

NOTICE OF PUBLIC CONSULTATION

APPLICATION RELATED TO PROPOSED ACQUISITION BY MAPLE GROUP ACQUISITION CORPORATION

**IN RESPECT OF TMX GROUP INC. AND PROPOSED SUBSEQUENT ACQUISITIONS OF
ALPHA TRADING SYSTEMS LIMITED PARTNERSHIP, ALPHA TRADING SYSTEMS INC.
AND THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

1. INTRODUCTION

On October 3, 2011, Maple Group Acquisition Corporation ("Maple") filed an application with the Québec Autorité des marchés financiers (the "AMF") related to a two-step integrated transaction to acquire 100% of the outstanding common shares issued by TMX Group Inc. ("TMX Group"). Maple has also proposed that, concurrently or following the acquisition of TMX Group, it will acquire Alpha Trading Systems Limited Partnership and Alpha Trading Systems Inc. (collectively "Alpha") as well as The Canadian Depository for Securities Limited ("CDS Ltd.") and, indirectly, CDS Clearing and Depository Services Inc. ("CDS Clearing") (collectively "CDS"). This Notice covers the public interest issues raised as a result of the acquisition of TMX Group, Alpha and CDS by Maple (hereafter the "Proposed Transactions").

The AMF is therefore submitting for consultation purposes the Maple application and is seeking written observations on the overall application and in particular on the specific issues set out in section 5 of this Notice.

Written observations should be supported with appropriate facts.

Information about the process for submitting written observations and about the public hearings which the AMF will hold with respect to the Proposed Transactions is available in section 6 of this document.

2. PURPOSE OF APPLICATION

The AMF will issue decisions sought as part of the Maple application where it is of the opinion that it is in the public interest to do so. Accordingly, the AMF must, in particular, ensure that Maple, TMX Group, Montréal Exchange Inc. ("MX"), the Canadian Derivatives Clearing Corporation ("CDCC") and CDS comply with legislation and with the recognition criteria applicable to them respectively.

In addition, the AMF may impose conditions in its decisions which it deems advisable to enable it to adequately oversee the Québec financial markets.

The Maple application seeks orders from the AMF:

1. recognizing Maple as the proposed holding company parent of TMX Group, and recognizing TMX Group as the proposed holding company parent of MX, as an exchange;
2. recognizing Maple as the proposed holding company parent of TMX Group, and recognizing TMX Group as the proposed indirect holding company parent of CDCC, as a clearing house;
3. recognizing Maple as the proposed holding company parent of TMX Group, and recognizing TMX Group as the proposed direct or indirect holding company parent of CDS, as a clearing house

4. approving the beneficial ownership by Maple of more than 10% of the voting securities of each of TMX Group and MX;
5. amending decision No. 2008-PDG-0102 dated April 10, 2008 recognizing MX as a self regulatory organization and authorizing it to carry on business as an exchange in Québec. This decision was amended pursuant to decision No. 2010-PDG-0207 dated November 22, 2010 that suspends the application of paragraph IX *Ratios et rapports financiers* of decision No. 2008-PDG-0102 (collectively the “MX recognition order”). The Maple application seeks to update the MX recognition order to reflect Maple’s acquisition of TMX Group;
6. approving the beneficial ownership by the Investors¹ individually, as applicable, of more than 10% of the voting securities of Maple for the transitional period between take-up under the Offer² and completion of the Subsequent Arrangement;³
7. authorizing the Investors and Maple to act jointly or in concert as beneficial owners of voting securities of TMX Group and of MX in connection with the Subsequent Arrangement and the Alpha and CDS acquisitions;
8. authorizing the Investors to act jointly or in concert as beneficial owners of the voting securities of Maple in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions;
9. amending decision No. 2006-PDG-0180 dated October 17, 2006 authorizing CDS to carry on business as a securities clearing house in Québec and exempting it from recognition as a self-regulatory organization (“CDS recognition order”) to reflect Maple’s direct or indirect acquisition of CDS;
10. amending decision No. 2004-PDG-0012 dated February 27, 2004 regarding TSX Inc. (“TSX”) (“TSX exemption order”) to update the decision and thereby reflect the TMX Group acquisition by Maple;
11. amending decision No. 2004-PDG-0076 dated June 28, 2004 regarding TSX Venture Exchange Inc. (“TSX Venture”) (“TSX Venture exemption order”) to update the decision and thereby reflect the TMX Group acquisition by Maple; and
12. as the AMF considers necessary or desirable with respect to the indirect ownership of MX.

¹ Maple is backed by the following: Alberta Investment Management Corporation, *Caisse de dépôt et placement du Québec*, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., *Fonds de solidarité des travailleurs du Québec* (F.T.Q.), GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial Inc., Ontario Teachers’ Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (collectively the “Investors”).

² Under the “Offer to Purchase 70% of the Common Shares of TMX Group Inc. for \$48.00 in cash per Common Share and Circular Soliciting Proxies against the Acquisition of TMX Group Inc. by London Stock Exchange Group PLC” dated June 10, 2011 and filed by Maple via www.sedar.com on June 13, 2011 and the “Notice of Variation relating to the Offer to Purchase by Maple Group Acquisition Corporation dated June 10, 2011 amended to purchase a minimum of 70% and a maximum of 80% of the Common Shares of TMX Group Inc. for the increased price of \$50.00 in cash per Common Share” dated June 24, 2011 and filed by Maple via www.sedar.com on June 27, 2011, Maple commenced a two-step integrated transaction to acquire all the outstanding shares issued by TMX Group. The first step is a take-over bid to acquire a minimum of 70% and a maximum of 80% of TMX Group shares for \$50.00 in cash per share (the “Offer”).

³ The second step is a plan of arrangement that provides TMX Group shareholders (other than Maple) with between 27.8% and 41.7% of the Maple shares (where between 70% and 80% of TMX Group shares are acquired under the Offer) in exchange for their remaining TMX Group shares (the “Subsequent Arrangement”).

Accordingly, the AMF is publishing the following documents, some of which are referred to directly by the Maple application, while others are useful as background information for certain specific questions raised in this Notice:

- The Maple application, which includes in particular Maple's draft undertakings to the AMF (Schedule 1);
- The MX recognition order (Schedule 2) (in French only);
- The CDS recognition order (Schedule 3) (in French only);
- The CDCC (formerly Trans Canada Options) recognition order for which an amendment application is pending⁴ (Schedule 4) (in French only);
- The TSX exemption order (Schedule 5) (in French only);
- The TSX Venture exemption order (Schedule 6) (in French only);
- Recognition criteria on which the AMF will base its analysis of the Maple application with respect to:
 - a. self-regulatory organizations (Schedule 7);
 - b. exchange activities (Schedule 8);
 - c. clearing house activities (Schedule 9).

3. BACKGROUND

Maple is a corporation created by the Investors, which include major brokerage firms affiliated with financial institutions and pension funds in Canada for the purpose of conducting the Proposed Transactions. On June 10, 2011, Maple commenced an integrated transaction to acquire all of the outstanding common shares issued by TMX Group.⁵ Upon completion of the Subsequent Arrangement, TMX Group will become a wholly owned subsidiary of Maple. One of the important components of the Maple proposal is its intention to acquire Alpha and CDS concurrently or following the acquisition of TMX Group for the purpose of vertically integrating Canadian exchanges and alternative trading systems ("ATSS") that will be held by Maple and post-trade securities clearing, settlement and depository services as well as horizontally integrating onto a common platform the clearing services for equities, bonds, debt securities and derivatives in both exchange-traded and over-the-counter markets.

Maple aims to integrate trading and post-trade activities of the six major market infrastructures in Canada (TSX, TSX Venture, MX, Alpha, CDCC and CDS) based on the business model that currently exists at Deutsche Börse, BM&F Bovespa (Brazil) and the Australian Securities Exchange.⁶ Upon completion, this will result in the concentration of almost all trades conducted in the Canadian capital markets as well as the outstanding positions resulting therefrom into a single public corporation listed on TSX.

⁴ On May 13, 2011, CDCC filed an application with the AMF seeking recognition as a clearing house in accordance with section 14 of the *Derivatives Act*, R.S.Q., c I-14.01 and the withdrawal of its recognition as a self-regulatory organization ("CDCC application"). The CDCC application was published in section 7.1 of the AMF bulletin dated May 13, 2011 (vol. 8, no.19).

⁵ See footnotes 2 and 3.

⁶ See Appendix A to the Maple application.

If the Proposed Transactions took place, CDCC and CDS would constitute wholly owned subsidiaries, directly or indirectly, of TMX Group. For the purposes of the Maple application, it should be borne in mind that securities clearing, settlement and depository activities are altogether different in nature from trading. These activities are subject to their own specific risks and must be regulated differently from trading.

Under the provisions of the *Payment Clearing and Settlement Act* (the “Clearing Act”),⁷ the Bank of Canada in fact oversees CDS Clearing’s CDSX system and may soon exercise similar oversight on the CDCC system.⁸ This Bank of Canada oversight complements AMF’s responsibilities with respect to monitoring and mitigating systemic risk associated with CDS and CDCC activities. It should be recalled that one of the purposes of the *Derivatives Act* is specifically to facilitate the control of systemic risk posed by derivatives, particularly in clearing house operations.

The possible impacts resulting from the Proposed Transactions are significant and differ to a large extent from the impacts arising from the acquisition of MX by TMX Group in 2008, particularly with respect to the increased level of concentration of companies engaged in the trading business as well as in derivatives clearing or settlement activities and securities clearing, settlement or depository activities in the Canadian financial industry. For this reason the AMF is seeking observations regarding specific issues arising from the Maple application.

4. GUIDING PRINCIPLES

The AMF will examine the Maple application in light of the following principles in particular:

- Ensure that MX satisfies all the requirements enabling it to fully perform its role and meet its obligations as a self-regulatory organization and a derivatives exchange;
- Ensure the jurisdiction and the exercise of regulatory powers of the AMF with respect to exchange and clearing activities;
- Foster market integrity, efficiency and effectiveness;
- Foster the efficiency, continuity and growth of MX and CDCC as entities specialized in derivatives markets with respect to trading, regulatory, oversight, clearing and settlement activities in connection with derivatives and related products, including the clearing of trades in fixed-income securities (repurchase transactions and cash buy or sell trades);
- Ensure meaningful, effective and objective representation in all of the Maple Group of persons interested in the activities of the Group, in particular participants in the derivatives and related product markets of MX as well as CDCC members and users of CDCC clearing and settlement services;
- Ensure that MX and CDCC will have sufficient resources, including financial, human and technological, to support their continuity and continue their growth and development in the derivatives and related products market as well as in the related clearing and settlement activities;
- Ensure that CDS will have sufficient resources, including financial, human and technological, to carry on and grow its securities clearing, settlement and depository activities in support of equity and debt securities markets;

⁷ S.C., 1996, c. 6

⁸ The Bank of Canada may designate the CDCC as a clearing and settlement system that could pose systemic risk in connection with CDCC’s upcoming clearing activities related to fixed-income securities (repurchase transactions and cash buy or sell trades), subject to terms and conditions to be met by CDCC.

- Ensure that the combination of financial market infrastructures as proposed by Maple is compatible with the sound management of risks related to the trading of derivatives and related products on MX and securities as well as to clearing, settlement and depository activities in respect of these financial instruments and over-the-counter derivatives, and that it will not increase systemic risk in Canada;
- Ensure that the combination of financial market infrastructures as proposed by Maple does not unduly reduce competition within markets on the one hand and competition with respect to securities clearing, settlement or depository activities on the other, and that, upon completion, it does not undermine their competitiveness and ability to innovate and enter foreign markets;
- Ensure that the structure, governance rules and operating terms of CDCC, CDS and of any clearing or settlement organization are in line with the objectives and principles of the International Organization of Securities Commissions (“IOSCO”) as well as the principles formulated by the joint committee of the Bank for International Settlements and IOSCO concerning financial market infrastructures;⁹
- Ensure fair and equitable access to all Canadian market infrastructures as well as a competitive offering of financial products and services to all interested individuals, businesses and market participants in Québec;
- Foster capital formation in Québec, access to the capital markets by Québec-based companies and the participation of investors and other players in the equity and derivatives and related product markets.

5. SPECIFIC ISSUES

In addition to general observations that might arise from the Maple application, the AMF is seeking observations on the specific issues presented below.

I. Public interest and guiding principles

As part of its analysis, the AMF must review several issues with respect to the framework to be implemented to ensure adequate oversight of the entities under its jurisdiction. The Proposed Transactions raise a number of major questions regarding in particular market efficiency, competition, risk management and access by market participants to products and services offered by market infrastructures as well as access by Québec-based companies and investors to public capital markets.

⁹ The Committee on Payment and Settlement Systems (“CPSS”) and the IOSCO Technical Committee issued a joint consultative report entitled *Principles for Financial Market Infrastructures*. Based on 24 principles, the report is intended to strengthen requirements related to payment, clearing and settlement-delivery systems. The report seeks to harmonize international standards currently governing market infrastructures as well as new requirements. After all comments have been reviewed, the CPSS-IOSCO joint committee will publish a final report and new principles will replace the standards currently in force. The consultative report is available on the IOSCO website (www.iosco.org) under the following links: <http://www.iosco.org/news/pdf/IOSCONEWS201.pdf> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf>.

Question:

1. As part of its analysis of the Maple application, should the AMF consider other guiding principles in addition to those set out in section 4 of this Notice in exercising its discretion? Are there other public interest issues that the AMF should take into account?

II. Share ownership

i. Share ownership restrictions

Maple undertakes to be subject to, and cause to be subject to, the restriction regarding ownership of its shares whereby no physical or legal person and no group of physical or legal persons acting jointly or in concert may beneficially own or exercise control or direction over more than 10% of any class or series of voting shares of Maple, without the prior approval of the AMF (the “share ownership restriction”).

The share ownership restriction proposed by Maple is similar to the restrictions imposed on TMX Group and MX in connection with the MX acquisition by TMX Group in 2008.¹⁰ This restriction enables the AMF to intervene before a shareholder is able to exercise significant control or direction over TMX Group or MX.

Maple is not proposing any similar undertaking with respect to CDCC, CDS and any other Maple Group entity that may eventually carry on trading, clearing, settlement and trade repository activities in respect of derivatives and related products or securities clearing, settlement or depository activities, even though a change in the ownership of such entities could have consequences similar to those related to a change in share ownership of Maple, TMX Group or MX. In addition, if Maple were to acquire Alpha, the application does not contain any undertaking related to any subsequent future change in the ownership of Alpha.

As well, given the risks related to securities clearing, settlement and depository activities, it is advisable to examine the restrictions regarding share ownership of the entities providing these services. Indeed, because of the specific risks related to these activities and the limits to the effectiveness of sound governance measures applied to boards of directors, it might be relevant and necessary to impose more stringent ownership restrictions than those for entities that conduct trades. Moreover, a collective limit on major financial institutions in the financial industry, for example, could be advisable so as to provide an additional tool for controlling conflicts of interest, mitigating systemic risk and promoting competition.

In this regard, it should be noted that special attention was placed on over-the-counter derivatives clearing and settlement activities as part of the general review of U.S. financial industry regulations. The U.S. Commodity Futures Trading Commission (“CFTC”) and the U.S. Securities and Exchange Commission (“SEC”) published, on October 18, 2010 and October 26, 2010 respectively, proposed rules on ownership of over-the-counter derivatives clearing organizations. The proposed rules set out two alternatives. Under the first alternative, a limit is applied to individual ownership by members of a clearing organization as well as to collective ownership for the industry as a whole.¹¹ Under the second alternative, no enumerated entity¹² may own more than 5% of any class of voting shares, but no collective limit is set out.

¹⁰ See Appendix B to the Maple application.

¹¹ Under the first alternative, a) no individual member may own more than 20% of any class of voting equity or voting power in a derivatives clearing organization and b) major financial institutions (the “enumerated entities”) may not collectively own more than 40% of any class of voting equity or voting power in a derivatives clearing organization. This collective limit would apply to all enumerated entities, whether or not they are members of the derivatives clearing organization.

Questions:

2. Given the crucial market infrastructure role played by CDCC and CDS and the similar or increased role that could eventually be played by any other entity within the Maple Group, should share ownership restrictions also be imposed on such entities? If so, should these restrictions
 - a. be the same as those applied to Maple, increased or reduced?
 - b. be different from those applied to exchanges, increased or reduced?
3. Should the Maple share ownership restriction include a specific limit on the interest that clearing house members or participants could hold? Should a collective limit be imposed? If so, specify the limit and to which group of entities should this apply?
4. In the event that Maple acquired Alpha and the latter continued solely with its current ATS activities, should ownership restrictions also be imposed on this entity? If so, should these restrictions be the same as those applied to Maple, increased or reduced?
5. Do the restrictions proposed by Maple appear to be sufficient to enable the AMF to perform its regulatory responsibilities in respect of Maple and each Maple subsidiary under its jurisdiction in the event of a takeover of Maple? What about in the event that Maple were to acquire or merge with a foreign corporation?
 - ii. ***Restrictions related to a change in share ownership of TMX Group, MX and CDCC***

Maple proposes the maintenance of the ownership restrictions in respect of the shares of TMX Group and MX imposed under the MX recognition order. Under these restrictions:

- 1 b) TMX Group undertakes to inform the AMF immediately in writing if it becomes aware that any person or company or any group of persons or companies acting jointly or in concert beneficially owns or exercises control or direction over more than 10% of any class or series of voting shares of TMX Group and TMX Group shall take the necessary steps to immediately remedy the situation, in compliance with Schedule B of TMX Group articles of incorporation.
7. TMX Group undertakes not to complete or authorize a transaction that would result in any person or company or any group of persons or companies acting jointly or in concert owning or exercising control or direction over more than 10% of any class or series of voting shares of MX, without obtaining the prior authorization of the AMF, except for TMX Group or an affiliate of TMX Group.
8. TMX Group undertakes that it shall continue to exercise control or direction over more than 50% of all classes or series of voting shares of MX.

¹² Enumerated entities means: bank holding companies with over \$50 billion in assets, a nonbank financial company supervised by the Federal Reserve System, a swap dealer, a major swap participant and any entity affiliated or associated with these institutions.

Under its application, Maple does not undertake not to complete or authorize a transaction that would result in any person or company, or any group of persons or companies acting jointly or in concert, owning or exercising control or direction over more than 10% of any class or series of voting shares of TMX Group, CDCC, CDS and any other Maple Group entity conducting trading, clearing, settlement and trade repository activities in respect of derivatives and related products or securities clearing, settlement or depository activities. As well, the Maple application does not include an undertaking whereby Maple will continue to exercise control or direction over more than 50 per cent of all classes or series of voting shares of TMX Group, CDCC, CDS and any other Maple Group entity conducting the above activities.

Where future transactions between Maple and third parties could cause changes in control over TMX Group, CDCC, CDS and any other Maple Group entity conducting the above activities, the lack of such an undertaking could pose some risks.

