposed Merger contemplates that Mergeco will not be subject to a recognition order but rather will provide certain undertakings which relate to governance, resource allocation; continuity of operations; financial information disclosure; access to information and ownership changes.[26] An initial reaction could be that the fact that Mergeco is not subject to a recognition order poses investor protection concerns: how can the Commission exercise an oversight role without a recognition order in place? However, the substance of the undertakings is crucially important, because the undertakings would constitute Ontario securities law (pursuant to the definition of this term in the Act and a subsequent decision of the Commission). In other words, in making these undertakings, Mergeco explicitly recognizes that its breach of the undertakings would open the door to Commission public enforcement mechanisms outlined above as well as breach of contract remedies.

The question that may arise is whether any greater investor protection could be achieved if Mergeco were subject to a recognition order as opposed to the undertakings. In other words, would Commission oversight be stronger under a recognition order than with the undertakings? Recognition orders form part of Ontario securities law and therefore a breach of a recognition order could occasion public enforcement by the Commission.

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market efficiency support each other at least up to a base level of regulation, which reduces agency costs that can exist in the absence of regulation.

22 *Securities Act,* R.S.O. 1990, c. S.5, s. 122.

23 *Ibid.* at s. 127.

24 *Ibid.* at s. 128.

25 Indeed, this is the rule from *Asbestos*: there must be a sufficient nexus to Ontario for the Commission to have jurisdiction over the conduct of a capital market participant. See *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, 2001 SCC 37 at para 51 ["*Asbestos*"]

26 See 34 OSCB 5744 May 13 2011.

However, a recognition order in all likelihood would not be classed as a legal contract whereas the undertakings are more likely to be so. That is, the promises made by Mergeco to the Commission can be interpreted to be contractual undertakings and subject to private as well as public enforcement action by the Commission.

By contrast to the Mergeco undertakings, the TMX Group will be subject to a recognition order as a precondition to its ability to operate as an exchange in the Province of Ontario.[27] Although the recognition order contemplated by the TMX Group appears to require only the changes necessary to take the merger into account, the Commission may certainly supplement the terms of the order suggested. The recognition order is a flexible tool. There are broad and various criteria for recognition[28] which enable the Commission to craft the terms and conditions of the ability of the stock exchange to operate. Thus, the recognition order, like the Mergeco undertakings, is the practical response to the view that current models of securities regulation create impediments to the creation of a global stock exchange.[29] It is via the recognition order, as well as the undertakings, that the Commission is able to mold the terms of its oversight.

Over and above the oversight that the Commission can exercise pursuant to the undertakings and/or recognition order, the share conditions attaching to common shares of TMX Group will contain restrictions that will pertain to the shares owned by the sole shareholder of TMX Group, Mergeco. Although the share restrictions were originally intended to address conflicts that might arise with demutualization (i.e. the fact that the TSX would be operating on a for-profit basis and the participating organizations of the TSX would be initial shareholders), the share restrictions should be considered a further arm of Commission oversight, and in particular, should (as contemplated) specify that Commission approval is required prior to a change of control of Mergeco (whether that change of control is de jure or de facto). In other words, the transfer of control by the sole shareholder of the TMX Group would require Commission approval. This is an additional means by which the Commission can continue to ensure the sound operation of Ontario's capital markets.

Thus far, we have considered only the oversight capabilities of the Commission (which are further discussed below). But the importance and relevance of extra-territorial laws must also be considered. It is not only the Commission but also the FSA which will have jurisdiction over Mergeco. In particular, a person proposing to acquire control over Mergeco can only do so with FSA consent. Failure to obtain such consent is a criminal offence. While a uniform set of international securities rules does not exist, it is clear that

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27 *Securities Act,* R.S.O. 1990, c. S.5, s. 21.

28 For example, see (2011) 34 OSCB 5722.

29 Roberta S. Karmel, "The Once and Future New York Exchange: The Regulation of Global Exchanges" (2007) 70 Brooklyn Law School Legal Studies Research Papers Working Papers Series (SSRN). Note that Karmel's argument is that the US exchanges have been losing listings because of the costs of compliance emanating from the Sarbanes-Oxley Act, an argument that is not overly pertinent to Canada. See also Jeff McCord, "New York Stock Exchange Sale to Deutsche Boerse Will Raise Fraud Risks for US Investors" *The Investor* Advocate (12 May 2011), online: The Investor Advocate http://www.the-investor-advocate.com/?p=2147483698 who argues that the current regulatory framework is ill equipped to deal with the globalization of stock exchanges. Note that the argument here is that any investor protection concerns raised by stock exchange mergers can be addressed through the current regulatory framework.

securities regulators either formally or informally have accepted the regulatory authority and decisions of extra-territorial regulators in cases where the corresponding regulator operates with similar levels of stringency and oversight, a case in point being the multi-jurisdictional disclosure system (MJDS).[30] A similar point should be made in the context of the Proposed Merger: The Commission can take considerable comfort from the fact that the FSA will have oversight over Mergeco. Further, the Commission could seek to enter into a memorandum of understanding with the FSA with regards to the oversight of Mergeco. Based on its own publications, the International Organization of Securities Commissions (IOSCO) would undoubtedly support this approach to dealing with international securities regulatory issues.[31]

3. Public Interest

The discussion thus far relating to objectives of the Commission seeks to reiterate the important point that the Proposed Merger is consistent with the Commission's mandate under the Securities Act (Ontario). The Request for Comments asks whether "there are additional public interest considerations that the Commission should assess in reviewing the Application…" The implication of course is that the Commission has an additional aspect of its mandate – the "public interest" – that provides it with the authority to oversee the Proposed Merger. To be sure, the concept of "public interest" is not found in the explicit mandate of the Commission. Rather, under section 127 of the Securities Act, the Commission can make orders in the 'public interest.'[32] The term "public interest" must be interpreted in light of the explicit mandate of the Commission but it does not form part of the explicit mandate per se.

