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June 13, 2011

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids - Exemption from the formal issuer bid requirements in MI 62-104 - Time Periods – An issuer wants relief from the prescribed time periods in securities legislation in connection with making a formal bid – The issuer is conducting a take-over bid with a novel structure; the requested relief forms a portion of the relief requested from the principal regulator; tendering shareholders will have similar withdrawal rights as under the legislation

Applicable British Columbia Provisions

Multilateral Instrument 62-104, ss. 2.30(1)(c) and 6.1

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador,
Yukon, Northwest Territories and Nunavut
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Maple Group Acquisition Corporation
(the Filer)

Decision

Background

The securities regulatory authority or regulator in Ontario and the securities regulatory authority or regulator in each of the Jurisdictions (the Coordinated Exemptive Relief Decision Makers) have received an application from the Filer for a decision under, as applicable, the securities legislation of the jurisdiction of the principal regulator (as defined below) and the securities legislation of the Jurisdictions (the Legislation), in connection with a take-over bid (the Offer) and subsequent plan of arrangement (the Subsequent Arrangement and, together with

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the Offer, the Filer Acquisition) for the acquisition by the Filer of all of the issued and outstanding common shares (the TMX Shares) of TMX Group Inc. (TMX Group), that:

- i) the requirement to take up and pay for the TMX Shares proportionately, disregarding fractions, according to the number of securities deposited by holders of TMX Shares (the TMX Shareholders) will not apply in respect of the Offer;
- ii) the requirement to pay for TMX Shares taken up under the Offer as soon as possible and in any event not later than three business days after the TMX Shares are taken up will not apply in respect of the Offer (together with (a) above, the Passport Bid Relief);
- iii) the three business day period after which a TMX Shareholder may withdraw TMX Shares deposited under the Offer if the Filer has taken up but not paid for such deposited TMX Shares be varied (the Coordinated Bid Relief); and
- iv) the requirements in sections 4.3 and 4.5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101) to obtain a formal valuation and minority approval, respectively, for a “business combination” do not apply to the Subsequent Arrangement (the Passport Valuation and Minority Approval Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a hybrid application):

- (a) the Ontario Securities Commission is the principal regulator for this application (the Principal Regulator);
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon: (i) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon, Northwest Territories and Nunavut in respect of the Passport Bid Relief, and (ii) in Québec in respect of the Passport Valuation and Minority Approval Relief;
- (c) the decision is the decision of the Principal Regulator; and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

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Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

The decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation existing under the *Business Corporations Act* (Ontario) (the OBCA). The Filer's registered office is located at 1 First Canadian Place, 100 King Street West, Suite 4400, Toronto, Ontario. The Filer has not carried on any material business other than in connection with the Offer and is not in default under the securities legislation of any jurisdiction.
2. The Filer was formed by five of Canada's largest pension funds and four Canadian bank-owned investment dealers, consisting of Alberta Investment Management Corporation, Caisse de Dépôt et Placement du Québec, Canada Pension Plan Investment Board, Fonds de solidarité des travailleurs du Québec (F.T.Q.) and Ontario Teachers' Pension Plan Board (the Fund Investors), and CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. (the Investment Dealer Investors, and together with the Fund Investors and potential additional investors who may join the Filer, the Investors). As of June 7, 2011, the Investors and their affiliates beneficially owned or exercised control or direction over in the aggregate less than 6% of the outstanding TMX Shares.
3. The authorized share capital of the Filer consists of an unlimited number of common shares (the Filer Shares) and an unlimited number of preferred shares. As at June 7, 2011, there were 16 Filer Shares outstanding and no preferred shares were outstanding.
4. As at June 7, 2011, the Investors (other than Fonds de solidarité des travailleurs du Québec (F.T.Q.)), or their affiliates, own all of the outstanding Filer Shares. Each Investor has also agreed or will agree pursuant to an equity commitment letter to subscribe for additional Filer Shares in connection with the Offer.
5. The Filer is not currently a reporting issuer or the equivalent in any of the Jurisdictions.