Question:

- 6. To enable the AMF to fully exercise its jurisdiction over market infrastructures, should the restrictions concerning a change in ownership of MX be extended to TMX Group, CDCC, CDS and any other Maple Group entity carrying on trading, clearing, settlement or trade repository activities in respect of derivatives and related products or securities clearing, settlement or depository activities?**

III. Governance

i. Maple governance

The Maple application outlines the governance framework that Maple will adopt. In this regard, Maple proposes that its board of directors, initially made up of 15 directors, will comprise the following:

- (a) at least 50% of the directors will be "independent" within the meaning of s. 1.4 of *Regulation 52-110 respecting Audit Committees*¹³ and the currently existing independence standards adopted by the board of directors of TMX Group;
- (b) at least 25% of the directors will be residents of Québec at the time of their election or appointment;
- (c) at least 25% of the directors will be persons that have direct or indirect expertise in the Canadian public venture capital markets;
- (d) at least 25% of the directors will be persons that have expertise in derivatives.

In addition, at least one director will be chosen from Canada's independent investment dealer community and the chair of the board will be an independent director.

The Maple board will establish committees with mandates substantively identical to the Finance and Audit Committee, Governance Committee, Human Resources Committee and Public Venture Market Committee presently in place at TMX Group. Maple does not propose any seats for residents of Québec on the various board committees tasked with assisting the board in the performance of its responsibilities and making recommendations on various matters. As well, Maple does not intend to establish a committee for derivatives and related products in charge of focusing the board's efforts on the matter.

¹³ R.R.Q., c. V-1.1, r. 28 ("Regulation 52-110").

Maple intends to enter into separate nomination agreements with each of the Alberta Investment Management Corporation, *Caisse de dépôt et placement du Québec*, Canada Pension Plan Investment Board, CIBC World Markets Inc., National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (or, in each case, an affiliate thereof) (the "nomination agreements") pursuant to which each such Investor (or its applicable affiliate) will have the right to nominate one director for election to the Maple board. The directors nominated by such Investors will therefore represent a majority on the Maple board for the term of the agreements. It is stated that these nomination agreements will terminate in respect of an Investor (or its applicable affiliate(s)) at the earlier of (i) the sixth anniversary of the completion of the TMX Group acquisition by Maple and (ii) such time as such Investor (or such affiliate(s)) ceases to own that number of common shares of Maple equal to 5% of the total outstanding common shares issued by Maple as of the date of the acquisition of 100% of the shares of TMX Group.

Questions:

- 7. Will the proposed composition of the Maple board of directors ensure fair and significant representation of the parties interested in the group's activities? If not, what changes should be made?**
- 8. Should a standing committee of the Maple board of directors be established that would be mandated to focus on derivatives markets and related products? If so, what specific mandate should be assigned to such a committee?**
- 9. Should at least one resident of Québec sit on each Maple board committee?**
- 10. Is it reasonable to allow eight investors to nominate a director to the Maple board over a period of six years?**

ii. TMX Group and MX governance

The boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be composed of the same individuals to ensure, according to Maple, consistency of governance within the group. Moreover, Maple undertakes to do everything within its control to cause TMX Group to comply with the undertakings it made to the AMF in 2008 and to cause MX to comply with the terms and conditions in its recognition order. The requirements in respect of governance imposed on TMX Group and MX would therefore be maintained.

In its MX recognition order, the AMF insisted on maintaining a separate regulatory division under the authority of a special regulatory committee named by the MX board of directors. Maple intends to maintain such a special committee with at least 25% of the membership being directors with derivatives expertise and to ensure that MX complies with its recognition conditions.

Question:

- 11. Would Maple's proposal to establish identical boards of directors for TMX Group, MX, TSX and TSX Venture ensure sound governance of these subsidiaries? Would this ensure efficient use of all the specific skill sets and expertise needed to meet the needs of each of these entities?**

iii. CDCC and CDS governance

Under its proposal, Maple will set up boards of directors of CDCC and CDS (the "clearing boards") that will include a number of directors who are common to each board. The boards will be composed of 11 directors, including five directors appointed by Maple, five independent directors and the chief executive officer of CDS and CDCC, respectively.

The selection criteria for persons to serve as directors will focus on enlisting knowledgeable persons who understand the industry and, wherever appropriate, have an interest in the successful and efficient operation of the business and in ensuring that the risks to the clearing or settlement system are properly managed. As well, at least four directors of CDS and CDCC will be representatives of users of the clearing services of CDS and CDCC. At least 25% of the directors of CDCC will be persons that have expertise in derivatives clearing and at least 25% of the directors of CDCC will be residents of Québec at the time of their election or appointment. Under the Maple proposal, there is no undertaking to ensure that residents of Québec provide a minimum representation on the CDS board of directors.

Maple intends to establish external Market Participant Advisory Committees with the participation of industry executives to advise on, among other things, matters of service development. It anticipates that the Market Participant Advisory Committees will include a strategic development committee, a risk advisory committee and specific committees for each of the derivatives, equities and debt securities industries. The composition of these committees is not specified.

Questions:

- 12. In light of the varying nature of the risks associated with the clearing activities of CDCC and CDS, is the governance framework proposed by Maple the most appropriate? Should the CDCC and CDS directors all be different persons?**
- 13. Should a minimum number of directors on the CDS board be residents of Québec, as is proposed in the case of CDCC?**
- 14. Should the composition of the advisory committees, in particular the risk committee and the derivatives committee, be specified so as to ensure meaningful, effective and objective representation of the parties interested in CDS and CDCC activities?**

iv. Independence of directors and conflicts of interest

Maple proposes to maintain TMX Group's current governance framework. To this end, at least 50% of directors on the Maple board and the boards of TMX Group, MX, TSX and TSX Venture will be independent directors.

The directors will be "independent" within the meaning of section 1.4 of Regulation 52-110 and the independence standards adopted by the board of directors of TMX Group. Under these standards, executives of Investors who are dealers and participants or approved participants of TMX Group will not be considered independent directors.

With respect to the CDS and CDCC boards, Maple proposes that five of the 11 directors (45%) will be independent. A director will be "independent" if the director is not: (a) an associate, a partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple; or (b) an officer or employee of Maple or its affiliates or an associate of such officer or employee. In addition, at least two of the independent directors will not be an associate, partner,

director, officer or employee of a participant of CDS or member of CDCC or their affiliates or an associate of such director, partner, officer or employee. The threshold of 5% above may be adjusted if other persons become additional investors in Maple.

Under Maple's proposed definition of independent director, a director could therefore be a partner, director, officer or employee of a participant of CDS or member of CDCC or their affiliates, or an associate of such director, partner, officer or employee. These directors could represent three of the 11 members of the boards of directors of CDS and CDCC and also three of the five independent directors.

The current board of directors of CDS Ltd. provides a suitable representation of persons who are independent from the shareholders on both the board of directors and board committees and, for this purpose, a person is independent where such person is not (i) a director, partner, officer or employee of a shareholder of CDS Ltd. or an associate of such shareholder; (ii) a director, partner, officer or employee of a CDS Ltd. participant or affiliate, an associate of such participant or affiliate or an associate of such director, partner, officer or employee of such participant; (iii) an officer or employee of CDS Ltd. or of an affiliate of CDS Ltd. or an associate of such officer or employee. The board of directors of CDS Clearing provides a suitable representation of persons who are independent from CDS Ltd. and participants on both the board of directors and board committees and, for this purpose, a person is independent where such person is not (i) a partner, officer or employee of CDS Ltd. or of a shareholder of CDS Ltd. or an associate of CDS Ltd. or such shareholder; (ii) a director, partner, officer or employee of a participant of CDS Clearing or an affiliate of CDS Clearing, an associate of such participant or affiliate of CDS Clearing or an associate of such director, partner, officer or employee of such participant; (iii) an officer or employee of CDS Clearing or an affiliate of CDS Clearing or an associate of such officer or employee.

With respect to the board of directors of CDCC, it is composed of at least 50% of independent directors within the meaning of Regulation 52-110 and independence criteria of the board of directors developed by CDCC. However, under the Maple proposal, the board of directors of CDCC, and likewise CDS, will be composed of 11 directors, including five directors appointed by Maple, five independent directors and the Chief Executive Officer of CDCC. Consequently, the CDCC board will no longer be composed of a majority of independent members, as is currently the case. The independence criteria to which the CDCC board will have to refer will be the same as those developed previously for CDS. Maple believes that this governance structure will properly balance the need to ensure that an appropriate level of expertise is provided by industry participants while also ensuring a diversity of views from independent directors who are not associated with Maple or CDCC.

Questions:

- 15. Is the current TMX Group definition of independent director that Maple proposes to adopt for Maple, TMX Group, MX, TSX and TSX Venture adequate and effective in the context of the Proposed Transactions? Should the founding Maple Investors be excluded from the definition of independent director? And what about directors representing issuers listed on a Maple Group exchange?**
- 16. Given the for-profit business model currently in place at CDCC and proposed for CDS and the key market infrastructure role played by securities clearing, settlement and depository firms, not to mention the monopolies held by CDS and CDCC, should a governance structure that ensures greater representation of truly independent directors on the board of directors of CDS and CDCC be required? If so, what would be the appropriate structure?**

17. To ensure effective and consistent management of conflict of interest risks at Maple Group entities providing securities trading, clearing, settlement or depository services, would it be advisable to adopt a single, more restrictive definition of independent director? If so, what changes should be made?

18. Is it acceptable that the proportion of independent directors sitting on the CDCC board will now be below 50%?

IV. Clearing and settlement of transactions

Clearing and settlement of transactions are critical components of an exchange's activities. Accordingly, the criteria that MX is required to satisfy for authorization to carry on business as an exchange in Québec, listed in Schedule 8, relate to clearing agreements with an authorized clearing house, adequate oversight of the clearing house, clearing of all transactions by the authorized clearing house, and restrictions on foreign members.

CDCC is currently a wholly-owned subsidiary of MX and is therefore held indirectly by TMX Group. CDCC provides the clearing services for all MX transactions and in respect of over-the-counter stock options. Products cleared by CDCC are settled through CDCC in the case of a cash settlement and through CDS Clearing where the settlement involves the delivery of securities.¹⁴ In addition, CDCC has been selected to develop a central counterparty service for the Canadian fixed-income securities market (repurchase transactions and cash buy or sell trades).

TMX Group is also the owner of Natural Gas Exchange Inc. ("NGX"). NGX is an exchange and clearing house for natural gas, electricity and crude oil contracts.

In addition, TMX Group owns an 18.1% interest in the share capital of CDS, which provides clearing, settlement and depository services for equities and debt securities.

CDCC activities are crucial to ensure the sound management of systemic risks related to derivatives markets. They are fundamental to ensuring the integrity of the MX market and the efficient operation of the Canadian derivatives market. In addition, the reliability of CDCC's systems is instrumental to its operations. Therefore, any material change to CDCC, including to its share ownership structure, governance, systems or business processes, could have significant repercussions not only on derivatives markets but also on Canadian financial markets overall. AMF oversight and monitoring in this respect are therefore essential.

The activities of CDS Ltd. and its wholly owned subsidiary CDS Clearing are essential to the securities markets and are linked to derivatives activities for which the underlying interest is a security settled by CDS Clearing. CDS Ltd. is a holding company that wholly owns, in addition to CDS Clearing, two other subsidiaries, namely, CDS Inc., which provides services through the National Registration Database (NRD), the System for Electronic Document Analysis and Retrieval (SEDAR) and the System for Electronic Disclosure by Insiders (SEDI), and CDS Innovations Holding Inc., which operates CDS Innovations Inc. CDS Clearing itself has a wholly owned subsidiary, CDS Securities Management Solutions Inc., which delivers services to issuers and their agents. Although the subsidiaries CDS Inc. and CDS Innovations Holding Inc. operate according to a "for profit" business model, the business model of CDS Clearing is that of a public utility operating under a cost recovery basis that delivers its services without discrimination to all securities markets in Canada (including TSX, TSX Venture or ATSS).

¹⁴ To enable settlement through CDS Clearing, CDCC is a participant.

Under its proposal, Maple will acquire CDS and change the business model of CDS Clearing so as to adopt the “for profit” business model of CDCC. Maple’s proposed acquisition of CDS will lead to the subsequent implementation of a reorganization plan to accomplish the integration of the clearing infrastructure of CDS and CDCC and the transfer of the settlement and depository functions to a separate legal entity. This integration is intended to create a common trading and clearing platform for all asset classes, whether exchange-traded or over-the-counter, as well as enable the creation of innovative risk management tools, in addition to facilitating improved collateral management, including cross-margining across asset classes.

This reorganization plan will also relate to ownership of each of these legal entities within the Maple Group. This ownership has yet to be determined. As well, Maple states that CDCC may continue as a wholly owned subsidiary of MX or become a direct wholly owned subsidiary of TMX Group or wholly owned by another subsidiary of TMX Group.

Although Maple believes that the acquisition will benefit the financial markets, the possible consequences of this acquisition should be properly assessed, particularly with respect to (i) the change in the business model of CDS Ltd. and of CDS Clearing arising from their new status as a for-profit subsidiary of a public corporation and (ii) the integration within Maple of CDS Clearing, whose CDSX platform has been designated by the Bank of Canada as a clearing and settlement system that could pose systemic risk under the Clearing Act. As well, the Bank of Canada may designate the CDCC system as a clearing and settlement system that could pose systemic risk in connection with the upcoming clearing activities of CDCC for fixed-income trading (repurchase transactions and cash buy or sell trades) subject to conditions to be met by CDCC.

The integration of CDS Clearing into the Maple Group raises a number of issues. Indeed, the change in CDS Clearing’s business model prompts us to assess the relevance of adopting specific terms and conditions to ensure that the transition is not detrimental to Canadian securities markets.

Questions:

- 19. Could access to clearing services by Maple competitors be compromised as a result of Maple becoming the owner of CDS? If so, should specific measures be imposed or implemented to maintain free access?**
- 20. Will Maple’s proposal to integrate the clearing and settlement activities of CDS and CDCC, particularly through the adoption of a common technology platform, have positive or negative implications on the activities of market participants? If so, what are the implications?**
- 21. Given that CDS operates on a cost recovery basis and acts as a public utility, should any specific objections be taken into account with respect to changing the business model as proposed? Will the change have a negative impact on clearing fees and the competitiveness of services currently available in Canada compared with services provided in the U.S. for the same securities? What measures would have to be taken to ensure effective control over any increase in clearing fees?**
- 22. Are there any benefits to maintaining ownership of CDCC by MX within the Maple Group?**
- 23. Are there any specific issues concerning Maple’s proposal to transfer securities settlement and depository services to a legal entity that is**

separate from CDS? Will such a separation have a significant impact on market participants? Is such a proposal advisable for the Canadian markets?

V. Competition

Maple maintains that its proposed business model will enhance overall competition among Canadian capital markets and market participants and that, following the integration of Alpha and TMX Group, the market will continue to be subject to vigorous competition. According to Maple, other Canadian markets or ATSSs, such as Chi-X Canada, Pure Trading and Omega ATS, offer the same services as Alpha, have significant trading capacity and exert competitive constraints comparable to Alpha. As well, the trading platforms in the U.S., “dark pools,” the over-the-counter market, the threat of entry of new Canadian-based trading platforms, the disincentive tied to high fees and the threat of regulatory intervention in respect of high fees are a significant and sufficient competitive constraint on Alpha and Maple.

Furthermore, if Maple manages to acquire Alpha, its board of directors will examine the advisability for Alpha to carry on with its plans to conduct exchange activities and compete against TSX or TSX Venture for listings. It should be noted that Alpha has filed applications for recognition as an exchange and for exemptive relief as an exchange with various Canadian authorities, including the AMF.

Even if Maple maintains that the Alpha acquisition will not have an adverse competitive impact on equities trading on the TSX and TSX Venture, the potential elimination of a serious competitor to TSX and TSX Venture for listings raises legitimate concerns with respect to capital formation and access to public capital markets. The lack of liquidity for the securities of public corporations, particularly in Québec, is one of the major weaknesses often mentioned by business leaders, financial institutions and investment dealers. In Canada and with respect to cross-listings in the U.S., experience has shown that the quality of the market for such securities as measured by the bid-asked spreads and market depth was superior when the TSX and TSX Venture markets faced competition from other exchanges or ATSSs.

Given the composition of Alpha share ownership,¹⁵ would an Alpha listing, in the event that Alpha is recognized as an exchange, result in deeper liquidity compared with the current situation. Another issue pertains to the cost of listings and continued listings. It is argued that competition from another exchange backed by major shareholders would no doubt help lower costs.

Moreover, certain provisions of an agreement entered into by the Investors¹⁶ will survive the completion of the Proposed Transactions. These provisions set out non-competition obligations, hold periods on resales of Maple shares and orderly resale obligations in respect of these shares.

In addition, Maple maintains that CDS Clearing will offer for-profit customer-centric services, will balance cost and service and will operate an equitable pricing structure – there will be unit pricing for all securities clearing, settlement or depository services such that all participants will pay the same price for the same services. Maple commits that all fees imposed by CDS Clearing for securities clearing, settlement or depository services will be equitably allocated in relation to product types and volumes, will not have the effect of unreasonably creating barriers to access such services and will be balanced with the criterion that CDS Clearing has sufficient revenues to satisfy its responsibilities, including to its shareholder. In addition, the process for setting fees will remain fair, appropriate and transparent.

¹⁵ CIBC World Markets Inc., CPP Investment Board Private Holdings Inc. (a member of the Canada Pension Plan Investment Board), Desjardins Securities (a member of Desjardins Financial Corporation), National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. each own Alpha securities.

¹⁶ Acquisition Governance Agreement entered into by the Investors in connection with the Transactions as amended and restated on June 10, 2011 and as further amended on June 22, 2011.

Maple affirms that ensuring fair access to CDS is essential to an efficient marketplace and that it does not intend to make any changes in this regard. CDS presently maintains an open architecture that permits all market participants that satisfy the criteria to access its clearing services, no matter the Canadian trading venue where the trade is executed.

With respect to competition, Maple maintains that the proposed acquisition of CDS by Maple will not reduce competition in any market for clearing, settlement, depository or any other services provided by CDS, given that The Depository Trust & Clearing Corporation ("DTCC") in the U.S. will remain CDS Clearing's competitor.

In the performance of its mission, the AMF must promote the availability of high-quality, competitively priced financial products and services for individuals and enterprises in all regions of Québec.¹⁷ The AMF must therefore ensure that Maple's Proposed Transactions will not affect the offering of such products and services nor market efficiency.

