

APPENDIX D

Summary of Comments to October 2011 Publication Acquisition of TMX Group

1. Exchange fees	
Should be transparency in mechanisms to determine fees relating to trade execution, clearing services, access to market data	IIAC
Independent board members should be involved in decisions related to execution fees	IIAC
To the extent the exchange operates as a de facto public utility regulators should examine pricing and profitability restrictions similar to those in the consumer electricity market.	CACC
2. Independence of Maple Board	
Current board composition not in public interest because of number of Maple shareholders represented. Board should be made up of a majority of independent directors	CACC
Independent should mean having no material interest in Maple's financial performance. This means non-owner users (including reps of retail investor protection groups, those that deal in venture and early stage companies and listed issuers).	CACC
Definition of "independent" should be lowered to exclude those representing shareholders with 5% or greater interest (down from proposed 10%)	FAIR, CNSX
Founding non-dealer shareholders of Maple should be excluded from definition of "independent"	CNSX, CACC
Nomination committee should be made up of only those members who have not worked in the industry	CACC
3. Other requirements for Maple boards	
Should ensure diverse representation on Maple's boards by requiring 2/3 independent directors, including 1/3	FAIR

representing Canadian investors (with at least 2 retail investor reps) and 1/3 representing other stakeholders (including listed companies and the public interest)	
Inappropriate for certain Maple investors to have 6 year nomination rights	CNSX, CACC
4. Conflicts	
Maple's proposed measures to mitigate potential conflicts are not sufficient. Regulatory oversight must be moved outside the Maple board and any other SRO to be truly independent.	CACC
Should outsource listing regulatory function as pre-condition of the transaction	CACC
Insufficient consideration has been given to the likelihood that Maple owners will enjoy a closer relationship with TMX Group of companies than dealers outside the syndicate, to the obvious detriment of the outside dealers. How will TMX and IROC ensure this would not occur?	CACC
Should prohibit employment by Maple entities of anyone who has been employed by a Canadian securities regulator	Stuart Moir

Acquisition of CDS

5. Vertical integration	
Current arm's length arrangement is serving Canada well. No compelling case that vertical integration would be in the public interest. Integration of CDS with TSX would introduce a higher level of operational and systemic risk into the Canadian system.	CACC
6. Conversion to a for-profit entity	
Not in the public interest. Significant concern that vertically integrated entity could block competition by non-affiliated marketplaces.	CNSX
If converted to a for-profit entity, should be regulated similar to a public utility.	FAIR
Should defer any decision until have fulsome consultation	FAIR, CACC

Main goal of CDS should be to minimize costs and optimize service, rather than to optimize profits, given that all costs are ultimately passed on to issuers and investors. Fee increases and difficulties accessing or becoming a member of CDS are anticipated.	CACC
7. Governance structure	
If approved, regulators should ensure proper oversight by requiring 1/3 board representation by user owners, 1/3 by non-user owners and 1/3 independent representatives (including reps from 2 unaffiliated marketplaces)	CNSX
Marketplaces should not be represented on clearing boards	CACC
Majority of directors should be independent users, as defined under the current CDS RO	CACC
User-owned system has served Canadian marketplace well. No reason to believe that a non-user owned system would work better. Consequences of it not working well outweigh whatever benefits might accrue from the change in ownership structure	CACC
Regulatory Oversight Committee should be responsible for nominating candidates for the board	CNSX
8. Clearing Fees	
Should provide full disclosure of any changes to risk model in clearing system, particularly if it will interfere with participant access	IIAC
Independent board members and market participant advisory boards should be involved in decisions related to clearing and access to market data	IIAC
Fee regulation is necessary if fees are to remain competitive, given the near monopoly of what is essentially a public utility	CACC
Questions whether Maple proposal to provide benchmarking to fees elsewhere will be timely enough to ensure Canada remains at forefront of international	CACC

competitiveness. Also questions whether Maple could do this objectively.	
9. Fair Access	
Regulators must ensure sufficient resources allocated to police compliance with NI 21-101	CACC

Acquisition of Alpha

Alpha acquisition will not have significant impact on industry	CNSX
Loss of a significant competitor could impact service to the public, competitive pricing practices and innovation.	CACC
10. Non-Competition and Non-preferencing agreements	
Would impede, but not imperil development of other ATS systems in Canada	CACC

Systemic Risk

Concentrated ownership adds to the systemic risk in the financial industry as it increases dependency and connection between the fiscal situation of some dealers and the clearing and stock exchange system itself. Operational failure could be catastrophic and would difficult to mitigate by regulatory measures.	CACC
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