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March 24, 2015

VIA EMAIL: mbrady@bcsc.bc.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

c/o: Michael Brady
Senior Legal Counsel, Capital Markets
British Columbia Securities Commission
P.O. Box 10142 Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

RE: Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* and Related Companion Policy 91-101 *Derivatives: Product Determination*.

Dear Mr. Brady:

TMX Group Limited (“**TMX Group**”) welcomes the opportunity to comment on the proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* and Related Companion Policy 91-101: *Derivatives: Product Determination* (“**MI 91-101**” or the “**Instrument**”) published by the Alberta Securities Commission (the “**ASC**”), the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the New Brunswick Financial and Consumer Services Commission and the Nova Scotia Securities Commission (the “**Authorities**”) on January 21, 2015 (the “**Notice**”). TMX Group is supportive of the proposed Instrument; particularly of the fact that the proposed Instrument will help create alignment across provinces, as the Instrument is substantially similar to the existing local rules in Manitoba, Ontario and Québec¹. Additionally, TMX Group is

¹ The securities regulatory authorities in Manitoba, Ontario and Québec published local rules in each respective province, namely (collectively, the “**Existing Scope and TR Rules**”): (i) Ontario Securities Commission (“**OSC**”) Rule 91-506 *Derivatives: Product Determination* and the corresponding OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; (ii) Manitoba Securities Commission (“**MSC**”) Rule 91-506 *Derivatives: Product Determination* and the corresponding MSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and (iii) Autorité des marchés financiers (“**AMF**”) Regulation 91-506 *Respecting Derivatives Determination* and the corresponding AMF Regulation 91-507 *respecting trade repositories and derivatives data reporting*.

supportive that the Authorities are proposing to implement a national instrument to harmonize all local rules across provinces².

The Notice has asked for comments regarding the Instrument, specifically whether it provides sufficient clarity regarding the contracts and instruments that are subject to trade reporting, pursuant to the proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (“MI 96-101”). TMX welcomes the opportunity to comment on this matter as we believe more clarity could be provided, in particular, to the language in relation to the exclusion of certain contracts that fall within the definition of “derivative”, for the purposes of the Instrument. As a result, we are proposing a slight change to the language in section 2(1)(g) of the Instrument in order to bring more clarity to the Instrument.

1. Proposed Amendment to MI 91-101

TMX Group submits a proposed technical amendment be made to section 2(1)(g) of MI 91-101. We are proposing this amendment to better clarify the intent behind this proposed exclusion. We propose the following language would more accurately align with the intent and purpose of the proposed Instrument:

Excluded derivatives

2(1) The specified instrument does not apply to a contract or instrument that is a derivative, if the contract or instrument is one or more of the following:

...

- (g) traded on or subject to the rules of an exchange that is:
 - (i) recognized by a securities regulatory authority,
 - (ii) exempt from recognition by a securities regulatory authority, or
 - (iii) regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding.

2. Reasoning for the Proposed Amendment

TMX Group is submitting this amendment to section 2(1)(g) of MI 91-101 for two reasons, as follows:

- A. it preserves the intent of the proposed Instrument; and
- B. it is consistent with international regulations.

Each of the two reasons is further described below.

² At the Canadian Securities Regulators “Proposed New Derivatives Rules” webinar, held on February 26, 2015, regulators stated that their intent is to harmonize all the local laws (once MI 91-101 and MI 96-101 are finalized) into a national instrument.

A. Preserves the Intent of the Proposed Instrument

MI 91-101 and MI 96-101 is an opportunity for the Authorities to appropriately enhance the oversight of the derivatives marketplace, and particularly the over-the-counter (“OTC”) derivatives marketplace. This oversight will ultimately create better protection for investors.

TMX is supportive of the effect that MI 91-101 and MI 96-101 will have, and welcomes the addition of these rules to the OTC derivatives market. The derivatives that are traded OTC and are not subject to rules of an exchange do not allow the Authorities the requisite transparency, surveillance and oversight of the Canadian marketplace.

TMX Group also recognizes the purpose of the exclusions found in MI 91-101: if a derivative is traded on a recognized exchange, the requirement for timely market data is already met, thus making the requirement to report such trades under MI 96-101 redundant. From a policy perspective, the carve-out in MI 91-101 also includes any OTC transactions that: meet or exceed specified volumes, are entered into the exchange, and are subject to the rules of a recognized exchange (“**Block Transactions**”). Block Transactions are subject to the rules of the applicable recognized exchange, including market surveillance and oversight, and are disclosed to Canadian regulators in the same manner as screen-traded transactions. Block Transactions are exempt from the reporting requirements under the Existing Scope and TR Rules. TMX Group understands that the application of MI 91-101 and MI 96-101 is intended to be as harmonious as possible with the application of the Existing Scope and TR Rules.

B. Consistent with International Regulations

The proposed amendment will not only provide more clarity to MI 91-101 and better reflect the policy considerations underlying the Instrument, but it will also harmonize with the approach implemented by other predominant foreign commodities regulators. By way of example, pursuant to the *Commodity Exchange Act* (the “CEA”), Block Transactions are considered to be “exchange” transactions. Section 4(a) of the CEA provides that it is illegal to offer to execute, to confirm or conduct any business in the United States for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless:

“such transaction is conducted on or subject to the rules of a board of trade which has been designated by or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity”³

Thus, so long as a Block Transaction is subject to the rules of a board of trade which is designated by or registered by the Commodity Futures Trading Commission, such transaction is considered an “exchange” transaction, that is, a transaction conducted subject to the rules of a contract market.

As Block Transactions are considered “exchange” transactions in other predominant foreign commodity marketplaces, we propose the above-noted amendment to the Instrument to provide comfort that this

³ For the full section, please see section 4(a)(1) of the CEA.

treatment of Block Transactions may continue across markets and this will minimize the potential for confusion, particularly in the context of energy and other markets that operate on a North American and global basis. TMX Group views the proposed amendment as an important one, as the derivatives energy market effectively functions as “one market” and different rules would lead to market confusion and potentially regulatory arbitrage.

TMX Group urges the Authorities to make a slight amendment to the proposed language found at section 2(1)(g) of MI 91-101 as this would appropriately support the intent and purpose of the proposed Instrument, as well as be consistent with regulations in other major markets.

3. Harmonized Approach

Finally, as noted above, TMX Group is pleased that the Authorities are proposing to implement MI 91-101 and MI 96-101 as a national instrument which will provide uniformity across provinces.

TMX Group appreciates the opportunity to provide comments with respect to MI 91-101. We hope that you will consider our suggestion and we would be happy to discuss this matter at greater length. Please feel free to contact Danielle Grover, Legal Counsel, TMX Group at danielle.grover@ngx.com if you have any questions regarding our comments.

Respectfully submitted,

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| James Oosterbaan President Natural Gas Exchange Inc. Group Head of Energy | Alain Miquelon President and Chief Executive Officer Montréal Exchange Group Head of Derivatives |
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