Questions:

- 24. Would recognition of Alpha as an exchange competing with TSX and TSX Venture enhance access by Canadian and Québec-based companies to the public capital market and to an exchange listing?**
- 25. Inasmuch as the Investors include several brokerage firms affiliated with major Canadian banks that hold a dominant share of securities and derivatives activities, do you believe that the non-competition obligations contained in the agreements entered into by the Investors raise any key issues, particularly by hampering the vibrancy and innovation of the Canadian markets? If so, what are they?**
- 26. Will the combination of the markets currently affiliated with TMX Group (TSX, TSX Venture, NGX, MX and TMX Select) and Alpha within Maple undermine or likely undermine the integrity, fairness, efficiency or transparency of the securities and derivatives markets in Canada?**
- 27. Are the factors mentioned by Maple in support of ongoing competition following completion of its Proposed Transactions convincing?**
- 28. Given the characteristic concentration of the Canadian securities industry, what are the foreseeable consequences of the horizontal integration of the TMX Group and Alpha markets on the integrity, efficiency, liquidity and competitiveness of the markets in Canada and Québec?**
- 29. Are the Maple undertakings regarding the equitableness of CDS fees reasonable and sufficient?**

VI. Vertical and horizontal integration of market infrastructures

Maple maintains that the creation of a vertically integrated entity would lead to greater stability of the financial market infrastructures in Canada and improve risk identification and risk management across the integrated operations chain. As well, again according to Maple, a vertical integration model would permit Canadian regulators to provide better control over systemic risk and the solutions specific to Canadian financial markets. An integrated organization would thus

¹⁷ Section 8 of *An Act respecting the Autorité des marchés financiers* (R.S.Q., c. A-33.2).

operate the entities conducting trades in securities and derivatives as well as the entities providing clearing, settlement and depository services.

According to Maple, the vertical integration model of exchange and clearing groups has proved itself in other jurisdictions as a stable and robust system, in particular during the 2008 market crisis.

Maple anticipates that market participants will benefit from the integration of clearing houses in light of the multiplicity and complementarity of the products that will be cleared and the possibility of determining cross-margining requirements for each market participant based on positions across all asset classes. The creation of an integrated group that provides trading, clearing, settlement and depository services for a broad array of financial instruments traded in Canada would therefore streamline trading, clearing and settlement activities through a common technology platform thereby achieving cost efficiencies for the benefit of all users.

Moreover, the proposed lower margin requirements of clearing houses as a result of introducing cross-margining could negatively impact risk management because of the reduced capital available to clearing houses, particularly in periods of intense market volatility.

As well, Maple proposes to transfer the securities settlement and depository functions of CDS to a separate legal entity. In this regard, the types of participants in a company tasked with securities settlement and depository services could be expanded and cover over-the-counter market participants. As a result, the financial position and capital of participants may not be of equivalent quality as that of investment dealers that are currently members of a clearing house.

Finally, Maple believes that the integration of CDS and CDCC technology platforms will facilitate the execution of fixed-income market trades (repurchase transactions and cash buy or sell trades). According to Maple, integration would optimize the clearing of over-the-counter derivatives and the future operation of a trade repository in Canada. However, the concentration of exchange-traded and over-the-counter securities and derivatives clearing activities onto a new platform and the migration of the CDS and CDCC systems to a common system could pose significant risks that are difficult to justify, given that the interoperability of systems does not require the implementation of a common platform.

Furthermore, the vertical integration model currently exists at the level of MX and CDCC. This model has proved to be efficient and, as a result, CDCC co-ordinates its activities with CDS. These two entities are separate and independent, in addition to operating their own systems for operations.

Questions:

30. Will Maple's proposed vertical integration foster:

- i. market integrity?
- ii. market fairness?
- iii. market efficiency?
- iv. market transparency?

31. To ensure its growth and competitiveness, does the Canadian market really need to combine the major six infrastructures in Canada (TSX, TSX Venture, Alpha, MX, CDCC and CDS) within a single public corporation?

- 32. What are the advantages and risks of combining within a single integrated group the settlement and clearing of transactions conducted in Canada in equities, fixed income securities and exchange-traded and over-the-counter derivatives with respect to:**

 - i. the efficiency and competitiveness of Canada's capital markets, in the short and long term;
 - ii. Montréal as a financial centre and the financial industry in Québec;
 - iii. the vulnerability of the Canadian and Québec economies to financial setbacks suffered by this group compared with the current situation in which CDCC and CDS are separate and independent entities of each other.
- 33. Will Maple's proposed vertical integration of the financial markets and the businesses charged with securities clearing, settlement or depository services diminish controls related to risk management in comparison with the controls currently in place at these entities?**
- 34. Or could the integration of CDS and CDCC within Maple increase and concentrate risks, in particular systemic risk?**
- 35. Given that the Canadian financial industry is highly concentrated with a limited number of large participants compared with other markets around the world, will the creation of a vertically integrated exchange group lead to greater or specific risks which the AMF should take into account in analyzing the Maple application?**
- 36. Does the separation of CDS settlement and depository functions into a separate legal entity pose any specific risks related to the type of participants that could qualify for admission? Should the AMF object to this separation?**
- 37. To ensure the sound management of systemic risks and given the Maple proposal, is it advisable to consider the adoption of cross-margining in terms of the stability and robustness of the Canadian financial markets?**
- 38. Could the interoperability of platforms be sufficient to improve the efficiency of the activities carried on by market participants while enhancing risk management? Could it have a negative impact on operational risks?**

VII. Consequences of Proposed Transactions

Part 2 of the Maple application highlights the key benefits that Maple believes will be generated by the Proposed Transactions. These benefits include the creation of a more diversified and efficient integrated exchange and clearing group, an integrated platform for clearing and settlement activities providing additional growth opportunities, improved risk management, meaningful cost synergies, retention of Canadian regulatory oversight over market infrastructures and support for continued growth in Canada.

Questions:

- 39. As a counterweight to the benefits set out by Maple in its application, could there be any negative consequences to the Proposed Transactions? If so, what could they be and what measures could be taken to eliminate or mitigate such consequences?**
- 40. Could there be any conflicts, real or apparent, between the interests of certain Maple shareholders with respect to the importance of the role played directly or indirectly by these shareholders in the Canadian markets and the obligations and role played by the market infrastructures that will be owned by Maple? Could these conflicts, if they were to take place, have any negative impacts on the cost of capital for Canadian companies and what measures could be taken to mitigate these impacts?**
- 41. Could any positive or negative consequences arise from any future inclusion of new investors in the Maple group, regardless of whether or not this takes place before or after the Proposed Transactions are completed?**

VIII. Maple undertakings

Maple has set out draft undertakings to the AMF if it authorizes the acquisition of all the outstanding common shares issued by TMX Group. The undertakings are outlined in Appendix B to the Maple application.

It should be recalled that, further to the agreement that the Canadian exchanges entered into in 1999, derivatives became the exclusive area of activity of MX and its CDCC subsidiary. This area of activity grew significantly over the years and underwent healthy development until the acquisition of MX by TMX Group in 2008. The maintenance of derivatives activities exclusively in Montréal was maintained in 2008 and continues so within TMX Group. As did the reorganization that took place 1999, Maple's Proposed Transactions will help shape the evolution of the market infrastructures in Canada. We believe that Maple's Proposed Transactions and the undertakings it proposes to make to the AMF must be analyzed in the spirit that has prevailed for almost 12 years and gives Montréal exclusive jurisdiction over derivatives.

In connection with its draft undertakings to the AMF, Maple intends to ensure that the derivatives trading and related products operations of the MX remain in Montréal. It also undertakes that the head office, executive office, the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility for MX and the executives responsible for management and administration will be based in Montréal.

With respect to CDCC or any new business unit established by Maple to carry on derivatives trading or clearing operations, Maple undertakes to ensure that the head office, the executive office, the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility and the executives responsible for management and administration will be based in Montréal. However, no specific undertaking is made to ensure that clearing and settlement operations will be based in Montréal.

Contrary to what was proposed as part of the failed transaction between TMX Group and London Stock Exchange Group PLC, Maple does not specifically undertake to realize its intention to ensure that Montréal is the centre of excellence in derivatives and the focal point for the group's derivatives and related product activities, including fixed-income securities and over-the-counter derivatives.

In addition, the scope of undertaking no. 19 does not extend to an exchange or clearing house for over-the-counter derivatives established in partnership or as a joint venture with another foreign corporation or clearing house (for example, LCH.Clearnet Ltd or CME Clearing).

Question:

- 42. Do the undertakings proposed by Maple appear to be sufficient to ensure the continuity and development of the Québec derivatives activities of MX and CDCC and enable their continued growth and development with respect to derivatives and related products as well as the clearing and settlement of derivatives and related products? If not, what additional undertakings should be required?**

IX. Access to capital markets

The Maple application states that the Proposed Transactions will continue to respond to the unique needs of the Canadian financial markets. Maple also states that, following the Proposed Transactions, TMX Group will be able to position itself as the primary marketplace where global mining, oil & gas, and public venture companies list and trade. Finally, it maintains that the group will continue to respond to the unique needs of small and medium-sized enterprises, which represent a key component of the Canadian economy, and to the needs of the derivatives and energy markets.

Questions:

- 43. Does the proposed acquisition of TMX Group by Maple raise any specific issues with respect to access to public markets? Do any of these issues vary depending on whether or not Maple is successful in its proposed acquisition of Alpha or CDS?**
- 44. In the event that Maple completes its proposed acquisition of TMX Group, will any improvements need to be made to the delivery of services currently available from TSX and TSX Venture to listed Québec companies?**

X. International expansion

According to Maple, its proposal to combine the major infrastructures of the Canadian markets will facilitate expansion of the Maple Group through international acquisitions or joint ventures. MX and CDCC currently stand out in this regard by virtue of the fact that a) MX holds a 51% interest in the Boston Options Exchange ("BOX") and is responsible for managing this U.S. exchange, and that b) the derivatives trading platform (SOLA®) developed by CDCC is deployed under licence at the derivatives exchanges of London Stock Exchange Group PLC in Europe. Maple undertakes that any export of knowledge of derivatives trading and clearing will be directed from Montréal.

Questions:

- 45. Will Maple's proposed market combination foster the expansion of MX activities to foreign markets?**
- 46. Will the horizontal integration of CDS and CDCC clearing or settlement services foster the deployment of CDCC platforms and services outside Canada?**

6. PUBLIC CONSULTATION PROCESS

I. Submission of observations

Anyone who wishes to take part in the public consultation is asked to submit their observations to the AMF in writing, preferably electronically, no later than November 7, 2011, to the attention of:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381

E-mail: consultation-en-cours@lautorite.qc.ca

Persons who submitted observations in writing in accordance with the above terms may also, if they wish and depending on availability, present their observations orally at the public hearings on the Proposed Transactions. They must notify the AMF Corporate Secretary accordingly when submitting their written observations.

At the conclusion of the consultation, written observations received will be posted on the AMF website at www.lautorite.qc.ca.

II. Information about public hearings on the Proposed Transactions

Public hearings on the Proposed Transactions have not been scheduled yet, but they are expected to take place in late November 2011. A notice will subsequently be published by the AMF giving the dates and details of the hearings.

Requests for information about the Maple application should be addressed to:

Jacinthe Bouffard
Director, SRO Oversight
Autorité des marchés financiers
514-395-0337, ext. 4351
Toll-free: 1-877-525-0337, ext. 4351
jacinthe.bouffard@lautorite.qc.ca

Élaine Lanouette
Senior Analyst, SRO Oversight
Autorité des marchés financiers
514-395-0337, ext. 4356
Toll-free: 1-877-525-0337, ext. 4356
elaine.lanouette@lautorite.qc.ca

October 7, 2011

SCHEDULE 1

Maple Group Acquisition Corporation

October 3, 2011

BY EMAIL AND COURIER

Autorité des marchés financiers
800, Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Attention: Jacinthe Bouffard, Director, SRO Oversight

Dear Ms. Bouffard:

Proposed Acquisition of TMX Group, Alpha and CDS by Maple Group Acquisition Corporation

Maple Group Acquisition Corporation ("we" or "**Maple**") has commenced a two-step integrated transaction to acquire 100% of the outstanding shares of TMX Group Inc. ("**TMX Group**") (the "**Maple Acquisition**"). Maple has also proposed that, concurrently or following the acquisition of TMX Group, Maple will acquire Alpha Trading Systems Limited Partnership and Alpha Trading Systems Inc. (collectively, together with any successors thereto, "**Alpha**") and The Canadian Depository for Securities Limited ("**CDS Ltd.**") and, indirectly, CDS Clearing and Depository Services Inc. ("**CDS Clearing**" and, collectively, "**CDS**") (collectively, the "**Alpha and CDS Acquisitions**" and, together with the Maple Acquisition, the "**Transactions**").

By way of background to our application, Maple and the proposed Transactions arose from a unique opportunity and a common vision shared across a diverse collection of capital markets participants to improve on Canada's capital markets infrastructure to better serve the needs of all participants in the capital markets. In bringing forward our proposal, Maple is backed by a cross-section of Canadian capital markets leaders consisting of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (collectively, the "**Investors**"). The Investors are significant direct and indirect users of Canada's capital markets infrastructure generally and the facilities of TMX Group, CDS and Alpha specifically.

The proposed Transactions are a unique opportunity to create an integrated exchange and clearing group which Maple believes is the best structure for Canada's capital markets given their relatively small size, the close proximity of the U.S. capital markets, and the

increasingly global nature of the exchange and trading business. The benefits of successfully implementing the Maple vision will accrue not only to the Investors but to all participants in the capital markets. In this regard, we believe that the interests of the Investors in the most efficient operation of Canada's capital markets infrastructure, as the most significant users thereof, combined with the proposed governance structure intended to address any potential conflicts of interest, are consistent with the public interest and the interests of all users, and therefore we respectfully submit that the Transactions should be approved.

The exchange business is currently in a state of flux. The proposed acquisition of TMX Group by London Stock Exchange Group plc ("LSE") served as a catalyst for the Investors to examine alternatives that could lead to a better exchange model for Canada's capital markets. We believe that the existing Canadian model of a stand-alone, listings-focused exchange can be improved, and that recent developments in the exchange industry present an opportunity for growth. Our vision is to build on TMX Group's many strengths to create an integrated exchange and clearing group that will be well positioned to pursue growth opportunities through innovative new product development, expanded distribution and international acquisitions or joint ventures. A more efficient and stable integrated exchange and clearing group will serve the public interest, and will increase the global competitiveness of Canadian capital markets and market participants. Indeed, TMX Group has previously attempted to acquire CDS and TMX Group's Chief Executive Officer has publicly stated that he supports the integration of CDS into TMX Group.¹ In addition, the ownership of Canadian Derivatives Clearing Corporation ("CDCC") by Montreal Exchange Inc. ("MX") is an example, albeit on a smaller scale, of the benefits that can be achieved from vertical integration. Streamlined trading, clearing and settlement on a common technology platform results in cost savings that benefit all users, and the integration of risk management systems facilitates the oversight of risk exposures for the benefit of users and regulators.

We propose to implement Maple's vision through the integration of CDS and Alpha into TMX Group's operations. To be successful in this vision, Maple must respect and serve the core elements of Canada's vibrant capital markets, by responding to and serving the interests of users, including listed issuers, both large and small, and public investors, ensuring fair practices free from real or perceived conflicts of interest, and respecting appropriate risk management practices. The integrated operations will also need to generate efficiencies, enhance speed of execution, maintain low costs and foster easy access. We understand that fees must continue to be fair and reasonable; open access must be maintained in both trading and clearing; and decisions within the organizations must be taken on a reasonable basis and in the interests of fostering confidence in the capital

¹ We note that on September 2, 2011, LSE issued a press release confirming press speculation that LSE is in discussions to acquire LCH.Clearnet Group Limited, Europe's last independent clearing house.

markets. Simply put, if Maple fails to sustain fair practices and produce these efficiencies, our vision will not be fulfilled.

We believe that the existing regulatory framework has served TMX Group, its subsidiaries, including MX and CDCC, and Canada's capital markets well, and that maintaining this framework is important to the continued growth and stability of Canada's capital markets. Our proposal respects the existing regulatory framework, and the changes proposed below with respect to applicable recognition orders will reinforce that framework and the oversight of the Autorité des marchés financiers (the "**Autorité**") and its fellow securities regulatory authorities.

We and our thirteen Investors share an interest with all other users of Canada's capital markets infrastructure: building a more dynamic, sustainable and globally attractive marketplace.

This application has been divided into eight parts:

1. Applications
2. Maple's Vision and Key Benefits
3. Acquisition of TMX Group and Implications for MX
4. Acquisition of CDS and Implications for CDCC
5. Acquisition of Alpha
6. Share Ownership
7. Undertakings in Other Jurisdictions and Confirmation of Exemption Orders
8. Enclosures

1. Applications

The Maple Acquisition is a two step integrated transaction. The first step is a take-over bid to acquire a minimum of 70% and a maximum of 80% of TMX Group shares for \$50.00 in cash per share (the "**Offer**"). The second step is a plan of arrangement that provides TMX Group shareholders (other than Maple) with between 41.7% and 27.8% of the Maple shares (where between 70% and 80% of TMX Group shares are acquired under the Offer) in exchange for their remaining TMX Group shares (the "**Subsequent Arrangement**"). Upon completion of the Subsequent Arrangement, TMX Group will be a wholly-owned subsidiary of Maple.

In connection with the Maple Acquisition, Maple hereby makes application to the Autorité for orders, in each case conditional upon the take-up of TMX Group shares under the Offer:

- (a) recognizing Maple, as the proposed holding company parent of TMX Group, and recognizing TMX Group, as the holding company parent of MX, as an exchange, on the basis described herein;

- (b) recognizing Maple, as the proposed holding company parent of TMX Group, and recognizing TMX Group, as the indirect holding company parent of CDCC, as a clearing agency, on the basis described herein;
- (c) approving the beneficial ownership by Maple of more than ten percent of the voting securities of each of TMX Group and MX;
- (d) amending and restating the recognition order of MX to update the representations supporting the order to reflect the Maple Acquisition; and
- (e) approving the Investors and Maple acting jointly or in concert as beneficial owners of voting securities of TMX Group and of MX in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions.

Subject to the Autorité accepting Maple's proposal, as described in part 3 "*Acquisition of TMX Group and Implications for MX*" below, to extend the limitation restricting beneficial ownership of more than ten percent of the voting securities of Maple for the benefit of the Autorité, Maple also hereby makes application to the Autorité for orders:

- (a) approving the beneficial ownership by the Investors individually, as applicable, of more than ten percent of the voting securities of Maple for the transitional period between take-up under the Offer and completion of the Subsequent Arrangement; and
- (b) approving the Investors acting jointly or in concert as beneficial owners of the voting securities of Maple in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions.

In connection with the direct or indirect acquisition by Maple of CDS, Maple hereby makes application to the Autorité for an order, conditional upon the acquisition of CDS, amending and restating the recognition order of CDS to reflect the changes as proposed herein and as agreed by Maple and the Autorité, including recognizing Maple, as the proposed parent holding company of TMX Group, and recognizing TMX Group, as the proposed direct or indirect holding company parent of CDS, as a clearing house on the basis described herein.