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TMX Group

6. TMX Group is a corporation existing under the OBCA. TMX Group is headquartered in Toronto with offices in Montréal, Calgary and Vancouver. TMX Group's registered office is located at The Exchange Tower, 130 King Street West, Toronto, Ontario.
7. TMX Group owns and operates two national stock exchanges, the Toronto Stock Exchange (the TSX), serving the senior equity market and TSX Venture Exchange, serving the public venture equity market; Montréal Exchange Inc., Canada's national derivatives exchange; Natural Gas Exchange Inc., an exchange providing a platform for the trading and clearing of natural gas, electricity, and crude oil contracts in North America; Shorcan Brokers Limited, an inter-dealer broker; and The Equicom Group Inc., providing investor relations and related corporate communications services.
8. The authorized share capital of TMX Group consists of an unlimited number of TMX Shares and an unlimited number of preferred shares. As at May 20, 2011, there were 74,598,140 TMX Shares outstanding and no preferred shares were outstanding.
9. TMX Group is a reporting issuer or the equivalent in each of the provinces and territories of Canada. The TMX Shares are listed and posted for trading on the TSX.

The Original Filer Proposal

10. On February 9, 2011, TMX Group issued a press release announcing that it had entered into an agreement with the London Stock Exchange Group plc (LSEG) providing for a plan of arrangement whereby the holders of TMX Shares (the TMX Shareholders) would receive 2.9963 shares of LSEG for each TMX Share. If the transaction is completed, existing shareholders of LSEG would own 55% of the outstanding LSEG shares and TMX Shareholders would own 45% of the outstanding LSEG shares (such transaction, the LSEG Acquisition). Under the LSEG Acquisition, LSE shares (or securities exchangeable into LSE shares) issuable to U.S. shareholders of TMX Group (the U.S. Shareholders) will be issued in reliance on the exemption from the registration requirements of the U.S. Securities Act of 1933, as amended (the U.S. Securities Act) provided by section 3(a)(10) thereof (the 3(a)(10) Exemption).
11. On May 13, 2011, the Filer submitted a proposal (the Filer Proposal) to the board of directors of TMX Group to acquire all of the issued and outstanding

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TMX Shares for, at the election of each TMX Shareholder, \$48.00 in cash or one Filer Share per TMX Share, in each case subject to proration. The maximum aggregate amount of cash payable under the Filer Proposal was \$2.5 billion and the maximum number of Filer Shares issuable was 22.5 million. On a fully prorated basis, each TMX Share would be exchanged for approximately \$33.52 in cash plus 0.3016 of a Filer Share. Upon completion of the acquisition of TMX Group by the Filer, existing TMX Shareholders would own approximately 40% of the outstanding Filer Shares, the Fund Investors would own approximately 35% of the outstanding Filer Shares and the Investment Dealer Investors would own approximately 25% of the outstanding Filer Shares. It was contemplated that the Filer Proposal would be implemented by way of plan of arrangement so that Filer Shares would be issuable to U.S. Shareholders in reliance on the 3(a)(10) Exemption.

12. On May 14, 2011, TMX Group issued a press release announcing that it had received the Filer Proposal and on May 15, 2011, the Filer issued a news release announcing that it had submitted the Filer Proposal to TMX Group.
13. On May 20, 2011, TMX Group announced that the Filer Proposal did not constitute a superior proposal for purposes of its agreement with LSEG, thereby rejecting the Filer Proposal.
14. On May 25, 2011, the Filer issued a press release announcing its intention to commence an offer on the same terms as the Filer Proposal (the May 25 Offer). The press release announcing the May 25 Offer provided in the "Information for U.S. Shareholders" section of the press release that, unless the Filer Shares issuable to a U.S. Shareholder pursuant to the May 25 Offer could be issued pursuant to an exemption from the registration requirements of the U.S. Securities Act, Filer Shares issuable to U.S. Shareholders would be sold and such shareholders would be entitled to the net cash proceeds of the sale of such shares (such sale of Filer shares otherwise issuable to U.S. Shareholders being referred to as the Vendor Placement). Based on its knowledge as at May 25 of the number of TMX Shares held by U.S. Shareholders, the Filer believed that it would be entitled to rely on the Vendor Placement in making the May 25 Offer in compliance with the U.S. Securities Act.

Reasons for Changes to the Filer Proposal

15. Following the May 25, 2011 announcement, the Filer received shareholder lists of TMX Group which showed that the number of TMX Shares held by U.S. shareholders is substantially higher than was believed on May 25, 2011. Specifically, based on the list of TMX Shareholders provided to the Filer, as at

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May 20, 2011, the percentage of TMX Shares held by U.S. Shareholders was approximately 40%.

