



June 27, 2022

**VIA EMAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
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Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
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Dear Sirs/Mesdames:

**Re: CSA Staff Notice and Request for Comment 25-304 Application for Recognition of New Self-Regulatory Organization**

TMX Group Limited (“**TMX**” or “**we**”) welcomes the opportunity to comment on the request for comment entitled “*CSA Staff Notice and Request for Comment 25-304 Application for Recognition*”

of *New-Self Regulatory Organization*” (the “**Request for Comment**”) published by the Canadian Securities Administrators (“**CSA**”) on May 12, 2022.

Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Request for Comment.

## **The Exchanges**

TMX is an integrated, multi-asset class exchange group. TMX’s key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. TSX, TSXV, TSX Alpha Exchange, The Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets. The TMX equities exchanges retain the Investment Industry Regulatory Organization of Canada (“**IIROC**”) as a regulation services provider to monitor the trading activities on our equities exchanges by enforcing compliance with the Universal Market Integrity Rules.

We appreciate the efforts taken by the CSA to reflect on how the evolution of the financial services industry has impacted the current regulatory framework in Canada. It is clear that the structure of the New SRO is the result of extensive analysis and reflection by the CSA as to the New SRO’s governance practices, operations and structure, among other things, while emphasizing that a one-size-fits-all approach should not apply to all SROs.

### Exchange Representation

Like the New SRO, TMX is committed to, among other things, protecting investors, protecting market integrity and fostering public confidence in the Canadian capital markets. As part of a group that operates exchanges and clearing houses in the public interest, TMX understands the importance of bringing the views of key stakeholders to the attention of its boards of directors. As such, TMX believes that it is important for exchanges in Canada to continue to have effective representation at the New SRO. IIROC is currently required to have one director who represents an exchange or ATS that is not affiliated with a marketplace,<sup>1</sup> and more specifically, its board is required to have a marketplace director recommended by TSX Inc. for nomination by IIROC’s Corporate Governance Committee.<sup>2</sup> We note that the proposed board composition requirements in the New SRO’s draft by-laws and recognition order do not include a similar requirement. Instead, the draft by-laws require that the board of the New SRO include six individuals who represent Members (being Dealer Members and Marketplace Members). The definition of a “Marketplace Member” is not limited to a recognized exchange,<sup>3</sup> and therefore, while a representative of a recognized exchange *may* sit on the board of the New SRO as a Marketplace

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<sup>1</sup> Subject to certain conditions. See Section 5 of IIROC’s current recognition order issued by the Ontario Securities Commission.

<sup>2</sup> Subject to certain conditions. See Section 5.4 of IIROC’s By-Law No. 1 as amended September 2021.

<sup>3</sup> See definition of “Marketplace” in Article 1 Interpretation of the draft by-laws.

Member, nothing in the draft bylaws or recognition order requires or guarantees exchange representation on the board.<sup>4</sup>

While TMX does not disagree with the proposed board composition of the New SRO and welcomes the discretion afforded to the new board and its Governance Committee to select directors in the best interests of the New SRO, we remind the CSA not to lose sight of the importance of exchange representation at the New SRO. The role IIROC currently plays, and the New SRO will continue to play, in providing regulatory services and market oversight is critical to the integrity of the Canadian capital markets. In performing these functions and in its oversight of dealers generally, it is important that the views of marketplaces are appropriately considered by the New SRO's board of directors. In order to ensure continued meaningful engagement and contribution from exchanges in Canada, and to ensure there is a proper balance between, and effective representation of, the public interest and the interest of marketplaces desiring access to the services provided by the New SRO, we urge the CSA to consider alternative avenues for receiving input from this critical stakeholder now that direct representation on the board of the new SRO is not required.

One such avenue would be requiring the New SRO to establish a board advisory or standing committee that requires exchange representation and that reports to the board of the New SRO. For example, a marketplace advisory committee that reports to the board could bring the perspective and expertise of exchanges and other marketplaces in Canada directly to the New SRO board. In the absence of direct representation on the board, this would provide a strong alternative that ensures this very important perspective is considered at the board level. We understand that the New SRO can establish advisory bodies under its discretion pursuant to the proposed by-laws, but similar to other important avenues for stakeholder input to the board, such as the Regional Councils and the Investment Advisory Panel, a marketplace advisory committee should be required to be established under the by-laws and/or recognition order of the New SRO, as applicable. This would, in our view, ensure that the perspective of exchanges and other marketplaces are adequately considered by the New SRO board.

In addition, when considering the overall composition of the board of the New SRO and the qualifications and skills required of each individual director, it is of utmost importance that a portion of the board be composed with individuals who have strong marketplace skills and experience. While, according to the Request for Comments, the Governance Committee of the New SRO will consider certain factors, including the appropriate mix of skills, capital market expertise and other relevant business expertise for each potential director, it does not specifically require that a nominee have marketplace experience despite the marketplaces being key constituents of the New SRO. Given that the role of the marketplaces and the services provided by the New SRO to the marketplaces are unique, and because there is no longer mandated exchange representation on the New SRO board, TMX is of the view that requiring directors of the New SRO board to possess extensive marketplace skills and expertise is reasonable and appropriate.

We appreciate the opportunity to respond to the Request for Comment. We would be pleased to discuss in more detail at your convenience.

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<sup>4</sup> See Section 10.1 of the draft recognition order, and Section 5.2 of the draft by-laws.

Sincerely,

*“Rizwan Awan”*

Rizwan Awan  
President, Equity Trading and Head of TMX Markets, Products & Services  
TMX Group Limited