We are also making applications to the Ontario Securities Commission (the "**OSC**"), the Alberta Securities Commission (the "**ASC**") and the British Columbia Securities Commission ("**BCSC**") with respect to recognition orders in those jurisdictions. As described more fully in part 7 "*Undertakings in Other Jurisdictions and Confirmation of Exemption Orders*" below, we hereby seek such amendments to the exemption orders previously granted by the Autorité in respect of such recognition orders to update the representations supporting such exemption orders.

2. **Maple's Vision and Key Benefits**

Our vision is to create an integrated group that provides trading, clearing, settlement and depository services for a broad array of financial instruments traded in Canada. The Maple Acquisition and the concurrent or subsequent Alpha and CDS Acquisitions represent a unique opportunity to capitalize on TMX Group's strengths to build this more efficient integrated exchange and clearing group – and by doing so to secure and enhance the future growth and ongoing integrity of the Canadian capital markets. The resulting integrated exchange and clearing group will: (i) make Canada's capital markets infrastructure more stable and robust; (ii) be better positioned to pursue growth opportunities through innovative new product development and expanded distribution; (iii) increase the global competitiveness of Canada's capital markets and market participants; and (iv) be in a stronger position to pursue international acquisitions and joint ventures.

The proposed integrated exchange and clearing group has proven itself in other jurisdictions as a stable and robust system, in particular during the market crisis of 2008. It is important to note, however, that this opportunity is uniquely available to Maple by virtue of the significant ownership interests of certain of the Investors and their affiliates in Alpha and CDS and a common desire by the Investors to make TMX Group a more efficient and dynamic entity.

The Maple Acquisition will also ensure that the business of TMX Group will continue to be responsive to the distinctive needs of capital market participants in Canada, with a particular ongoing commitment to maintain the unique characteristics of Canada's venture, resources and derivatives markets, as well as to maintain its position as the leading global exchange for resource companies. Our business model is aimed at building on TMX Group's position as the marketplace where global mining, oil & gas, and public venture companies list and trade. Additionally, we will remain focused on supporting the unique needs of small- and medium-sized enterprises, which represent the backbone of the Canadian economy, as well as Canada's derivative and energy markets.

TMX Group already competes globally from a position of strength and, as described below, the completion of the Transactions would enhance that position.

Key Benefits

Enhanced system integrity and a simplified Canadian-controlled solution for derivatives clearing

The creation of an integrated exchange and clearing group should provide for greater control by Canadian regulators over systemic risk and the solutions specific to the Canadian context that are in keeping with the rapidly evolving international regulatory environment. Our vision is to provide improved and easier management of systemic risk by providing more transparency for operators and regulators end-to-end across the trading

chain thereby permitting better counterparty risk management. Risk may be more effectively identified and managed within an integrated organization for clearing and settlement that is local and transparent.

We believe market participants will, over time, benefit from having a central counterparty able to provide clearing of Canadian dollar-denominated fixed-income repurchase agreements (or repos), MX listed and over-the-counter fixed-income and equity derivatives and through net margin determination, whereby the central counterparty calculates the net capital required by each market participant for all of its outstanding trading positions across all asset classes. Following the acquisition of CDS, the integrated technology infrastructure that we expect will ultimately result from the integration of CDS' and CDCC's technology platforms will streamline market participants' risk management technology requirements for Canadian dollar denominated products.

We believe that the vertically integrated model will be an improvement over the status quo from the perspective of both provincial and federal regulators. Closer integration between the trading, clearing and settlement of equities through the common ownership of TMX Group and CDS will improve information flow and reporting capabilities, which will benefit market participants and regulators.

We intend to integrate the information flow and risk management systems of CDS and CDCC. This will allow market participants who trade both equities and derivatives to net their aggregate positions and better understand changing exposures, positions and margin requirements. Currently, a brokerage house that trades both equities and derivatives cannot see its net position on one computer screen. We intend to change that. Streamlining this information flow and providing for cross margining across different asset classes will benefit both market participants and regulators.

In response to the global financial crisis, leaders from the G20 countries agreed to improve the functioning, transparency and regulatory oversight of the over-the-counter derivatives market. As part of the response, the G20 countries have committed to move clearing of standardized derivatives to a central counterparty clearing system. Additional incentives to move to a central counterparty clearing system exist in the form of significantly greater capital requirements with respect to non-centrally cleared over-the-counter derivatives under the Basel III regulatory standard on bank capital adequacy and liquidity, which are scheduled to be implemented in January 2013. Canadian financial institutions are developing a solution for the Canadian dollar-denominated fixed-income repo market in conjunction with CDS and CDCC. The integration of CDS and CDCC would facilitate this initiative as all the required functionalities (clearing, settlement and the central counterparty) would be found under one umbrella. Although the focus is currently on the fixed-income repo market, the integrated platform could also be used for central counterparty clearing of other products, such as over-the-counter derivatives on fixed-income and equity securities, thereby reinforcing Canada's response to the G20 commitment. If successfully implemented, volume brought by these additional products

would add scale which will benefit industry participants through reduced costs, improved capital management and the potential for cross-margining across asset classes, a key to maintaining liquidity in the capital markets given heightened collateral requirements under Basel III. The capital efficiency achieved by more accurately reflecting an enterprise's economic risk profile is significant. As an example, in connection with cross-margining interest rate futures cleared by New York Portfolio Clearing with broker dealer repos cleared by Fixed Income Clearing Corporation in the United States, NYPC is targeting 15-30% improvement in capital efficiencies for its customers.²

The benefits of an integrated exchange and clearing group as proposed by Maple would become more important to capital market users as global regulatory constraints relating to clearing and reporting of over-the-counter derivatives evolve. In this context, an integrated CDS and CDCC platform could provide the functionalities and business solutions required by market participants to comply with new over-the-counter clearing standards. Such functionalities will include risk management tools which will provide a global view of all positions held at CDS and CDCC at any point in time to support enhanced risk management at the user level. Moreover, the creation of a Canadian based publicly traded integrated exchange and clearing group facilitates greater control by Canadian financial regulators, institutions and market participants over the solutions specific to the Canadian context and in keeping with a rapidly evolving regulatory environment.

In addition, the Maple ownership proposal for CDCC may accommodate the range of options currently being considered by the Canadian Securities Administrators Derivatives Committee discussed in CSA Consultation Paper 91-402 *Derivatives: Trade Repositories*. The Derivatives Committee stated that there may be concerns with not having a central collector and aggregator of Canadian derivatives data in Canada. A central derivatives repository based and managed in Canada could permit more effective regulatory oversight than would be the case if the repository were not based and managed in Canada. The role played by CDCC today and its future direction may represent an important response to the current and emerging issues in both the exchange traded and over-the-counter derivatives markets. Maple's proposal for the development of CDCC may assist in addressing Canadian concerns for Canadian dollar denominated products in the derivatives marketplace.

Given the size and scale of Canada's capital markets, the formation of a Canadian based integrated exchange and clearing group could be one means by which to achieve the regulatory and commercial goals associated with the over-the-counter derivatives market in Canada for Canadian dollar denominated products and enhancing ongoing innovation as that market, and the global regulatory environment, continues to evolve.

² New York Portfolio Clearing (2011) "Frequently Asked Questions" www.nypclear.com/FAQs.

Retention of regulatory oversight over a critical element of Canada's capital markets and economy

The Canadian regulatory framework has been fundamental to TMX Group's success, particularly with respect to small- and medium-sized businesses, enabling it to be locally responsive through, among other things, listing standards which foster regional growth. Under the Maple Acquisition, we propose that Maple and TMX Group will be recognized and regulated by the Autorité and OSC. In addition, TSX Inc. ("TSX") will continue to be subject to full oversight of the OSC, TSX Venture Exchange Inc. ("TSX Venture") will continue to be subject to full oversight by the ASC and BCSC, Natural Gas Exchange Inc. ("NGX") will continue to be subject to full oversight by the ASC, CDS will continue to be subject to full oversight by the OSC and the Autorité, and CDCC and MX will continue to be subject to full oversight by the Autorité, in each case as they are today. This general Canadian regulatory overlay applicable to the operations of TMX Group covers all aspects of operations, from fees to access, and we believe that maintaining this overlay is important to the continued growth of Canadian businesses and the continued growth and stability of Canada's capital markets.

Ten percent share ownership restriction

Under the current regulatory framework, no person or company or combination of persons or companies acting jointly or in concert may, without the prior approval of the Autorité, beneficially own or exercise control or direction over more than 10% of the voting securities of TMX Group (the "**Share Ownership Restriction**").³

We believe that the 10% ownership restriction is important to ensuring that TMX Group and its operating exchanges, including MX, may continue to operate in a manner consistent with the public interest, free from undue influence from a single entity or group of joint actors and, accordingly, we propose that the Share Ownership Restriction be extended to apply to the voting securities of Maple.

Upon completion of the Transactions, the Investors will no longer be acting jointly or in concert with respect to Maple, TMX Group or MX. None of the Investors is or will be an affiliate or associate of another Investor or Maple, TMX Group or MX. In addition, following completion of the Transactions, the Investors will have no agreements, commitments or understandings with respect to the acquisition of securities of Maple, TMX Group or MX or the voting of any such securities. In particular, while certain

³ Pursuant to its undertakings to the Autorité dated April 9, 2008, TMX Group agreed that it is subject to the restriction that no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over more than 10 per cent of any class or series of TMX Group's voting shares without the prior approval of the Autorité. Terms used such as "beneficially own" have the meanings given to those terms in the Securities Act (Ontario) (the "**OSA**") and "acting jointly or in concert" is to be interpreted in a manner consistent with the OSA. In addition, these restrictions have been incorporated into the articles of TMX Group. The same share ownership restrictions are also in effect in favour of the OSC.

provisions of the acquisition governance agreement entered into by the Investors in connection with the Transactions (as amended and restated on June 10, 2011, and as further amended on June 22, 2011, the "**Acquisition Governance Agreement**") will survive the completion of the Transactions, none of these provisions relates to the acquisition or voting of securities of Maple, TMX Group or MX. Rather, the provisions of the Acquisition Governance Agreement that will survive completion of the Transactions are limited to non-competition obligations (as described further under part 5 of this application), hold periods on resales of Maple shares and orderly resale obligations. The Investors have no shareholders' agreement and, while certain Investors (or an affiliate thereof which will own Maple shares) will enter into separate nomination agreements with Maple that will entitle each of them to individually nominate one director to the board of Maple, this nomination right is an individual right of each such Investor (or such affiliate) and there is no obligation, agreement, commitment or understanding that any other Investors will vote their Maple shares in favour of such nominee. In the event of some extraordinary transaction or other matter that requires a vote of shareholders, there is no agreement, commitment or understanding among the Investors as to how they must vote. The Investors are a diverse group, and each will be free to decide on all matters relating to Maple according to its own views and interests.

In addition, although the Investors have co-operated in the preparation of a high-level business plan for Maple, which describes the proposed corporate governance structures and some broad strategic objectives, much more detailed budgets and strategic and operational business plans will be prepared post-closing by the management of TMX Group, CDCC, CDS and Alpha, under the supervision of the board of directors of each company. The Investors are content that these matters will be dealt with in the ordinary course by management and by the applicable board of directors. In such circumstances, Maple submits that the Investors will not be acting "jointly or in concert" following the completion of the Transactions even with an expansive definition of that term.

Preservation of TMX Group's existing governance structure

Following completion of the Maple Acquisition, the governance structure of the board of directors of Maple (the "**Maple Board**") and its committees will represent a fair balance between the diverse interests of capital market participants across Canada and those of its shareholders. The composition of the Maple Board will continue to comply with the requirements of the existing recognition orders and undertakings of TMX Group and its subsidiaries on a consolidated basis. At least half of the Maple Board will be independent, at least 25% of the directors will be residents of Québec at the time of their election or appointment, and at least 25% of the directors will have expertise in, or be associated with, the Canadian public venture market. In addition, we propose that at least 25% of the directors will have expertise in derivatives and that at least one director will be chosen from Canada's independent investment dealer community. Maple's strategic vision and direction will be set under the direction of a Canadian-based board of directors.

The Maple Board will be replicated at each of TMX Group, MX, TSX and TSX Venture to ensure consistency of governance at each of these exchanges.

Support for continued growth in Canada

Maple will invest in the continued growth of TMX Group's derivatives trading and clearing business and will fulfill the undertakings given by TMX Group to the Autorité in 2008, including the commitment to keep TMX Group's derivatives trading and clearing business in Montréal. Under Maple, MX will continue as the exclusive business unit responsible for exchange traded derivatives and related products.⁴ In addition, a key business priority for Maple is the development of new over-the-counter derivatives products and if Maple establishes an exchange or clearing agency for trading or clearing derivatives that are presently over-the-counter derivatives, that exchange or clearing agency will be based in Montréal. MX, and any such future business unit responsible for the creation and implementation of Maple's strategic plan with respect to derivatives and derivatives related products, along with annual operating plans and budgets for that business unit, and the mind and management thereof, will remain headquartered in Montréal. MX will continue to export its expertise in the trading and clearing of derivatives, and such international activity will be directed from Montréal. The most senior executive officer with direct responsibility for the derivatives business unit, and the executives responsible for managing the development and execution of the policy and direction for that business unit sufficient to permit such senior executive to execute his or her responsibilities, will be located in Montréal.

Maple is committed to continuing to foster the growth and development of TSX Venture and to responding to the unique needs of small and medium-sized enterprises. We believe that small and medium-sized enterprises foster job growth and regional development and represent a key component of the Canadian economy. Under Maple, TSX Venture will continue to provide meaningful access to capital for small- and medium-sized enterprises in a manner that is locally responsive to regional capital markets' needs through operational centers of excellence in Calgary and Vancouver. Small and medium-sized enterprises will also remain important to the dynamic of the Canadian exchange structure as the graduation of issuers from TSX Venture to TSX provides a steady source of new listings for TSX.

The head office of TMX Group and associated finance and technology jobs will remain in Canada, and the key policies and business strategies will continue to be set in the office of the Chief Executive Officer of Maple for the benefit of TMX Group and Canadian capital

⁴ For clarity, all references to derivatives and related products in this application pertain to equity and fixed income derivatives and exclude any derivatives and related products of TMX Group or any affiliate thereof not under the direct responsibility of MX on the date hereof including, without limitation, derivatives and related products of NGX, Shorcan Brokers Limited ("SBL") and Shorcan Energy Brokers Inc. ("SEB") and the clearing and settlement thereof. Maple does not propose that NGX, SBL, SEB or their products and services would fall within the scope of responsibility of MX or any new business unit with respect to derivatives and related products.

markets. The Maple Acquisition will preserve substantially all of TMX Group's senior management under the direction of its current Chief Executive Officer, as well as high-tech, finance and other capital market jobs ancillary to the presence of a leading exchange based in Canada.

An integrated platform providing additional growth opportunities

Under Maple, TMX Group will benefit from additional growth opportunities associated with providing the clearing and settlement of fixed income repos and, in the longer term, over-the-counter equity and fixed income derivatives. In addition, we anticipate that revenue synergies will be achieved through the enhanced positioning of the combined TMX Group and CDS for the clearing of listed and over-the-counter products, as well as through the development of innovative products utilizing the integrated platform. Under Maple, we envision growing CDS and CDCC substantially by migrating the bilateral over-the-counter derivatives market into CDCC and CDS over time. The result is the transition of a large part of the capital markets from an unregulated over-the-counter environment into entities regulated by the Autorité and the OSC. Under Maple, the role of CDS and CDCC will be expanded and the regulatory supervision of the Autorité and the OSC will be enhanced.

Support for high quality jobs in Canada which are dependent on the businesses of TMX Group's exchanges

The exchanges operated by TSX and TSX Venture are the top exchanges for public metals and mining and oil and gas companies to list their stocks and raise capital. Capital raising activities support high quality professional jobs including financial, legal and accounting professionals and related jobs. The Maple Acquisition will better enable Canada to retain its concentration of world class talent and remain the number one choice for resource listings globally.

A more diversified, efficient and integrated exchange and clearing group

CDS' clearing, settlement and custodial business will add stability and diversification to TMX Group's businesses. In addition, we believe that the creation of a vertically integrated trading and clearing exchange for equities, bonds, energy products and derivatives in both exchange traded and over-the-counter markets, a proven and highly valued business model which currently exists at Deutsche Börse, BM&F Bovespa and the Australian Securities Exchange, would dramatically broaden TMX Group's business activities, generate substantial growth opportunities, and create significant synergies (including cost rationalization) for the benefit of TMX Group, its shareholders and Canada's standing as a global financial centre of excellence.⁵

⁵ Set out at Appendix A to this application are overviews of integrated exchanges and clearing groups which currently exist at Deutsche Börse, BM&F Bovespa and the Australian Securities Exchange.

Meaningful cost synergies

We are confident that the combination of TMX Group with Alpha and CDS will result in meaningful cost synergies. While Maple has not been able to perform a detailed estimate of likely synergies because it has not had access to customary due diligence, we believe these synergies will be substantial and result from, among other things: (a) the closer integration between CDS' equities clearing, settlement and depository operations and the cash equities operations of TMX Group; (b) the closer integration between the clearing operations of CDS and CDCC; and (c) the integration of CDS' and CDCC's information technology platforms, initially using straight through processing. Additional information about the types of synergies likely to be realized are addressed in more detail below.

Guiding Principles

Our commitment to a successful and competitive integrated exchange and clearing group will be guided by four key principles.

Improved risk management

Prudent risk management will be our top priority to ensure that systemic risk is well managed. We will improve on existing tools and establish new tools for ourselves, for market participants, and for regulators to enhance risk management and to minimize risks to Canada's capital markets. Our vision for an integrated exchange and clearing group will lead to an end-to-end view over the trading value chain which can be used to closely monitor risk throughout the system and establish early warning triggers to quickly identify risks and prevent their escalation.

We commit to a constant dialogue with our regulators to ensure full transparency regarding risk management practices, and to provide data streams to regulators to permit direct insight into, and monitoring of, systemic risk. We believe this level of transparency will represent a material benefit to the stability of Canada's capital markets and a significant step forward in the protection of the public interest.

A customer-centric business model

We will apply equitable pricing for our products and services – there will be unit pricing at CDS Clearing for clearing, depository and settlement services such that all participants will pay the same price for the same service, there will be no discrimination in trading pricing between inter-listed and non-inter-listed securities, and so long as Alpha continues to operate as an alternative trading system (an "ATS") Alpha data will continue to be available on an unbundled basis separate and apart from TMX data. Importantly, our fees will continue to be subject to regulatory review.

We will maintain fair and equitable access to our products and services. Following the acquisition of Alpha, we expect that Alpha and/or TMX Select will continue to operate as ATSSs. Moreover, at CDS and CDCC we will build upon the existing advisory committees

comprised of market participants to provide direct access for market participants and ensure responsiveness to their needs for new and improved products and services.