16. The Filer has been advised that the structure contemplated under the May 25 Offer would not comply with applicable U.S. securities laws to the extent that:

- (a) The SEC would not generally permit use of a Vendor Placement where there is such a significant proportion of TMX Shares held by the U.S. Shareholders.
- (b) The offering of Filer Shares to U.S. shareholders would require the preparation of a registration statement in accordance with U.S. securities laws. Such a registration statement would require significant time to prepare and the Filer would be unable to commence its offer until the registration statement was filed with the U.S. Securities and Exchange Commission (the SEC). The registration statement would also require relief from the SEC requirement to provide a reconciliation of TMX Group's financial statements to U.S. generally accepted accounting principles (U.S. GAAP).
- (c) Because the Filer Shares will not be listed in the U.S. and because the U.S.-Canadian Multijurisdictional Disclosure System registration forms are not available for SEC registration of the Filer Proposal due to absence of historic Canadian reporting by the Filer, the Filer Proposal would need to be filed in and cleared by state securities (blue sky) commissions in over half of the states in the United States and there is no assurance that all states would clear the Filer Proposal without a U.S. GAAP reconciliation.
- (d) The obligation to register its securities under U.S. securities laws would result in the Filer being subject to significant additional SEC reporting obligations and the Filer and its board being subject to potential U.S. securities liability with respect to disclosure regarding the Filer and TMX Group in the SEC registration statement and other filings.

17. For these reasons, and in light of timing constraints because the TMX Group is seeking the approval of its shareholders for the LSEG Acquisition on June 30, 2011, the Filer concluded that the structure of the May 25 Offer is not viable in the circumstances.

The Filer Acquisition

18. The Filer wishes to proceed with a structure providing for an integrated two-step acquisition transaction designed to result in 100% of the existing TMX

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Shares being acquired from existing TMX Shareholders on substantially the same aggregate economic terms as the Filer Proposal and the May 25 Offer, and in compliance with the U.S. Securities Act.

19. The first step of the Filer Acquisition is the Offer, pursuant to which the Filer will seek to acquire 70% of the TMX Shares for \$48.00 in cash per TMX Share. Since only cash consideration will be offered under the Offer, the Offer can be made to U.S. Shareholders without the requirement to file a registration statement under the U.S. Securities Act. Immediately following the successful completion of the Offer, the Investors, through the Filer, will own approximately 70% of TMX Group and TMX Shareholders will own approximately 30% of TMX Group.
20. The second step of the Filer Acquisition is the Subsequent Arrangement to be implemented pursuant to applicable Canadian corporate laws. This will be accomplished by way of a court-approved plan of arrangement providing for a share exchange transaction pursuant to which TMX Shareholders will receive Filer Shares in exchange for their TMX Shares. Following completion of the Subsequent Arrangement, the Investors will own approximately 60% of the outstanding Filer Shares and former TMX Shareholders will own approximately 40% of the outstanding Filer Shares. Since the Subsequent Arrangement will be effected pursuant to a court-approved plan of arrangement, U.S. Shareholders of TMX Group will be able to receive the Filer Shares in connection with the Subsequent Arrangement pursuant to the 3(a)(10) Exemption.
21. Following successful completion of the Offer, the Filer will have sufficient votes to cause the Subsequent Arrangement to be completed under applicable Canadian corporate laws and will use its best efforts to complete the Subsequent Arrangement within 35 days following the Deposit Extension Period Expiry Time (as defined below). The Subsequent Arrangement will be subject to a fairness review by the court, and the Filer Shares issuable to any remaining U.S. Shareholders will be issued in the United States in reliance upon the 3(a)(10) Exemption.
22. The economic result of the Filer Acquisition will be substantially the same as that of the Filer Proposal and the May 25 Offer if all TMX Shareholders were to elect the Full Deposit Election (as defined below).
23. The Filer intends to commence the Offer shortly by mailing the circular and related offer documents to TMX Shareholders and concurrently filing such documents on SEDAR.

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24. If the Offer is varied, the Filer will ensure that the aggregate consideration payable for TMX Shares acquired under the Offer and the Subsequent Arrangement are substantially equivalent in value, regardless of the form of consideration.