What is the scope of the Commission's public interest power vis a vis the Proposed Merger? The term "public interest" is very broad. At the outset it is important to note that in terms of securities regulation, the power is not meant to render punishment or compensation. Rather it is meant to prevent future harm to the capital markets in Ontario.[33] Following *Asbestos*, it is clear that there is a societal element in the public interest power that is future-oriented: Prospectively speaking, what actions must be taken (or curtailed) in order to protect investors, enhance market efficiency, and promote confidence in the capital markets? If the Commission wished to exercise its public interest power against Mergeco or the TMX Group for violating the undertakings (discussed above) or the

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30 The multi-jurisdictional disclosure system is a case in point, i.e. of formal delegation to the securities regulators of another jurisdiction. SEC Release No. 6568, Release No. 33-6568, 32 S.E.C. Docket 707, 1985 WL 634782, 17 CFR Part 230 "Facilitation of Multinational Securities Offerings," File No. S7-9-85 (February 28, 1985). As the SEC stated, "While the multijurisdictional disclosure effort is based on the concept of mutual recognition, Canada was chosen as the first partner for the United States in part because of the similarities between the U.S. and Canadian investor protection mandates and disclosure standards." Release No. 2254, Release No. 6879, Release No. 28561, Release No. 33-6879, Release No. 1 "Multijurisdictional Disclosure and Modifications."

31 See Technical Committee of IOSCO, *Regulatory Issues Arising from Exchange Evolution*, (November 2006).

32 See, generally, Mary Condon, "The Use of Public Interest Enforcement Powers by Securities Regulators in Canada" in A. Douglas Harris, ed., *WPC – Committee to Review the Structure of Securities Regulation in Canada: Research Studies* (Ottawa: Department of Finance, 2003) 411. Note also that the term 'public interest' is not defined in the statute.

33 See *Asbestos*, *supra* note 25.

applicable recognition order, it could certainly proceed under the public interest power with this guiding principle in mind (i.e. the principle being that the public interest power is preventative and prospective). Other than this principle, the scope of the power is extremely broad, further allowing the Commission to respond to eventualities following the Proposed Merger that may not be foreseen ex ante.

Although the public interest power is broad, it is not unlimited.[34] It is not within the jurisdiction of the Commission to pronounce on aspects of the Proposed Merger that do not relate to these objectives' being achieved. For instance, the notion that Proposed Merger is "unCanadian" is irrelevant to the public interest. Whether a rival bid may eliminate market competition is also outside the public interest in securities regulation strictly speaking (and rests rather within the jurisdiction of the Competition Bureau).[35] In short, the public interest power is not an ex ante consideration that the Commission should utilize to determine which regulatory instrument is preferable. Rather, it is an ex post enforcement mechanism.

As noted above, it is highly unlikely that once the undertakings from Mergeco are given, and the recognition order is granted, that the entities concerned will violate these legal commitments. The reason is that stock exchanges share the objectives of the Commission in maintaining capital markets that operate with integrity, that provide liquidity and that otherwise serve investors. The public interest power is, therefore, best conceived as a safeguard for the Commission to act if necessary to protect the integrity of the capital markets against abusive conduct. In this sense, it should provide considerable comfort to the Commission in approving the Proposed Merger that regardless of the structure of the transaction, and the specific details under which it unfolds including the details of the recognition order and undertakings, the Commission can always act to curtail abusive conduct.

4. Conclusion

In conclusion, I have argued here that the Proposed Merger is wholly consistent with the objectives of securities regulation and the mandate of the Commission under the Securities Act (*Ontario*). I believe that the efficiencies of the Proposed Merger would be extensive. I also believe that the TMX Group board, acting in accordance with its fiduciary duties, has adopted the transaction which will not only maximize shareholder value but will also attend to the needs of other constituencies, including Ontarian investors. In the face of greater efficiencies being achieved in the capital markets under this transaction, I am confident that the Commission's oversight and enforcement mechanisms under Ontario securities law would be sufficient to protect investors if the necessity to do so arose.

To elaborate further to this submission, I would be interested in meeting with you in person during the scheduled hearings on this matter or otherwise at your convenience. Please feel free to contact me at anita.anand@utoronto.ca.

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[34] See judgment of Iacobucci J. in *Asbestos*, *supra* note 25.

[35] See Rowland Fleming, "Old boys' club is back; Maple bid would revive old conflicts of interest at TMX" op-ed, *National Post* (21 June 2011) FP13.

Yours very truly,

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