Independent, effective governance

We are committed to maintaining the highest standards of corporate governance and ensuring that the boards of Maple and its applicable subsidiaries, including MX and CDCC, cause exchange and clearing functions to be carried out in a manner consistent with the public interest. The composition of the boards of Maple and its operating exchanges, including MX, will ensure fair, meaningful and diverse representation, including appropriate representation of independent directors and a proper balance among the interests of the different persons and companies using TMX Group's services and facilities. In particular, we believe that balancing independent directors with knowledgeable directors who understand the industry and have an interest in the successful and efficient operation of the business, and the evolution thereof to address the needs of the Canadian capital markets, is important to ensuring best operating practices for a recognized exchange. Our proposed governance structure accomplishes this goal while maintaining appropriate checks against any one shareholder or group of shareholders exercising undue influence.

The boards of CDS and CDCC will have a number of overlapping directors and will operate separately from the board of Maple. Our proposed governance arrangements will ensure fair and meaningful representation on those boards including appropriate representation by directors who are persons independent of Maple with relevant subject matter expertise. In addition, we propose to build upon existing market participant advisory committees (by establishing or maintaining committees with respect to each of the equity, fixed income, and derivatives industries as well as a strategic development committee and a risk advisory committee) so that market participants will have a direct voice in making recommendations relating to the products and services of CDS and CDCC to ensure that they are responsive to the market's needs.

A commitment to market innovation and competition

We will maintain an open architecture for clearing infrastructure to allow competing exchanges and ATSs to connect thereto. In addition, we will establish board committees at CDS and CDCC that are responsible for identifying and resolving conflicts of interest and responsible for ensuring fair and equitable resource allocation to product development with competing exchanges and ATSs.

A More Robust and Stable Model

In summary, we believe that a vertically integrated exchange and clearing group will be more robust and stable than the status quo in Canada for a number of reasons:

- (a) Revenue Diversification. The volatility of earnings for integrated exchanges is typically lower than for non-vertically integrated exchanges, in particular during crisis periods, because of the broader diversification of revenues into clearing, settlement and custodial services.
- (b) Improved Risk Management. The vertical integration will improve risk management as risk will be better monitored and managed when contained in a single integrated structure. An integrated model would permit regulators and participants to have a broader view into the risk profile of participants through a single entry-point and better reporting of risk positions. The resulting enhanced understanding of risk profile will inherently lead to greater stability by enabling regulators to intervene earlier in risk situations to prevent broader contamination. In addition, the integration of CDS and CDCC would facilitate the consolidation of risk positions to increase transparency, and to provide more effective collateral management opportunities through cross-margining across multiple asset classes.
- (c) Product Development. An integrated CDS/CDCC will provide the best opportunity for clearing OTC derivatives in Canada. It will also create additional opportunities for product innovation and strategic development, for example in respect of collateral management products and high end custody services.
- (d) Increased Scale. The vertical integration will result in increased scale of operations. This will enable cost savings from duplicated overhead costs. It will also reduce the risks that a significant portion of the clearing and settlement functions, particularly in respect of the clearing of OTC derivatives, would be conducted outside of Canada. Similarly, increased scale will reduce the likelihood of an acquisition of Maple by a foreign acquiror which, in turn, will enhance regulatory oversight and reduce the risks of a loss or diminution of regulatory jurisdiction by Canadian regulators.
- (e) Straight-Through Processing. Vertical integration allows easier straight through processing which will assist in reducing inter-operational errors and complexities.

We do not believe that any additional concentration that arises as a result of the proposed Transactions is detrimental to the stability and robustness of the market infrastructures in Canada. For example, risk in the clearing functions of CDS and CDCC will continue to be ring fenced from Maple's other operations to avoid any spill-over of risk.

We expect that efficiencies will be achieved for the benefit of shareholders, the brokerage community and public investors in two broad categories by virtue of the proposed Transactions. Just as there are synergies from operating derivatives trading and clearing together through MX and CDCC, we believe there are synergies to linking within the same organization both the trading and clearing of cash settled equities by better integrating TSX and TSX Venture with CDS. Closer integration of computer systems, for example, will materially improve information flow and reporting capabilities to everyone's benefit.

We also expect that improvements can be achieved through the integration of CDCC and CDS. While the clearing of cash settled equities is fundamentally different from clearing derivatives contracts, there is complementary expertise within these organizations with respect to risk management systems, technology solutions, capital deployment and product development that, when combined, will make the aggregate organization stronger than CDS and CDCC operating independently.

Indeed, one of the most important benefits of a single integrated exchange and clearing group is that it will permit more efficient and effective development of needed products and services in Canada's capital markets infrastructure by eliminating impediments to cooperation among key components of such infrastructure which currently exist as a result of the separate ownership and management of TMX Group and its subsidiaries (including CDCC) on the one hand and CDS on the other. The improved cooperation and alignment of interests that can be expected to result from common ownership may be expected to reduce product development time and costs by housing the required expertise under the same management and ownership umbrella.

3. Acquisition of TMX Group and Implications for MX

Maple was formed on April 28, 2011 and has not carried on any material business prior to the date hereof other than in connection with matters related to the proposed Transactions. As a result of the Maple Acquisition, Maple will become a reporting issuer in jurisdictions across Canada. Upon completion of the Maple Acquisition, Maple will be the holding company parent for TMX Group and its exchanges and related businesses. Maple will not carry on any active business operations; the business activities of TMX Group will continue to be carried on by TMX Group and through TMX Group's subsidiaries. Maple will be the continuing public company and TMX Group will cease to be a reporting issuer. Maple's corporate office will be located with the corporate office of TMX Group.

Maple is making an application to be recognized as an exchange, and for TMX Group to be recognized as an exchange, on a basis consistent with the OSC's recognition of TMX Group, but in the context of being direct or indirect holding company parents of MX.

Corporate Governance

Maple is committed to maintaining the highest standards of corporate governance and ensuring that the Maple Board causes exchange functions to be carried out in a manner consistent with the public interest. As such, Maple will adopt for itself TMX Group's governance framework, including substantively identical board and committee mandates. Maple's governance arrangements will ensure fair, meaningful and diverse representation on the Maple Board and its committees, including appropriate representation of independent directors and a proper balance among the interests of the different persons and companies using TMX Group's services and facilities.

Composition of Board of Directors

The Autorité and other Canadian securities regulatory authorities have recognized the need for a strong and effective governance structure for stock exchanges that operate in Canada and, through recognition orders and undertakings, have previously mandated an effective governance structure for TMX Group and its operating exchanges, including MX. The boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be comprised of the same individuals to ensure consistency of governance at each of the exchanges. As such, the Maple Board will respect the recognition orders of TMX Group, TSX, TSX Venture and MX on a consolidated basis, including:

- (a) at least 50% of the directors will be "independent" within the meaning of s. 1.4 of NI 52-110 and the currently existing independence standards adopted by the board of directors of TMX Group;
- (b) at least 25% of the directors will be residents of Québec at the time of their election or appointment; and
- (c) at least 25% of the directors will be persons that have expertise in or are associated with the Canadian public venture capital markets.

In addition, we propose that at least 25% of the directors of MX will be persons that have expertise in derivatives. This pool of directors would be expected to include directors with expertise in derivatives trading, derivatives clearing, and risk management. We believe that this commitment will provide the derivatives business with significant representation while permitting Maple to ensure that its board of directors is as strong and knowledgeable as it can be, in each of the areas it requires expertise, in order to make necessary strategic decisions and guide the company accordingly. By virtue of the mirror board concept, these persons would also be directors of Maple, TMX Group, TSX and TSX Venture.

Finally, we will commit that at least one member of the Maple Board will be chosen from Canada's independent investment dealer community (i.e., participants who are not affiliated with Canadian Schedule I banks) and that the chair of the Maple Board will be an independent director.

The existing requirements have proven effective at ensuring a strong and independent board at TMX Group with diverse representation. We believe, however, that the presence of a minority of directors drawn from both participants affiliated with Canadian Schedule I banks (pursuant to the nomination agreements described below) and the independent investment dealer community (pursuant to the new commitment), each of whom will be knowledgeable of the industry and have an interest in the successful and efficient operation of TMX Group's businesses and the evolution thereof, will serve to enhance the ability of the Maple Board as a whole to provide effective oversight of the operations of TMX Group, ensure that business and regulatory decisions are in keeping with the public interest, and are not unduly influenced by any one segment of capital markets participants. The nominees of the participants affiliated with Canadian Schedule I banks on the Maple Board will be a minority of the Maple Board and will be balanced by the "buy side" nominees and other directors. The board composition as a whole will ensure a diversity of voices across the capital markets spectrum.

The Maple Board will adopt the standards of TMX Group with respect to the selection of directors and will take reasonable steps to ensure that each director of Maple, TMX Group, TSX, TSX Venture and MX is a fit and proper person and that the past conduct of each director affords reasonable grounds for belief that the director will perform his or her duties with integrity.

Initially, the boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be comprised of 15 directors selected as follows: 4 nominees of pension fund Investors (Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board), 4 nominees of the bank-owned dealer Investors, 4 additional independent individuals (potentially including representatives from the current board of directors of TMX Group), one representative of Canada's independent investment dealer community, the Chief Executive Officer and the independent Chair. Individuals are being selected for these boards who have the appropriate skill sets and stature within the community and to ensure the boards meet all existing regulatory requirements (including requirements for Québec residents, derivatives expertise and public venture experience). Maple believes the boards will appropriately balance the interests of the users of the exchanges, including the bank-owned dealers, and other owners that are entirely at arm's length from the exchanges.

In selecting these individuals, Maple will adopt and comply with TMX Group's existing specialized definition of "independence". Under this existing standard, executives of dealer Investors, who are "participating organizations", will not be considered independent directors. Under this standard, the initial boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will have eight independent directors: three of the four pension fund nominees (AIMCO's nominee, George Gosbee will not be considered independent as he is President and Chief Executive Officer of a "participating organization"), four additional independent directors (potentially including independent directors from the

current board of directors of TMX Group) and the independent chair. Maple is presently undertaking a process to identify an independent chair and that person will not be a nominee of an Investor nor will he or she be an existing director of TMX Group.

As described in part 4 "*Acquisition of CDS*" below, CDS and CDCC will have separate governance procedures.

Board Committees

The Maple Board will establish committees of the board with mandates substantively identical to the Finance and Audit Committee, Governance Committee, Human Resources Committee and Public Venture Finance Committee presently in place at TMX Group. In brief:

- **Finance and Audit Committee** – This committee will be comprised of at least four directors, all of whom will be independent. It will be charged with, among other things, assisting the board in fulfilling its oversight responsibilities regarding (a) the integrity of the corporation's financial statements, (b) the internal control systems of the corporation, (c) the external audit process, (d) the internal audit and assurance process, (e) business planning, (f) investment opportunities and the raising of funds by the corporation, (g) the administration, financial reporting and investment activities of the corporation's pension plan(s), and (h) the corporation's compliance with legal and regulatory requirements. This wholly independent committee will also be charged with assisting the board in fulfilling its risk management responsibilities, including reviewing and assessing Maple's risk management policies and procedures with regard to the identification of principal risks and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Each of the Finance and Audit Committees at Maple, TMX Group, TSX, TSX Venture and MX will be comprised of the same individuals and, as such, will be well positioned to best understand such risks and any interrelationship thereof.
- **Governance Committee** – This committee will be comprised of at least five directors, all of whom will be independent. It will be charged with providing the Maple Board with recommendations relating to corporate governance in general, including, without limitation: (a) all matters relating to the stewardship role of the board in respect of the management of the corporation, (b) board size and composition, including the candidate selection process and the orientation of new members, (c) board compensation, and (d) such procedures as may be necessary to allow the board to function independently of management and non-independent directors. This committee will design and oversee compliance with policies associated with an efficient system of corporate governance, including policies relating to conflicts of interest.

- **Human Resources Committee** – This committee will be comprised of at least four directors, all of whom will be non-management. It will be established to take steps on behalf of the Maple Board as are necessary regarding: (a) appointing and compensating executive officers and approving succession plans for the Chief Executive Officer and other executive officers, (b) approving and reporting to the board in respect of human resources policies for executive officers, and (c) overseeing the administration of compensation and benefits plans.
- **Public Venture Market Committee** – This committee will be comprised of at least four directors, all of whom will be non-management. It will be established to advise and make recommendations to the board with respect to all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the corporation and/or TSX Venture in relation thereto.

At MX, the board of directors will also maintain a special committee responsible for MX's regulatory division. Members of the special committee will be appointed by MX's board, and a majority of the special committee members will be residents of Québec satisfying the same independence requirements as described above. In addition, Maple commits that at least 25% of the special committee of MX will be composed of directors who have expertise in derivatives. The mandate for the special committee will be substantially identical to the special committee mandate presently in place at MX.

Selection of Future Directors

The Governance Committee of the Maple Board, comprised of at least five directors, all of whom will be independent, will be charged with nominating directors. The Governance Committee will review on an ongoing basis the composition of the Maple Board, including the current strengths, skills and experiences on the Maple Board and its strategic direction. The Governance Committee will be charged with identifying any gaps in the Maple Board's composition and seeking to fill those gaps. Qualities such as integrity, good character and high regard in his or her community or professional field will always be basic criteria for Maple Board members. The Governance Committee will also consider independence, professional or board expertise, and experience in a number of areas including capital markets, venture exchange markets, derivatives, energy, clearing, technology, public companies, sales and marketing, corporate governance, human resources, settlement, broker/dealers and international dealings. As well, representation from geographic regions relevant to Maple's strategic priorities and Québec residency requirements will be taken into consideration. The objective will be to ensure the Maple Board's composition provides the appropriate mix of skills and experience to guide the strategies and business operations of Maple and TMX Group's exchanges, including TSX, TSX Venture and MX. The Governance Committee will be authorized to retain outside consultants to assist in conducting searches for appropriate nominees. In addition, the Governance Committee will be charged with maintaining a list of potential director candidates for its consideration, to be reviewed annually. Independent directors may also

be proposed by Investors as their nominees pursuant to the nomination agreements described below. Nominees brought forward pursuant to the nomination agreements will be subject to the approval of the Governance Committee.

Nomination Agreements

Prior to the initial take-up of TMX Group shares under the Offer, Maple will enter into separate nomination agreements with each of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (or, in each case, an affiliate thereof) pursuant to which each such Investor (or its applicable affiliate(s)) will have the right to nominate one director for election to the Maple Board. Each Investor will ensure that its nominee has the appropriate skills to serve on the Maple Board and has the full support of the nominating Investor. The persons nominated to the board of Maple pursuant to the nomination agreements will be subject to, and will be expected to comply with, their fiduciary duties owed to Maple and must act in the best interests of Maple regardless of any personal affiliations with the nominating Investor or any other corporations.

Following completion of the Maple Acquisition, to ensure compliance with applicable recognition orders and to permit the Maple Board to be satisfied that any nominee proposed pursuant to a nomination agreement is a fit and proper person, such nominee will be subject to the approval of the Governance Committee of the Maple Board, acting reasonably in the discharge of its mandate. The Governance Committee will have the power to reject a proposed nominee, in which case the Investor would be required to propose an alternate nominee.

The nomination agreement will terminate in respect of an Investor (or its applicable affiliate(s)) at the earlier of (i) the sixth anniversary of the completion of the Maple Acquisition and (ii) such time as such Investor (or such affiliate(s)) ceases to own that number of common shares of Maple (or any successor entity resulting from the combination of Maple and TMX Group) equal to 5% of the total issued and outstanding common shares of Maple as at the date of, and after giving effect to, the acquisition of 100% of the shares of TMX Group. The nomination agreement will be personal to such Investor (or its applicable affiliate(s)) and non-transferable (other than to affiliates). Maple (and any successor entity) will take into account the rights of the Investors (or their applicable affiliate(s)) party to the nomination agreements in connection with ensuring its compliance with applicable recognition orders.

The nomination agreements are not among the Investors as there is no connection between an Investor's individual nomination right and any other individual Investor. There is no agreement, commitment or understanding among the Investors to vote in favour of any other Investor's nominee and the election of each such nominee will remain subject to

consideration and approval by Maple's shareholders at any meetings at which directors of Maple are to be elected.

Public Interest and Duties to Maple

As described above, the composition of the Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will include independent directors comprising at least half of the board and will reflect a balance among the interests of the different persons and companies using TMX Group's services and facilities. The Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will benefit from the inclusion of individuals who have an interest in the successful and efficient operation of TMX Group's businesses and its evolution. We believe that the composition of the Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will enhance the ability of Maple and its subsidiaries to carry out their exchange functions in a manner consistent with the public interest while inherently addressing any perception of potential conflicts of interest by balancing the participation of nominees drawn from a cross section of users of TMX Group's services with highly respected and skilled independent directors.

With respect to directors individually, Maple will adopt a board code of conduct substantially identical to TMX Group's. Each director, including the directors nominated pursuant to the nomination agreements, will be expected to:

- (a) act honestly and in good faith with a view to the best interests of the corporation;
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (c) exercise his or her director's powers for the purpose for which they were intended;
- (d) ensure that the director's personal interest and his or her duty to the corporation are not brought into conflict;
- (e) ensure that the director does not obtain or receive, directly or indirectly, a personal profit, gain or benefit as a result of his or her relationship with the corporation; and
- (f) exercise his or her director's powers having regard to the public interest mandate of a recognized exchange.

The board code of conduct will also address situations where a director of Maple (and/or its applicable subsidiaries) may find himself or herself with a potential conflict of interest. Each director will be expected to furnish annual declarations of interest and the corporate

secretary will have the responsibility for monitoring conflicts. In addition, each director will be expected to self-identify conflicts of interest or potential conflicts of interest which he or she may have from time to time. The Governance Committee will at the request of a director or the corporate secretary, and may on its own initiative, consider whether a director is in a material conflict of interest. In circumstances where a director has a material conflict of interest that director will not participate in the decision taken by the board or committee with respect thereto.

The possibility of perceived conflicts of interest is also mitigated through the composition and mandate of the board committees. For example, the Finance and Audit Committee will be comprised entirely of independent directors and will be charged with overseeing risk management and the annual business plan as well as ensuring compliance with all applicable legal and regulatory requirements (including the requirements of the recognition orders applicable to Maple and its subsidiaries). In addition, the Governance Committee will be comprised entirely of independent directors and will be charged with overseeing procedures to allow the board to function independently of management and non-independent directors, including policies relating to conflicts of interest.

Maple believes that the proposed ownership structure for Maple does not increase the risks of real or perceived conflicts of interest at the operating exchanges. Following the acquisition of TMX Group by Maple, the four bank-owned dealers that are Investors will have nomination rights with respect to only four out of 15 directors on the Maple Board. These directors will have no participation at the management level of an exchange. To the extent the board has to consider an issue that raises a conflict for a nominee, that nominee would abstain from the vote, all in the normal fashion and based on established conflict of interest standards and procedures. The board will be made up of experienced directors and the Governance Committee has a mandate to monitor conflicts, all of which Maple believes will be sufficient to address any real or perceived conflict.