Terms of the Offer - Full Deposit Election and Minimum Deposit Election

25. Under the Offer, the Filer will seek to acquire 70% of the outstanding TMX Shares (on a non-diluted basis), and the Offer will include a non-waivable minimum tender condition that at least 70% of the outstanding TMX Shares (on a non-diluted basis) shall have been tendered under the Offer at the Initial Expiry Time (as defined below) (the Minimum Tender Condition).
26. Each TMX Shareholder will be entitled to elect to accept the Offer either:
- (a) on the basis (the Full Deposit Election) that:
 - i) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period (as defined below), then the number of TMX Shares to be acquired and paid for from each TMX Shareholder that has made a Full Deposit Election shall be pro-rated, disregarding fractions by rounding down to the nearest whole number of TMX Shares, based on the number of TMX Shares deposited by each TMX Shareholder making the Full Deposit Election; and
 - ii) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is not sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period (but the Minimum Tender Condition is satisfied after taking into account the number of TMX Shares deposited to the Offer in respect of which the Minimum Deposit Election has been made), all TMX Shares deposited under the Offer in respect of which the Full Deposit Election has been made shall be acquired and paid for; or
 - (b) on the basis (the Minimum Deposit Election) that:
 - i) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period, then no TMX Shares deposited by any TMX

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Shareholder making the Minimum Deposit Election will be acquired and paid for under the Offer; and

- ii) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is not sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period (but the Minimum Tender Condition is satisfied after taking into account TMX Shares in respect of which the Minimum Deposit Election has been made), then only such number of TMX Shares deposited to the Offer in respect of which the Minimum Deposit Election has been made as is necessary, together with any TMX Shares in respect of which a Full Deposit Election has been made, to satisfy the Minimum Tender Condition will be acquired and paid for under the Offer (on a pro rata basis, disregarding fractions by rounding down to the nearest whole number of TMX Shares, based on the number of TMX Shares deposited by each TMX Shareholder making the Minimum Deposit Election).

27. TMX Shareholders who wish to receive as much cash as possible for their TMX Shares pursuant to the Filer Acquisition can make the Full Deposit Election because only cash will be paid as consideration pursuant to the Offer. TMX Shareholders who would like to support the Offer, but would like to receive as many Filer Shares as possible for their TMX Shares pursuant to the Filer Acquisition, would make the Minimum Deposit Election because this will result in the minimum number of their TMX Shares being acquired in order to satisfy the Minimum Tender Condition pursuant to the Offer to the extent that an insufficient number of TMX Shares have been tendered under the Full Deposit Election to satisfy the Minimum Tender Condition for the Offer, and the balance of their TMX Shares will be acquired in exchange for Filer Shares pursuant to the Subsequent Arrangement.

Terms of the Offer – Deposit Extension Period

28. Under the Offer, if all of the conditions of the Offer have been satisfied or waived by the Filer at or prior to the expiry time of the Offer, as it may be extended, except in connection with the Deposit Extension Period (as defined below) (the Initial Expiry Time), the Filer will make a public announcement of that fact and take up all TMX Shares deposited to the Offer, and the Offer will remain open for deposits and tenders of TMX Shares for ten days (the Deposit Extension Period) from the date of such announcement, following which the Offer will expire (the Deposit Extension Period Expiry Time). The Deposit Extension Period will permit TMX Shareholders who have not deposited their TMX Shares prior to the Initial Expiry Time the opportunity to deposit their

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TMX Shares under the Offer after TMX Shareholders know that the Offer will be successful.

29. The Deposit Extension Period provides a shareholder approval mechanism for the Filer Acquisition that is intended to ensure that a TMX Shareholder can separate the decision to tender its TMX Shares from the approval or disapproval of the Filer Acquisition.
30. At the Initial Expiry Time, the Filer will take up TMX Shares validly deposited under the Offer prior to the Initial Expiry Time. Any TMX Shares deposited under the Offer during the Deposit Extension Period will be taken up not later than the Deposit Extension Period Expiry Time.
31. At the Deposit Extension Period Expiry Time and based on the number of TMX Shares taken up under the Offer by such time, the Filer will calculate the appropriate proration factors to be applied for the TMX Shares deposited under the Offer in respect of which Full Deposit Elections and Minimum Deposit Elections have been made. Following the determination of the applicable proration factors, the Filer will:
 - (a) pay for those TMX Shares that are to be acquired at the Deposit Extension Period Expiry Time; and
 - (b) return, at the Filer's expense, those TMX Shares that are not to be acquired under the Offer to the applicable TMX Shareholders as soon as practicable following the Deposit Extension Period Expiry Time.

