



October 6, 2021

**VIA EMAIL**

Canadian Securities Administrators (“**CSA**”)  
% The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal  
Affairs Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2640, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Dear Sirs/Mesdames.

**Re: CSA Consultation Paper 25-404 *Consultation on the Self-Regulatory Organization Framework***

TMX Group Limited (“**TMX**” or “**we**”) welcomes the opportunity to comment on the CSA’s Position Paper 25-404 - *New Self Regulatory Organization Framework* that was published on August 3, 2021 (“**Position Paper**”). Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Position Paper.

We appreciate the efforts taken by the CSA to present a solution for a New SRO that reflects the evolution of how the financial services industry has impacted the current regulatory framework in Canada.

**TMX Group and SROs**

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. Toronto Stock Exchange, TSX Venture Exchange, TSX Alpha Exchange, the Canadian Depository for

Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX 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. Given our familiarity with IIROC operations, we focus our comments on the specific solutions outlined in Section 4(a)-*Improving Governance* and in Section 4(h)-*Maintaining Strong Market Surveillance* of the Position Paper.

## **Section 4(a): Improving Governance**

### *New SRO Board Composition*

As we noted in our 2020 Comment Letter in response to CSA Consultation Paper 25-402 - *Consultation on the Self-Regulatory Organization Framework*, we believe that the CSA has already struck the proper balance between its need for regulatory oversight and a self-regulatory organization’s (SRO’s) need for commercial and operational flexibility when the CSA set out in the applicable recognition orders detailed criteria for IIROC’s board composition.

We therefore believe that a similar approach to board composition would continue to be appropriate for the board of the New SRO. Mirroring IIROC’s current recognition order, we believe that board composition requirements should form part of the by-laws of the SRO and reviewable by the CSA at its request, rather than forming part of the New SRO’s recognition order. As demonstrated by the sophisticated matrices that IIROC currently uses to identify candidates for its board, we believe that the New SRO’s board and management will also be well placed to determine its own future board composition requirements. Further, as outlined in the Position Paper, the CSA’s intention to include a non-objection mechanism for the CSA to review the initial matrices for board member appointments and any subsequent changes to them, including the inclusion of a reporting requirement in the recognition order for material changes to the matrices, will provide the CSA with sufficient oversight and insight into the board selection process without impacting the New SRO’s commercial and operational flexibility.

### *Independence Criteria*

We are concerned that the outlined intent to limit non-independent, or industry, nominations to a minority of the board, may undermine the ability of the New SRO to effectively manage its mandate. While the objective of independence from industry is laudable, effective regulation requires that independence to be balanced by sufficient industry knowledge and experience. We believe that expanding the number of seats available to industry experts

would better ensure a fair, meaningful, and diverse representation on the New SRO's Board and its committees and a proper balance among the interests of the differing persons and entities that are currently regulated by IIROC and the Mutual Fund Dealers Association of Canada ("MFDA").

#### CSA Involvement in New SRO Corporate Governance

As we noted in our 2020 Comment Letter, we were concerned with the possible impact of granting the CSA veto powers over the SRO Board selection process. In our view, granting the CSA non-objection powers, rather than veto powers, with regards to, among other matters, the SRO Board selection process will still result in a process that will be burdensome and time consuming to manage. We continue to be concerned that creating a new process that requires the New SRO's thirteen regulators to review and provide their non-objection to the appointment of each New SRO Board member could add significant delay to the SRO's director onboarding process, with no commensurate benefit. We therefore strongly urge the CSA to ensure that any sub-matrix of criteria that is developed to inform the non-objection process includes reasonable timelines and the requirement to provide the rationale for any objection made.

In conclusion on this topic, as we expressed in our 2020 Comment Letter, we continue to disagree with the notion that the regulatory oversight related to the governance of SROs needs to change. We believe that the current governance structure at IIROC, for example, appropriately manages potential conflicts of interest and that the New SRO would be able to fulfil its public mandate efficiently and effectively under the currently established corporate governance framework for SROs.

#### **Section 4(h): Maintaining Strong Market Surveillance**

TMX strongly supports the CSA's conclusion that the surveillance of Canadian equity and debt marketplaces should remain with the New SRO. TMX also commends the intent to establish a new CSA Market Information Coordinating Working Group that will focus on identifying and resolving gaps or inefficiencies in information sharing between the New SRO and the CSA.

We believe that the outcomes of this Working Group would be enhanced by industry participation and we urge the CSA to include industry members in this Working Group at its inception and on an ongoing basis. TMX would be pleased to work with the CSA on initiatives in this area and share our expertise, stemming from our deep knowledge of market surveillance, with the CSA.

As we expressed in our 2020 Comment Letter, we continue to believe that "monitoring systemic risk" should not form part of any solutions outlined in Category H. As we wrote in 2020, an SRO regulates the operations and the standards of practice and business conduct of its members or participants. CSA regulators then oversee these SRO activities. The

statutory regulators are not using the SROs to monitor systemic risk which, in a financial context, denotes the risk of a cascading failure in the financial sector, caused by linkages within and between the components of the financial system, resulting in a severe economic downturn. While we fully agree that the fair and efficient operation of our public equity markets facilitates vital capital formation activities and is integral to investor confidence, we do not believe that it is correct to imply that marketplace trading activities are possible triggers of systemic risk, properly understood. For these reasons, we again submit that references to systemic risk should be removed from this category of solutions.

## **Conclusion**

We thank the CSA for providing us with the opportunity to comment on the Position Paper. As staff reviews the comment letters and as the CSA prepares to establish the New SRO, we urge the CSA to be vigilant in protecting the efficiencies that the existing SROs can bring to the governance and operations of the New SRO. We would be pleased to discuss our comments with you.

Sincerely,

***'Rizwan Awan'***

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