Responsive Governance for all Stakeholders

Maple intends to maintain a director qualification policy which will provide that, in an uncontested election⁶ of directors at its annual shareholders' meeting, any nominee, including those put forward pursuant to a nomination agreement, who receives a greater number of votes "withheld" than votes "for" will tender his or her resignation to the Maple Board promptly following such annual meeting. The Governance Committee would be expected to recommend that the Maple Board accept the resignation, except in extenuating circumstances. The Maple Board will make its decision and announce it in a press release within 90 days following the election, including the reasons for rejecting the resignation, if applicable. The Maple Board may fill a vacancy created by such a resignation. Where the resigning director was the nominee of an Investor, that Investor will be entitled to

⁶ An "uncontested election" means the number of nominees for election at the annual meeting is the same as the number of directors to be elected to the Maple Board.

nominate a new individual to serve subject to the approval of such individual by the Governance Committee as more fully described above.

The proposed governance arrangements for Maple and its operating exchanges will ensure fair, meaningful and diverse representation, including appropriate representation of independent directors and a proper balance among the interests of different persons and companies using TMX Group's services and facilities, including with respect to TSX, TSX Venture and MX. In addition, the exchanges operated by Maple will take into the account the interests of their participants (including participants who are not shareholders) in the same manner as they do today. For example, the exchanges today obtain input from participants through committees that seek full and open debate on policy issues in an open consultation process encompassing a diversity of opinions. These committees are comprised of knowledgeable individuals representing various industry groups and regions, as applicable. These committees will be maintained.

Initial Board and Management

It is our intention that, upon take-up under the Offer, the Maple Board (and subsequently the boards of TMX Group, TSX, TSX Venture and MX) will be comprised of the following individuals, each of whom has agreed to serve as a director, together with the Chief Executive Officer of TMX Group and additional independent directors which may include certain members of TMX Group board of directors (if such TMX Group directors agree to serve):

- Luc Bertrand, Vice Chair of National Bank Financial Group;
- Marie Giguère, Executive Vice-President, Legal Affairs and Secretariat of Caisse de dépôt et placement du Québec;
- George Gosbee, Chairman, President and Chief Executive Office of AltaCorp Capital Inc.;
- Sarabjit (Sabi) Marwah, Vice-Chairman and Chief Operating Officer of The Bank of Nova Scotia;
- Frank McKenna, Deputy Chair of TD Bank Group;
- Jim Prentice, Senior Executive Vice-President and Vice Chairman of Canadian Imperial Bank of Commerce;
- William Royan, head of Relationship Investing at Ontario Teachers' Pension Plan Board;
- Kevin Sullivan, Deputy Chairman of GMP Capital Inc.; and
- Eric M. Wetlaufer, Senior Vice-President, Public Market Investments at Canada Pension Plan Investment Board.

We note that six of these nine initial directors, Messrs Gosbee, Marwah, McKenna, Prentice, Sullivan and Wetlaufer, have had no direct involvement in the development of the proposed Transactions. Maple is also presently undertaking the process of identifying an individual to serve as an independent chair. The chair will not be any of the foregoing individuals nor will he or she be an existing director of TMX Group. Of the 15 initial directors, only three will have participated in the development of the proposed Transactions.

It is our intention that the existing senior management of TMX Group, including its Chief Executive Officer, will become the senior management of Maple following take-up under the Offer.

MX Fees and Access

We intend to maintain a competitive fee structure for MX, and our fees will not discriminate against any particular user or category of users. We commit that all fees that are imposed by MX on its participants will be transparent and fairly and equitably allocated, will not have the effect of creating barriers to access and will be balanced with the criteria that MX shall have sufficient revenues to perform its duties, its regulatory activities and its exchange operations. We note that a number of Investors in Maple are consumers of the services of MX and uncompetitive fees would have adverse cost implications for their businesses. We believe this consideration aligns such Investors with market forces and will further sensitize MX to the needs and concerns of its participants with respect to fees. Under our proposal, the process for setting fees will remain fair and appropriate, consistent with the current practice of MX. The Finance and Audit Committee, comprised entirely of independent directors, will be responsible for making recommendations to the board with respect to fees and ensuring that they do not create barriers to access. In addition, fees will continue to be subject to regulatory oversight as we are not proposing any change to the Autorité's ongoing public interest oversight with respect to fees.

Similarly, we do not propose any changes to the recognition order of MX with respect to access. Maple's intention is to maintain an open platform which will continue to permit any person who satisfies the applicable access standards to trade on MX. Maple has no intention to make any changes to MX's standards for access. Decisions regarding access will be made in accordance with the current practices and policies in place at MX with a view to promoting access in accordance with its recognition order. Consistent with MX's existing recognition order, any future changes to the written standards for access will be assessed against the requirement that they not unreasonably prohibit or limit access by a person or company to the services of MX. MX will continue to maintain written records of each grant or denial of access and the reasons for such grant or denial of such access. These records will remain open for review by the Autorité.

Additional information with respect to fees in respect of CDS, CDCC and Alpha is set out in part 4 "Acquisition of CDS" and part 5 "Acquisition of Alpha" below.

Non-Competition Agreement

Consistent with standard commercial practice, the participation by each of the Investors in the Maple Acquisition was conditional upon such Investor (or its parent entity) agreeing to enter into a limited non-competition agreement with Maple and the other Investors (or their parent entities) upon the closing of the Maple Acquisition. A description of such agreement is included in part 5 of this application under "Non-Competition Agreement".

Share Ownership

Upon completion of the Maple Acquisition, we expect that the shares of Maple will be owned as set out in the following table. Consistent with the existing Share Ownership Restrictions applicable to TMX Group, Maple's shares will be widely held with no one shareholder holding more than 10% of the outstanding shares.

| <u>Shareholder</u> | <u>Percentage of Maple shares upon completion of the Subsequent Arrangement</u> | |
|---|---|---|
| | <u>If 70% of TMX shares are acquired in the Offer⁽¹⁾</u> | <u>If 80% of TMX shares are acquired in the Offer⁽²⁾</u> |
| Alberta Investment Management Corporation | 7.1% | 8.7% |
| Caisse de dépôt et placement du Québec | 6.9% | 8.6% |
| Canada Pension Plan Investment Board | 7.2% | 8.8% |
| CIBC World Markets Inc. | 5.5% | 6.7% |
| Desjardins Financial Corporation | 2.8% | 3.4% |
| Dundee Capital Markets Inc. | 0.5% | 0.7% |
| Fonds de solidarité des travailleurs du Québec (F.T.Q.) | 2.7% | 3.3% |
| GMP Capital Inc. | 0.5% | 0.7% |
| The Manufacturers Life Insurance Company | 2.8% | 3.4% |
| National Bank Financial Inc. | 6.1% | 7.1% |
| Ontario Teachers' Pension Plan Board | 6.9% | 8.6% |
| Scotia Capital Inc. | 6.2% | 7.2% |
| TD Securities Inc. | 5.4% | 6.7% |

| | | |
|-------------------------------------|-------|-------|
| Other former TMX Group shareholders | 39.2% | 26.1% |
| Total | 100% | 100% |

Notes:

- (1) Assumes Investors receive 70% cash and 30% Maple shares for TMX shares currently held by certain Investors.
- (2) Assumes Investors receive 80% cash and 20% Maple shares for TMX shares currently held by certain Investors.

Maple and its Investors support the rationale for the Share Ownership Restriction – that no one shareholder or group of shareholders acting jointly or in concert should exercise substantial influence over an operating exchange without prior approval of the Autorité. To that end, other than in connection with facilitating the Alpha and CDS Acquisitions, after completion of the Maple Acquisition there will be no agreements, commitments or understandings between the Investors with respect to the voting of Maple's shares and each Investor will deal with its interest in Maple in accordance with its own self-interest, objectives and concerns.⁷

Moreover, we believe it appropriate that the Share Ownership Restrictions are applied to Maple in circumstances where it is recognized as an exchange by the OSC and the Autorité. Where the Share Ownership Restrictions are applied to Maple, Maple would amend its articles to provide for the Share Ownership Restrictions within its articles and to add comprehensive enforcement mechanisms, substantively identical to the existing enforcement mechanisms set out in TMX Group's articles, that would be applicable in the event of a contravention of the Share Ownership Restrictions.⁸

⁷ We note that each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc., has agreed that for a period of five years following completion of the Maple Acquisition, it will continue to own at least the lesser of: (a) during the first year of such period, 6.25%, and thereafter, 5.625%, of the total issued and outstanding Maple shares as at the date of, and after giving effect to, the completion of the Maple Acquisition; and (b) such percentage of the total issued and outstanding Maple shares acquired by it as a result of its subscription for Maple shares pursuant to its equity commitment letter, as at the date of, and after giving effect to, the completion of the Maple Acquisition. The remaining shareholders of Maple will be free to dispose of their shares as they see fit.

⁸ Schedule B to TMX Group's articles provides for comprehensive enforcement mechanisms that are applicable in the event of a contravention of the Share Ownership Restrictions. After a determination of contravention by TMX Group directors, some of the enforcement mechanisms are that no person may vote the voting shares of the contravening persons or companies, dividends on the voting shares are limited or prohibited and TMX Group is required to send a notice requiring the sale of voting shares held in contravention. In the event that such a required sale is not made, the further enforcement mechanisms then applicable include the prohibition of the exercise of any right or privilege attached to the voting shares and the right of TMX Group to sell or redeem voting shares held in contravention and to remit the net proceeds to the holder.

Undertakings

Consistent with Maple's respect for the existing regulatory framework in respect of TMX Group and MX, to ensure continuity of the existing recognition orders and undertakings, Maple will undertake to the Autorité that it will:

- (a) do everything within its control to cause TMX Group to fulfill its April 9, 2008 undertakings to the Autorité;
- (b) do everything within its control to cause MX to comply with the terms and conditions of its recognition order; and
- (c) assume to the best of its ability in the circumstances the following undertakings of TMX Group with respect to MX as if it were the maker of them: section 1 ("TMX Group Share Ownership Restrictions"); section 2 ("TMX Group Board Representation"); sections 5 and 6 ("Bourse Operations"); sections 7, 8 and 9 ("Change in Ownership"); section 10 ("Strategic Plan for Derivatives"); section 11 ("Access to Information"); section 12 and 13 ("Resources"); section 14 ("Non-Compliance") and sections 15 and 16 ("General").

These and other undertakings reflective of commitments made herein are set out in full in Appendix B.

Amended and Restated Recognition Order

On December 17, 2002, as amended on May 13, 2003, MX was recognized by the Commission des valeurs mobilières du Québec as a self-regulatory organization. Under a decision dated April 10, 2008, as amended on November 22, 2010, MX was authorized by the Autorité to carry on business as an exchange in Québec and was recognized by the Autorité as a self-regulatory organization. We respectfully request that the Autorité make an order amending and restating the existing recognition order to recognize each of Maple and TMX Group as an exchange, to implement the Share Ownership Restrictions and to otherwise amend the order and update the representations supporting the order, all in the form to be agreed between Maple and the Autorité. In that regard, Maple proposes that the recognition of Maple and TMX Group and the amendments to the recognition order of MX would become effective contemporaneously with the take-up by Maple of the voting securities of TMX Group under the Offer.

4. Acquisition of CDS and Implications for CDCC

Contemporaneous with or following completion of the Maple Acquisition, Maple intends to acquire CDS. Maple intends to form a committee of directors who are independent of Maple shareholders with an interest in CDS to oversee the process of evaluating and

consummating the acquisition of CDS, including ensuring that the consideration to be offered is fair, from a financial point of view, to shareholders of Maple (excluding Investors with an interest in CDS).

Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of CDS and to support such transaction. Maple understands that, in circumstances where Maple controls TMX Group, with the support or abstention of any one of the Investment Industry Regulatory Organization of Canada ("IIROC"), The Bank of Montréal or Royal Bank of Canada (as direct or indirect shareholders of CDS), the Investors or their affiliates would be able to cause the completion of the acquisition of CDS.

Affiliates of each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. currently directly and indirectly hold shares of CDS and would be expected to receive its proportion of any consideration payable therefor in connection with an acquisition of CDS concurrently with or following the successful completion of the Maple Acquisition.

Integration Objectives

Our objective is to more closely align the products and services offered by TMX Group, in particular by its indirect subsidiary CDCC, and those offered by CDS to create an efficient trading and clearing platform for all asset classes, whether exchange traded or over-the-counter. We believe that this alignment, combined with external market forces and the common ownership of CDS and CDCC, will enable more efficient and effective new product development for clearing and settlement, increase the ease of access and use for clients, enable the creation of innovative new risk management tools and facilitate improved collateral management, including cross-margining across asset classes.

As described in greater detail above in part 2, "*Maple's Vision and Key Benefits*", by aligning the operations of CDS and CDCC under Maple, the combined enterprise will be better able to grow and develop new solutions for the Canadian capital markets and will be able to develop products and solutions that CDS and CDCC would individually be unable to develop independently. Furthermore, it is our intention to open a dialogue with regulators with a view to establishing trade repository services under the combined enterprise. This alignment, and the provision of trade repository services, will bring distinct benefits for regulators through the provision of data streams providing meaningful insight across the trading chain and enhancing transparency on systemic risk to enable such regulators to more effectively discharge their systemic risk mandates.

Under our proposal, the clearing infrastructure of CDS and CDCC would be integrated. To maintain separation of financial risk, under the legal structure we expect that the clearing operations of each of CDS and CDCC would remain housed in separate legal entities, with material overlap in personnel, resources and board membership. To further

isolate risk, the depository and settlement functions of CDS would be housed in a separate subsidiary of TMX Group. Initially, technology would be integrated by means of straight-through processing between the technology platforms of CDS and CDCC with the goal of moving to one common platform over time. That integration is a long term project, requiring careful planning, which will be commenced by appropriate experts within the applicable organizations following the completion of the Transactions. The common information technology infrastructure would remain open to other ATSs and exchanges operating in Canada in order to continue to foster innovation of new products and an ongoing competitive trading environment.

The services, policies and procedures (such as the margin requirements, the applicable membership requirements, etc.) of CDCC and CDS will continue to be maintained in the ordinary course consistent with current practice. Following the completion of the acquisition of CDS, management and the boards of CDS and CDCC will develop a reorganization plan to accomplish the integration of the clearing infrastructure of CDS and CDCC and the separation of the settlement and depository functions into a separate legal entity. Among other things, this reorganization plan will address the ownership of each such legal entity within the Maple group of companies, which has not been determined at this time.⁹ The reorganization plan will be presented to applicable regulators for their approval prior to the implementation thereof and will include proposed amendments to applicable recognition orders and undertakings, if required.

CDS will remain headquartered in Toronto and CDCC will remain headquartered in Montréal. Consistent with existing regulatory requirements, the most senior officer of CDCC would be a resident of Québec at the time of his or her appointment and for the duration of his or her term of office and will work in Montréal.

Corporate Governance

We are proposing a governance structure that we believe will ensure that the best interests of CDS and CDCC are met, taking into consideration input from members, market participants and regulators and with due consideration of the public interest. Under our proposal, the boards of directors of CDS and CDCC (the "**Clearing Boards**") will include a number of directors who will be common to each board and also a number of directors unique to each board taking into account the specific technical and other expertise required in respect of each clearing operation. Maple's proposed governance arrangements will ensure fair and meaningful representation on the Clearing Boards and their committees, including appropriate representation by directors who are persons independent of Maple.

⁹ For example, CDCC is presently a wholly-owned subsidiary of MX. As part of the reorganization, CDCC may remain a wholly-owned subsidiary of MX, it may become a direct wholly-owned subsidiary of TMX Group, or it may become a wholly-owned subsidiary of another subsidiary of TMX Group.

It is also our desire to ensure continuity on the Clearing Boards through the inclusion of existing CDS and CDCC directors, respectively (if they agree to serve).

Maple believes that adopting overlapping boards at CDS and CDCC will facilitate consistent governance and direction at CDS and CDCC and enhance Maple's ability to efficiently integrate their clearing infrastructure.

Maple will annually make a regularly scheduled meeting of the Clearing Boards open to observers from the Bank of Canada, the Autorité and the OSC, as applicable, and will furnish each such regulator with copies of all board and committee minutes to ensure transparency for regulators.

Composition of the Clearing Boards

We believe it is critically important that the Clearing Boards include directors with technical expertise, industry experience and an interest in the successful and efficient operation of the business and the evolution thereof. The board of directors of each of CDS and CDCC will be comprised of 11 directors, including 5 directors appointed by Maple, 5 independent directors¹⁰ and the Chief Executive Officer of CDS and CDCC, respectively.

Under Maple ownership, CDS and CDCC will each take reasonable steps to ensure that each director of CDS and CDCC, respectively, is a fit and proper person and that the past conduct of each director affords reasonable grounds for belief that the director will perform his or her duties with integrity. The selection criteria for persons to serve as directors will focus on identifying knowledgeable persons who understand the industry and, wherever appropriate, have an interest in the successful and efficient operation of the business and to ensure that the risks to the clearing and settlement system are properly managed.

The Clearing Boards will be comprised of persons with relevant subject matter expertise and industry experience, including persons with expertise in derivatives clearing at CDCC (including risk management and the technology requirements related to derivatives clearing) and equities clearing at CDS (including risk management and the technology requirements related to equities clearing). We commit that at least 25% of the directors of CDCC will be persons that have expertise in derivatives clearing. In addition, at least 25% of the directors of CDCC will be residents of Québec at the time of their election or appointment.

¹⁰ For purposes of the CDS and CDCC boards, a director will be "independent" if the director is not:
(a) an associate, partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple; or (b) an officer or employee of Maple or its affiliates or an associate of such officer or employee. In addition, at least two of the independent directors will not be an associate, partner, director, officer or employee of a participant of CDS or member of CDCC or their affiliates or an associate of such director, partner, officer or employee. The threshold of 5% above may be adjusted if other persons become additional investors in Maple.

We commit that at least 4 of the 11 directors of each of CDS and CDCC will be representatives of users of the clearing services of CDS and CDCC, respectively. We will also invite Investment Industry Association of Canada ("IIAC") and IIROC to propose to the Governance Committees of each of CDS and CDCC a list of potential independent director candidates to serve on the CDS and CDCC boards, and those Governance Committees will, subject to being satisfied that the applicable nominee is a fit and proper person, select at least one of the proposed candidates to act as a director of CDS and CDCC, respectively. These industry directors would also serve on the risk management committees of CDS and CDCC, respectively, to ensure user input into any risk management decisions, including collateral requirements. We believe that this structure, together with the use of Market Participant Advisory Committees as described below, will ensure user representation in the governance and operations of CDS and CDCC, and properly balance the need to ensure that an appropriate level of expertise is provided by industry participants while also ensuring a diversity of views from independent directors who are not associated with Maple, CDS or CDCC.