Subsequent Arrangement

32. The Subsequent Arrangement will be a “business combination” under MI 61-101 requiring a formal valuation and minority approval, unless exempt. In connection with the Subsequent Arrangement, the formal valuation exemption in section 4.4 of MI 61-101 and the ability, under section 8.2 of MI 61-101, to include votes of shares tendered by independent shareholders in obtaining minority approval under Part 8 of MI 61-101 are not available because the consideration to be received by a TMX Shareholder under the Subsequent Arrangement (i.e., Filer Shares) would not be in the same form as the consideration that the tendering TMX Shareholders will receive under the Offer (i.e., cash).

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Effect of Decision

33. The Filer acknowledges that the granting of this decision does not constitute approval of the Filer Acquisition for any regulatory purpose.

Decision

Each of the Principal Regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Principal Regulator under the Legislation is that the Passport Bid Relief is granted provided that:

- (a) the Filer acquires TMX Shares under the Offer in accordance with the Full Deposit Election and Minimum Deposit Election as described in paragraph 26 above;
- (b) the Filer extends the expiry time of the Offer as described in paragraph 28 above;
- (c) the Filer pays for TMX Shares validly deposited under the Offer at the Deposit Extension Period Expiry Time and any TMX Shares deposited under the Offer during the Deposit Extension Period are taken up and paid for at the Deposit Extension Period Expiry Time; and
- (d) the Subsequent Arrangement is completed no later than 35 days following the Deposit Extension Period Expiry Time.

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Bid Relief is granted such that:

- (a) a TMX Shareholder may withdraw TMX Shares deposited under the Offer if the TMX Shares taken up under the Offer have not been paid for within three business days after the Deposit Extension Period Expiry Time.

James Turner
Commissioner
Ontario Securities Commission

James D. Carnwath
Commissioner
Ontario Securities Commission

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The further decision of the Principal Regulator under the Legislation is that the Passport Valuation and Minority Approval Relief is granted provided that:

- (a) minority approval for the Subsequent Arrangement shall have been obtained by the Filer by acquiring under the Offer more than 50% of the TMX Shares held by TMX Shareholders who satisfy the following conditions:
 - (i) the TMX Shareholder that tendered the TMX Shares to the Offer was not a joint actor with the Filer in respect of the Offer,
 - (ii) the TMX Shareholder that tendered the TMX Shares to the Offer was not
 - (A) a direct or indirect party to any connected transaction to the Offer or the Subsequent Arrangement, or
 - (B) entitled to receive, directly or indirectly, in connection with the Offer
 - (x) consideration per TMX Share in the Offer that was not identical in amount and form to the entitlement of the general body of holders in Canada of TMX Shares pursuant to the Offer, or
 - (y) a collateral benefit,
- (C) entitled to receive, directly or indirectly, in connection with the Subsequent Arrangement
 - (x) consideration per TMX Share in the Subsequent Arrangement that was not identical in amount and form to the entitlement of the general body of holders in Canada of TMX Shares pursuant to the Subsequent Arrangement, or
 - (y) a collateral benefit,
- (b) the Subsequent Arrangement is completed no later than 35 days following the Deposit Extension Period Expiry Time,
- (c) the disclosure document for the Offer

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- (i) disclosed that if the Filer acquired TMX Shares under the Offer, the Filer will use its best efforts to complete the Subsequent Arrangement within 35 days following the Deposit Extension Period Expiry Time,
 - (ii) stated that the Subsequent Arrangement would be subject to minority approval in accordance with the terms of this decision,
 - (iii) disclosed the number of votes attached to the TMX Shares that, to the knowledge of the Filer after reasonable inquiry, would be required to be excluded in determining whether minority approval for the Subsequent Arrangement had been obtained in accordance with the terms of this decision,
 - (iv) identified the holders of securities specified in subparagraph (iii) and set out their individual holdings,
 - (vi) described the expected tax consequences of both the Offer and the Subsequent Arrangement, and
- (d) the Minimum Tender Condition is non-waivable.

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