Board Committees

The Clearing Boards will each establish three committees, all chaired by independent directors, to assist the Clearing Boards in the discharge of their respective duties. In brief:

- **Risk Management Committee** – This committee will be comprised of at least four directors. It will be charged with, among other things, assisting the board in fulfilling its risk management responsibilities, including reviewing and assessing CDS' or CDCC's (as applicable) risk management policies and procedures and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Members of the committee will be required to possess experience or expertise in one or more of the following areas: internal risk controls, risk assessments and reporting, legal matters, government and public policy, accounting, risk management and corporate governance.
- **Finance and Audit Committee** – This committee will be comprised of at least four directors, all of whom will be independent. It will be charged with, among other things, monitoring the financial performance of CDS or CDCC (as applicable), providing financial management and direction to the business and affairs of CDS or CDCC (as applicable) and advising the board on the equitableness of its pricing and fees.
- **Governance Committee** – This committee will be comprised of at least four directors, at least a majority of whom will be independent. It will be charged with assisting the board on matters related to corporate governance, including, without limitation: (a) the candidate selection process for the identification of independent directors and the orientation of new members; (b) oversight of policies and procedures for the identification and resolution of conflicts of interest; (c) the operation of the Market Participant Advisory Committees (as described below);

and (d) ensuring fair and equitable resources are dedicated to development projects for competitive ATSs and exchanges.

In connection with the process for the acquisition of CDS, Maple anticipates working with CDS and CDCC to develop formal mandates for the Clearing Boards and committees. Such formal mandates will be submitted to the Autorité for approval prior to the implementation thereof.

Selection of Future Independent Directors

The Governance Committee of each of CDS and CDCC will be charged with nominating independent directors. Each Governance Committee will review on an ongoing basis the composition of the applicable board, including the current strengths, skills and experiences on the board and its strategic direction. Each Governance Committee will be charged with identifying any gaps in its board's composition and seeking to fill those gaps. Qualities such as integrity, good character and high regard in his or her community or professional field will always be basic criteria for board members. Each Governance Committee will also consider independence, professional or board expertise, and other relevant expertise and experience. The objective will be to ensure that the board's composition provides an appropriate mix of skills and experience to guide the strategies and business operations of CDS and CDCC, as applicable. As previously discussed, we will also invite IIAC and IIROC to propose to the Governance Committees lists of potential independent director candidates, and each of the Governance Committees will, subject to being satisfied that such nominee is a fit and proper person, select at least one of the proposed candidates to act as a director.

Public Interest and Duties to CDS and CDCC

The Clearing Boards will be specifically focussed on discharging their duties having due regard to the public interest. We intend to adopt a board code of conduct which establishes similar expectations for directors appointed to the Clearing Boards as are described in part 3 "*Acquisition of TMX Group and Implications for MX – Public Interest and Duties to Maple*" above. The code of conduct will also include conflict of interest disclosure provisions.

On a more general basis, Maple will ensure that CDS and CDCC and their respective subsidiaries are appropriately partitioned from Maple and its other subsidiaries to avoid situations of real, potential or apparent conflicts of interest that may arise, and to ensure that confidential information currently or potentially held by CDS or CDCC concerning their functions, activities and files remain confidential and are not communicated, disclosed or exchanged inappropriately to Maple or its applicable subsidiaries or to third parties.

Further, Maple will ensure that it and CDS and CDCC strive to minimize any risk of conflict of interest between risk management functions and other operations of CDS and CDCC, respectively. The clearing operations of each of CDS and CDCC are presently part of larger organizations with existing risk management policies intended to address the risk of conflict of interest between risk management functions and other operations (in the case of CDS, the depository and other operations, and in the case of CDCC, the exchange and other operations). We do not believe that the completion of the Transactions would require that any new mechanisms be introduced in this regard. These organizations presently assess the adequacy of their risk management policies and procedures at least annually and each organization benefits from the advice and guidance of a market participant risk advisory committee. We propose that these prudent risk management practices would continue to be adhered to consistent with past practice and that amendments and improvements to risk management policies and practices would be implemented where necessary or desirable.

We do not believe that the business model of the organization (i.e., cost recovery or for-profit) inherently leads to any difference in risk profile. CDCC has for several years operated on a for-profit basis under TMX Group's ownership, with an internal risk management committee of the CDCC board that is advised by a market participant risk advisory committee. Following the completion of the Transactions, CDCC would continue to do so utilizing the same policies and procedures as it does today. Similarly at CDS, CDS will continue with a risk management committee of the CDS board that is advised by a market participant risk advisory committee following its acquisition. Maple expects that CDS will successfully make the transition to a for-profit model just as CDCC did and without impairment of risk management policies and procedures. All decisions with respect to risk management regarding clearing services will continue to be made by the CDS and CDCC boards, respectively, taking into account the advice of the market participant risk advisory committees.

Advisory Committees

CDS and CDCC presently utilize market participant advisory committees to obtain participant input into their clearing operations. Maple believes that the existing process is effective at obtaining this input. CDS for example highlights at page 36 of its 2010 Annual Report that:

"CDS has developed processes that provide for extensive consultation and input from all stakeholder groups. Membership on these committees extends to a wide range of stakeholders and ensures that there is extensive understanding and input regarding CDS policies and operations."

We propose to enhance the committee mechanism by formally enshrining it in CDS' and CDCC's recognition orders and mandating annual reporting obligations to the Autorité with respect to the recommendations made by such committees. In such annual report to the Autorité, CDS or CDCC, as applicable, would be required to explain any rejection of a recommendation or any partial or modified implementation of a recommendation of such committees with respect to its clearing operations. Each market participant advisory committee would be provided a copy of CDS's and/or CDCC's report, as applicable, and such market participant advisory committee would be required to advise the Autorité if it accepts CDS's and/or CDCC's report, as applicable, or, where it disagrees with such report, provide reasons for such disagreement. In this manner the board would be obligated to proactively consider the issues and suggestions raised by the market participant advisory committees, the Autorité would be made aware of such issues and suggestions, and the Autorité would be made aware of the dispositions thereof.

Accordingly, we intend to establish external Market Participant Advisory Committees with the participation of industry executives to advise on, among other things, matters of service development in order to (a) ensure that systems development initiatives are prioritized based on industry consensus, (b) arrange for provision of industry data related to services, such as operating volumes, (c) facilitate the provision of expert industry resources for projects and arrange for agreed upon resources to be made available, and (d) assist management in improving industry understanding of functions and benefits for CDS and CDCC services. We currently anticipate that the Market Participant Advisory Committees will include a strategic development committee, a risk advisory committee and specific committees for each of the derivatives, equities and fixed income industries.

The CDS and CDCC Governance Committees would be charged with responsibility for overseeing their respective Market Participant Advisory Committee process to ensure it is properly implemented and that adequate resources in the form of logistical support are furnished to the committees. To facilitate this mandate, the Governance Committees would be expected to meet at least annually with the chairs of their respective Market Participant Advisory Committees to, among other things, obtain feedback on the committee process with a view to optimizing such process.

Participation on the Market Participant Advisory Committees would be open to all interested parties within the industry, including members of IIROC and IIAC. We also propose that the Bank of Canada, the OSC and the Autorité would be entitled to participate on all Market Participant Advisory Committees.

Management

We expect that the senior executive position for CDS and CDCC will be maintained, but that certain management and other functions will be reviewed as part of the integration analysis to achieve an efficient organizational structure. The specific details of such

integration will be determined by CDS and CDCC senior management, under the supervision of the CDS and CDCC boards, following the completion of the Transactions.

CDS Fees

Under Maple ownership, CDS Clearing will offer a for-profit customer-centric proposition which balances cost and service. We intend to operate an equitable pricing structure – there will be unit pricing for clearing, depository and settlement services such that all participants will pay the same price for the same services. We commit that all fees imposed by CDS Clearing for clearing, depository and settlement services will be equitably allocated in relation to product types and volumes, will not have the effect of unreasonably creating barriers to access such services and will be balanced with the criterion that CDS Clearing has sufficient revenues to satisfy its responsibilities, including to its shareholder. In addition, the process for setting fees will remain fair, appropriate and transparent. CDS Clearing will have a practice of benchmarking its fees for its various products against relevant domestic and international counterparts and CDS' Finance and Audit Committee, comprised entirely of independent directors, will be responsible for advising the CDS board with respect to the equitableness of its fees, taking into account the interests of market participants, including as articulated by the Market Participant Advisory Committees. In addition, we commit that the fees, costs and expenses borne by participants in the clearing, depository and settlement services will not reflect any cost or expense incurred by CDS Clearing in connection with any activity that is not related to such services.

Access

Maple understands that ensuring fair access to CDS is essential to an efficient marketplace and does not intend to make any changes in this regard.

CDS presently maintains an open architecture and permits all market participants that satisfy applicable criteria to access its clearing services, no matter the Canadian trading venue where the trade is executed. Maple does not propose any changes to the recognition order of CDS with respect to access, and intends to maintain CDS's open architecture following the completion of the Transactions with a view to continuing to fulfil CDS's public interest mandate. In addition, Maple has no intentions to make any changes to such access criteria or eligibility requirements. Under Maple ownership, CDS will provide any person or company reasonable access to the clearing, settlement and depository services of CDS where that person or company satisfies the applicable participation standards. CDS will continue to maintain written records of each such grant or denial or limitation of access and the reasons for such grant or denial or limitation of such access. These records will remain open for review by the Autorité.

Competition

CDS does not provide any services provided by TMX Group, Alpha or any of their respective subsidiaries (including CDCC). Accordingly, an acquisition of CDS by Maple following the Maple Acquisition will not reduce competition in any market for clearing, settling, custody or any other services provided by CDS. DTCC in the United States will remain CDS Clearing's closest competitor.

We recognize that CDS will become 100% controlled by TMX Group pursuant to the proposed Transactions and that Canadian-based competitors of TMX Group in the provision of equities trading platforms in Canada will continue to use CDS Clearing for clearing services. However, as the principal Canadian clearing system for equities trading (in which TMX Group and affiliates of major bank-owned investment dealers already have a significant interest), CDS is already subject to extensive regulatory oversight designed to ensure access to its clearing system on non-discriminatory terms and conditions.¹¹ In addition to that continued regulatory oversight, the above-noted substantial independent director representation on the CDS board and its committees, partitioning of CDS from Maple and its other subsidiaries, Market Participant Advisory Committees (to which operators of competing Canadian-based ATSs will be invited to join), and the unit pricing model under which all participants will pay the same price for the same clearing, settlement and depository services, will further assist in addressing any such concerns about TMX Group controlling the clearing system in Canada.

The proposed acquisition of CDS also will reduce the percentage ownership of CDS by affiliates of the bank-owned investment dealers. Individually, affiliates of Schedule I Canadian banks currently own on average about an 11% interest in CDS, with one bank affiliate owning over 20% of CDS. As a group, such bank affiliates currently own over two-thirds of CDS. Following the proposed transactions, no Schedule I bank-owned dealer or its affiliates will own more than 7.5% of the combined TMX Group/CDS, and the Investors who are such bank affiliates will own less than 28%. Indeed, the above-noted Share Ownership Restrictions will ensure that no one exercises control or direction of more than 10% of CDS's controlling parent company following completion of the proposed transactions.

¹¹ For example, section 16 of the Autorité's recognition order of CDS Clearing requires CDS Clearing to equitably allocate its fees for settlement and requires that such fees not have the effect of unreasonably creating barriers to access to such settlement services. Section 16 also requires such fees to be fair, appropriate and transparent. In addition, pursuant to section 23.3 of the recognition order, CDS Clearing rules may not permit unreasonable discrimination among participants. More generally, the Bureau de décision et de révision has the authority under section 172 of the Securities Act to prescribe a course of action to a recognized clearing house where it considers it necessary for the proper operation of the clearing house or for public protection.

Amended and Restated Recognition Order and Undertakings

The Autorité has issued decision No. 2006-PDG-0180 recognizing CDS for the purposes of providing clearing activities in Québec. We respectfully request that the Autorité amend and restate the recognition order to reflect a "for profit" business model, to implement obligations described herein and to reflect the Market Participant Advisory Committees, all in the form proposed in Appendix C or as otherwise agreed between Maple and the Autorité.¹² To ensure continuity of the existing recognition order in respect of CDS, Maple also proposes that the existing recognition order be amended such that Maple and TMX Group each be recognized as a clearing house and they be required to do everything within their control to cause CDS Ltd. (and CDS Clearing) to satisfy their obligations pursuant to the recognition order and to perform the obligations proposed in Appendix D or as otherwise agreed between Maple and the Autorité. Maple proposes that the amendments to the recognition orders would become effective only upon the direct or indirect acquisition by Maple of a majority of the outstanding voting shares of CDS Ltd.

CDCC Recognition Order

We understand that on May 13, 2011 CDCC applied for recognition by the Autorité as a clearing agency under section 14 of the *Derivatives Act* (Québec), an exemption from the requirement to obtain recognition as a clearing house and to otherwise comply with sections 169 to 172 of the *Securities Act* (Québec), an exemption from the requirement to obtain recognition as a self-regulatory organization under section 59 of the *Act respecting the Autorité des marchés financiers* (Québec), and a revocation of decision 8601 dated November 12, 1987 pursuant to which CDCC was recognized as a self-regulatory organization (the "**CDCC Application**").

At present we take no position with respect to the substance of the CDCC Application. However, we note that elements of it are or may be impacted by our proposals as set out herein and, as such, we respectfully request that the CDCC Application be addressed in tandem with this application such that they may be addressed in a harmonious and cohesive fashion. In this regard, Maple proposes that Maple, as the proposed holding company parent of TMX Group, and TMX Group, as the indirect holding company parent of CDCC, be recognized as a clearing agency under section 14 of the *Derivatives Act* (Québec) (and be exempted from the requirement to obtain recognition as a clearing house and to otherwise comply with sections 169 to 172 of the *Securities Act* (Québec), and be exempted from the requirement to obtain recognition as a self-regulatory organization under section 59 of the *Act respecting the Autorité des marchés financiers* (Québec)) such that they be required to do everything within their control to cause CDCC to satisfy its obligations pursuant to the recognition order issued in connection with the CDCC Application and as otherwise agreed between Maple and the Autorité. Maple proposes that

¹² Maple has proposed to the OSC parallel changes to the OSC's recognition order applicable to CDS.

Maple and TMX Group's recognition be made contemporaneous with the proposed recognition of CDCC.

In any event Maple will undertake to the Autorité that it will do everything within its control to cause CDCC to comply with the terms and conditions of decision 8601. Such undertaking is included in Appendix B.

5. Acquisition of Alpha Group

Contemporaneous with or following completion of the Maple Acquisition, Maple intends to acquire Alpha. Maple intends to form a committee of directors who are independent of Investors with an interest in Alpha to oversee the process of evaluating and consummating the acquisition of Alpha, including ensuring that the consideration to be offered is fair, from a financial point of view, to shareholders of Maple (excluding Investors with an interest in Alpha).

Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of Alpha and to support such transaction. Maple understands that the Investors who hold (or whose affiliates hold) ownership interests in Alpha would be able to cause the acquisition of Alpha to be completed.

Each of CIBC World Markets Inc., CPP Investment Board Private Holdings Inc. (an affiliate of Canada Pension Plan Investment Board), Desjardins Securities Inc. (an affiliate of Desjardins Financial Corporation), National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. owns securities of Alpha and would be expected to receive its proportion of any consideration payable in connection with the acquisition of Alpha concurrently or following the successful completion of the Maple Acquisition.

Integration Objectives

We envision maintaining multiple equities trading platforms within Maple for providing complementary services and to cater to the differing needs of some market participants. Users are not homogenous and we believe that the ability to potentially offer multiple trading venues serving different constituencies may represent an opportunity to increase Maple's trading volumes. We intend to consult with market participants prior to making any decision with respect to the best course of action for the platforms and services of Alpha and TMX Select, TMX Group's new ATS, recognizing that it may not be necessary to meet the needs of market participants for TMX Group to operate multiple ATS platforms.

If Maple is successful in acquiring Alpha, the board of directors will consider whether Alpha should withdraw or continue to pursue (i) its proposal to be recognized as an exchange by the OSC and to provide listing services, and (ii) its application for an exemption from the Autorité with respect to (i).

Vigorous Ongoing Competition¹³

We believe the provision of trading services for equities listed on TMX Group's operating exchanges is an area that will continue to be subject to vigorous competition following the combination of Alpha with TMX Group.

Trading of TMX listed equities takes place on several types of platforms:

- (a) "lit platforms", such as the equity exchanges operated by TMX Group, NYSE, and NASDAQ and ATSs such as Alpha, Chi-X Canada, Omega ATS and Pure Trading, as well as U.S.-based ATSs such as BATS and Direct Edge;
- (b) "dark pools", platforms typically used by institutional investors to trade large blocks of equities without providing pre-trade transparency; and
- (c) "over-the-counter", where equities are traded between two parties, away from any structured venue.

Over the six months ended May 31, 2011, the lit platforms represented 87% of the total volume traded globally (taking into account international volumes) for the 248 constituents of the S&P TSX Composite Index. TMX Group, Alpha and many others compete for trading volume in the lit platforms. TMX and Alpha combined represented 51% of the total volume traded globally, and 46% of the total value of those trades, for the constituents of the S&P TSX Composite Index in the 6-month period ended May 31, 2011. (Alpha itself represented 12% by volume and 9% by value.)

Market Shares

In some industries, especially those characterized by significant excess capacity, for the purposes of assessing likely competitive impact, it is most appropriate and meaningful to measure competitors' market shares based on capacity.¹⁴ In equities trading, each trading system has not only significant, but effectively unlimited, capacity. Accordingly, in the context of equities trading, the above-noted combined TMX/Alpha shares overstate the competitive influence of a combined TMX/Alpha. We also note that equities trading volumes are able to easily shift among trading platforms given the abundance of available capacity, low switching costs and technological features inherent to the equities trading business. A more meaningful factor is the existence and ready availability of three other lit ATSs in Canada, several U.S.-based exchanges and lit ATSs, "dark" trading platforms in

¹³ All statistical data in this section is derived from Fidessa Fragmentation Index and the TSX eReview and is for the six months ended May 31, 2011.

¹⁴ See, for example, the Commissioner of Competition's *Merger Enforcement Guidelines*, at para 4.7: "Where firms producing homogenous products have excess capacity, market shares based on capacity may best reflect a firm's relative market position and competitive influence in the market."

Canada and the U.S., and the ability to quickly and easily establish additional ATSSs to which users could rapidly divert sufficient trading volume to make unprofitable any attempt by a combined TMX/Alpha to raise trading fees above competitive levels, or otherwise engage in anti-competitive conduct.¹⁵

In any event, market share is only one factor in the analysis of competitive effects. For example, market share is not determinative of the Competition Bureau's analysis of a merger, and section 92 of the Competition Act expressly states that the Bureau's analysis cannot be based only on market shares. Other important factors that the Bureau takes into account include whether barriers to entry and expansion are low (which they are here), the ability of customers to easily switch suppliers (which is costless in this case), and the disruptive role of innovation (which also operates here).

Even if we consider only the lit trading platforms, following the integration of TMX and Alpha, vigorous and effective competition for equities trading of TMX-listed securities will continue to be provided by:

- (a) other Canadian-based ATSSs, each of which has a sophisticated trading platform, effectively limitless capacity, and the ability to draw bids and trades to its platform with advantageous pricing of trading fees and other features;
- (b) U.S. exchanges and ATSSs, such as NYSE, NASDAQ, BATS and Direct Edge, on which a large volume of inter-listed TMX securities already trade;
- (c) the threat of entry by new Canadian-based ATSSs with similar capabilities to Alpha, particularly given the ease of entry, including from a technological and regulatory perspective – for example, all Canadian dealers are required by law (under the order protection rule) to have direct or indirect access to each new ATSS and trade on any ATSS which offers the best price; and
- (d) the threat of regulatory intervention by provincial securities regulatory authorities in response to any conduct deemed not to be in the public interest (anti-competitive conduct is unlikely to be considered to be in the public interest).

Canadian-Based ATSSs

Chi-X Canada, Pure Trading and Omega ATSS are Canadian-based lit ATSSs that compete for trading volume, have effectively unlimited capacity to handle increased volumes of trades, and have been increasing their share of overall trading of TMX-listed equities.

¹⁵ A recent example of rapid entry by an established foreign ATSS into Canada is SIGMA X, which is owned by Goldman Sachs. Goldman Sachs intends to support its ATSS with its own clients' trading volumes. See below for additional information about SIGMA X.

Each of these ATSSs offers equities trading services, possesses significant excess trading capacity, and exerts a comparable competitive constraint upon TMX Group and Alpha.

In considering the competitive impact and potential impact of these ATSSs, it is useful to keep in mind that Alpha itself is a relatively small business that has been in operation for only about three years. Alpha has benefited from varying degrees of support from its current owners, but as smaller percentage shareholders in a combined TMX/Alpha those owners may have less incentive to trade on TMX than they currently have to trade on Alpha. Accordingly, Chi-X, Pure and Omega will be even better positioned to attract greater trading volumes following a TMX/Alpha combination, and to represent an even greater competitive discipline on trading fee pricing by TMX.

Traders can and do switch between trading platforms without incurring any cost. Rapid switching of platforms used by dealers in favour of the best price or advantageous fee opportunities takes place all the time – for example, Chi-X recently opened its platform to trading for TSX-V stocks, offering attractive fee levels to "active side" traders, and within two weeks captured more than 4% by volume and 9% by value of all trading of TSX-V equities in Canada.

U.S. Trading Platforms

As noted above, competition is not limited to Canadian-based ATSSs. U.S. exchanges and ATSSs offer additional trading platforms for Canadian-based securities also listed in the U.S. For example, although inter-listed Canadian-based securities account for only 8% of the securities listed on the TSX, these inter-listed Canadian-based securities account for 25% of the total volume and 54% of the total value of trading on the TSX over the same six month period. Indeed, 38% of the total volume and 40% of the total value for these inter-listed securities traded on U.S. platforms, compared to 37% and 38% collectively on TSX and Alpha.¹⁶ The U.S. platforms directly constrain pricing for equities trading in Canada. If such Canadian pricing were ever to exceed competitive levels, migration of the trading volume for inter-listed Canadian equities (and associated revenues) to trading platforms in the United States would accelerate to a point that would make such an attempted uncompetitive price increase unprofitable.

As noted above, we commit that TMX equity trading fees will not discriminate as between inter-listed and non-inter-listed securities. This commitment will provide added assurance of the ongoing competitive constraint on all TSX listed equities created by the option to trade in the U.S. In the absence of discrimination in trading fees for listed and non-interlisted equities, the risk of losing substantial inter-listed trading volume in the event of an attempted uncompetitive price increase will keep the trading fees for all TSX listed equities competitive.

¹⁶ See Maple's Offer to Purchase and Circular dated June 13, 2011 at page 48 (English) and 50 (French).

Ease of Entry

As noted above, the threat of new entry will be an additional competitive constraint on a combined TMX/Alpha. In this regard, it should be kept in mind that Canadian equities trading regulations support the establishment of new entrant ATSs. For example, Canadian dealers are obligated to maintain direct or indirect access to all ATSs and must observe the order protection and "best execution" rules, which require that trades be routed to such an ATS when it presents the most attractive opportunity for a particular trade. Technology requirements are also modest and an ATS can be profitable even with relatively small volumes traded on its system. If the combined TMX/Alpha entity attempted to significantly raise trading fees following the proposed Transactions, it would face a real risk of inducing other foreign ATSs to enter Canada.

Established U.S. ATSs, for example, have the management, reputation and advanced technology necessary to quickly establish a material presence in Canada. They also maintain relationships with high frequency traders, who are already familiar with the technologies these ATSs operate. In late August, Goldman Sachs announced that it would expand its dark pool ATS, SIGMA X, into Canada for trading in TSX listed stocks.¹⁷ Goldman Sachs indicated that its ATS would make use of Goldman Sachs' electronic trading technology and be supported with its own and its clients' liquidity. Analysts reported that, "*Goldman is betting on demand from its own clients, a pricing model that it believes will be cheaper, and the fact that it is adding other technology to its Canadian offering, including a locally-placed smart order router that will be faster and attract clients.*"¹⁸

The leading U.S. ATSs, which account for approximately 10% each of trading in lit U.S. equity markets, are BATS and Direct Edge. BATS has publicly commented about its desire to enter Canada. Operation of a Canadian-based ATS would make either of these firms an even stronger competitive threat to a combined TMX/Alpha.

User Incentives

Users of TMX and ATSs are sophisticated entities who have a good understanding of the costs of using the various available trading platforms. If a combined TMX/Alpha were to attempt to impose anti-competitive price increases on trading fees, traders (including the minority investors in TMX/Alpha) would have a strong incentive to move a substantial portion of their own trades (subject to the order protection and best execution rules) to other ATSs, U.S. trading platforms or new entrants. Even the investment dealers with

¹⁷ "Goldman Sachs Launches Sigma XTM Canada", Goldman Sachs Electronic Trading press release, August 18, 2011, available online: <http://gset.gs.com/cgi-bin/upload.dll/file.pdf?z03860f0azffdd0179528d4cde88555e6bdd4ffdad>.

¹⁸ Boyd Erman, "Goldman sees opportunity in tough market for dark trading", The Globe and Mail, August 19, 2011, available online: <http://www.theglobeandmail.com/globe-investor/investment-ideas/streetwise/goldman-sees-opportunity-in-tough-market-for-dark-trading/article2134847/>.

share ownership positions in TMX/Alpha (each with less than 7.5%), would benefit by directing their trades to lower priced platforms. While a 7.5% investor in TMX may regain some value from paying a higher trading fee to TMX, any such benefit is clearly outweighed by paying 100% of an uncompetitive fee when that dealer has the option of using other platforms. In this environment, uncompetitive trading fee levels would create a strong incentive for all users to move significant volumes to other existing ATSS and exchanges and would create incentives for rapid establishments of new trading venues such that an attempted TMX/Alpha uncompetitive price increase would be unprofitable and unsustainable.

Regulation

Finally, all aspects of the provision of equities trading services, including fees and access, are subject to regulation by provincial securities authorities. Among other things, securities regulatory authorities could regulate equity trading fees if they determine that to be in the public interest. Even absent actual price regulation, the threat of regulatory activity will continue to be a significant discipline on the activities of TMX/Alpha and a further influence to keep its equity trading fees competitive.

Efficiencies

The combination of TMX Group and Alpha will create more efficient and diversified trading venues that will allow TMX Group to better serve its customers and thereby better compete with other ATSS and exchanges, including U.S. trading systems with respect to Canadian inter-listed equity securities. The resulting repatriation of trading volume would benefit TMX Group's equity trading platforms, as well as MX's derivatives platform (since derivatives are traded where the underlying security is trading).

Alpha Fees and Access

We intend to maintain a competitive fee structure for Alpha (including as between inter-listed and non-inter-listed securities, for which there will be no price discrimination). Fees will be set in a manner that is harmonious with the present process for setting fees at TSX. With respect to data fees, Maple will continue to offer Alpha data on a non-discriminatory and unbundled basis – separate and apart from other TMX data.

We also intend to maintain appropriate standards for access to trading on Alpha that do not unreasonably prohibit, condition or limit access by persons or companies to Alpha's services.

Non-Competition Agreement

Consistent with standard commercial practice, the participation by each of the Investors in the Maple Acquisition was conditional upon such Investor (or its parent entity, and each

such entity, a "Parent") agreeing to enter into a limited non-competition agreement with Maple and the other Investors or their Parents upon the closing of the Maple Acquisition. The Investors or their Parents (other than the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause their subsidiaries not to, engage in any business in Canada that competes with the business of TMX Group, CDS or Alpha, subject to certain exceptions. Further, each Investor or Parent (including the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause its subsidiaries for which it controls decision making authority not to, invest in any person engaged in establishing or operating an alternative trading system or recognized exchange in Canada, or in any person primarily engaged in the settlement and clearing of securities or derivatives trading transactions in Canada, subject to certain exceptions. The non-competition agreement will run for a term of five years from closing of the Maple Acquisition.¹⁹

The non-competition agreement is directly related to and necessary for the implementation of the Transactions. It limits the ability of the Investors and their affiliates (including those Investors with nominees on the Maple Board²⁰) to undermine the significant investments in Maple of each of the Investors through competition with TMX Group in Canada for a limited period of time.

Maple submits that the non-competition agreement will not give rise to the Investors acting jointly or in concert after completion of the Transactions. The non-competition obligations in no way amount to any agreement between any of the Investors with respect to the future direction or development of Maple's business, and the obligations do not commit any of the Investors to take any positive action with respect to Maple's business or the conduct of an Investor's own trading activities. Moreover, the obligations under the non-competition agreement of each Investor or Parent will be independent of and entirely unrelated to (i) the continued ownership or acquisition of securities of Maple by such Investor or Parent during the term of the agreement, or (ii) the voting of any such securities. For instance, a pension fund Investor could sell all of its shares in Maple shortly after closing of the Maple Acquisition, but would continue to be subject to the non-competition obligation for the full five-year term.²¹

¹⁹ A summary of the non-competition agreement is included at page 76 of Maple's Offer to Purchase and Circular dated June 13, 2011.

²⁰ Although the nomination rights will not expire until after six years, if at any time an Investor competed with TMX Group after the expiry of the non-competition agreement, such Investor's nomination right would expire immediately.

²¹ The right of Maple to enforce each Investor's or Parent's obligations under the non-competition agreement will continue for the full term of the non-competition agreement. The right of each other party to enforce such obligations under the agreement will terminate on the date on which such party and its subsidiaries no longer owns at least that number of Maple common shares that represented 2% of the total issued and outstanding Maple common shares on the date that the non-competition agreement is entered into.

Non-Preferencing Obligations (in the event Alpha is unable to be acquired)

The Acquisition Governance Agreement contemplates the possibility that Maple might be unable to acquire Alpha even if all necessary regulatory approvals for the acquisition of Alpha are obtained. To account for this contingency, and with the same overall objective of not undermining the significant investments in Maple by each of the Investors, the Maple offer entails certain non-preferencing obligations that would arise in only specified limited circumstances. In particular, in the event that Maple completes the Maple Acquisition and receives approval from the Commissioner of Competition to acquire Alpha, but is unable for any other reason to acquire Alpha (or the ownership interests in Alpha held by CIBC World Markets Inc., Desjardins Securities Inc., National Bank Financial Inc., Scotia Capital Inc., TD Securities Inc. (collectively, the “**Alpha Dealers**”) and CPP Investment Board Private Holdings Inc.), then each Alpha Dealer will agree with Maple that it will not preference trading on the facilities of Alpha with respect to its trading volumes in securities listed or traded on such facilities.²² However, given that the Alpha Dealers and CPP Investment Board Private Holdings Inc. have committed to sell their ownership interests in Alpha to Maple at a price to be agreed upon or resolved by arbitration, Maple is of the view that it is highly unlikely that this non-preferencing obligation would ever come into effect.

The purpose of this contingent non-preferencing obligation is consistent with the rationale for the non-competition agreement. It provides assurance to the shareholders of Maple (other than the Alpha Dealers) that, in the event that Maple is unable to acquire Alpha (or the ownership interests of the Alpha Dealers and CPP Investment Board Private Holdings Inc.) in the circumstances described above, the Alpha Dealers will not (as a result of their ownership interests in Alpha providing them with an incentive to do so) preference their trades through Alpha to the disadvantage of trading platforms owned by TMX Group.

Each Alpha Dealer's non-preferencing obligation would be subject, of course, to applicable "order protection" and "best execution" rules and all other applicable securities regulatory requirements. Moreover, the obligation would not arise unless the Commissioner of Competition had previously approved both the acquisition of Alpha by Maple and the non-preferencing obligation. The non-preferencing obligation would have no additional competitive effects relative to an acquisition of Alpha.

For the same reasons described above in respect of the non-competition agreement, Maple submits that these non-preferencing obligations would not give rise to the Investors acting jointly or in concert after completion of the Transactions. The obligations would in no way amount to any agreement between any of the Investors with respect to the future direction or development of Maple's business, and the obligations would not commit any

²² The value of such non-preferencing obligation would be negotiated between the Alpha Dealers and an independent committee of Maple's directors, provided that if the value could not be agreed upon it would instead be determined by binding arbitration.

of the Investors to take any positive action with respect to Maple's business. Subject to the obligation not to preference Alpha, each of the Investors would remain free to conduct its own trading activities independently. Moreover, the obligations would be independent of and entirely unrelated to (i) the continued ownership or acquisition of securities of Maple by any of the Investors, or (ii) the voting of any such securities. The non-preferencing obligation of each Alpha Dealer would survive the sale by such Alpha Dealer of its shares in Maple and would continue to run in perpetuity.

6. Share Ownership

Share Ownership of TMX Group

Maple will acquire beneficial ownership of more than 10% of the TMX shares upon its take-up of TMX shares under the Offer. In order to acquire this beneficial ownership, Maple requires the approval of the Autorité.

As TMX Group owns all the issued and outstanding voting shares of MX, as a consequence of Maple's take-up of TMX shares, Maple will be deemed to beneficially own more than 10% of the voting shares of MX. Pursuant to part I (a) of the recognition order of MX, without the prior approval of the Autorité, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than ten percent of any class or series of voting shares of MX other than TMX Group or an affiliate of TMX Group. In order to acquire this beneficial ownership, Maple requires the approval of the Autorité.

Following take-up of TMX shares under the Offer, Maple will acquire the TMX shares not deposited under the Offer through the Subsequent Arrangement. In order to do so, Maple and the Investors require the approval of the Autorité to act jointly or in concert within the meaning of the Share Ownership Restrictions at TMX Group for the purposes of the Subsequent Arrangement.

In addition, each of the Investors has agreed to use commercially reasonable efforts to pursue and effect a transaction or transactions that would result in the acquisition by Maple of Alpha and CDS. For purposes of the Share Ownership Restrictions, it may be argued that as a result of such agreement the Investors would be acting jointly or in concert with respect to such acquisitions. In order to avoid any inadvertent violation of the Share Ownership Restrictions, Maple and the Investors request the approval of the Autorité to act jointly or in concert within the meaning of the Share Ownership Restrictions at TMX Group for the purposes of effecting the Alpha and CDS Acquisitions.

We request that the Autorité make an order granting approval for (a) Maple to beneficially own or exercise control or direction over more than 10% of the voting shares of each of TMX Group and MX and (b) Maple and the Investors to act jointly or in concert as

beneficial owners of voting securities of TMX Group for the purposes of (i) the Subsequent Arrangement and (ii) the Alpha and CDS Acquisitions.

Share Ownership of Maple

Following take-up of TMX shares under the Offer, and until the Subsequent Arrangement is completed, four Investors, Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board, will each beneficially own approximately 11.8% of the outstanding voting securities of Maple. As a consequence of the Share Ownership Restrictions being applied to Maple, these four Investors may not beneficially own over 10% of the voting securities of Maple during the transitional period between take-up under the Offer and completion of the Subsequent Arrangement without the prior consent of the Autorité.

In addition, each of the Investors has agreed to use commercially reasonable efforts to pursue and effect a transaction or transactions that would result in the acquisition by Maple of Alpha and CDS. For purposes of the Share Ownership Restrictions, it may be argued that as a result of such agreement the Investors would be acting jointly or in concert with respect to such acquisitions. In order to avoid any inadvertent violation of the Share Ownership Restrictions, Maple and the Investors request the approval of the Autorité to act jointly or in concert within the meaning of the Share Ownership Restrictions at Maple for the purposes of effecting the Alpha and CDS Acquisitions.

We request that the Autorité make an order granting approval for (a) Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board to each beneficially own or exercise control or direction over more than 10% of the voting shares of Maple during the transitional period between take-up under the Offer and completion of the Subsequent Arrangement and (b) the Investors to act jointly or in concert as beneficial owners of voting securities of Maple for the purposes of (i) the Subsequent Arrangement and (ii) the Alpha and CDS Acquisitions.

Share Ownership of MX

We request that the Autorité make such other orders as it considers necessary or desirable with respect to the indirect ownership of MX to facilitate the Transactions, in each case on terms to be agreed between Maple and the Autorité.

7. Confirmation of Exemption Orders

TSX

On April 3, 2000, varied on January 29, 2002, September 3, 2002, August 12, 2005, December 16, 2005, August 10, 2006 and June 1, 2008, TMX Group and TSX were recognized by the OSC as an exchange in Ontario under section 21 of the OSA.

Maple is making an application to the OSC to amend and restate the recognition order of TMX Group and TSX to update the representations supporting such recognition order, to recognize Maple as an exchange, to reflect the Maple Acquisition and to amend the recognition order with respect to corporate governance. No other substantive changes are proposed. A copy of the application has been provided to the Autorité.

We respectfully request that the Autorité make an order amending and restating the existing exemption order in respect of TSX to update the representations supporting the existing exemption order to reflect the Maple Acquisition. Maple does not propose any changes to the terms and conditions of the exemption order.

TSX Venture

On November 26, 1999, as amended on July 31, 2001, September 3, 2002, and August 12, 2005, and varied on June 1, 2008, TMX Group's wholly-owned subsidiary TSX Venture was recognized by the ASC as an exchange in Alberta under subsection 52(2) of the *Securities Act* (Alberta) and by the BCSC as an exchange in British Columbia under subsection 24(2) of the *Securities Act* (British Columbia).

In connection with the Maple Acquisition, Maple is making application to the ASC and BCSC that may impact their recognition orders of TSX Venture. As part of such application, Maple will propose to undertake to the ASC and BCSC that:

- (a) it will do everything within its control to cause TMX Group and TSX to perform their undertakings to the ASC and BCSC with respect to TSX Venture;
- (b) it will do everything within its control to cause TSX Venture to comply with the terms and conditions of its recognition order;
- (c) it will, subject to certain notice obligations, cause TMX Group to allocate sufficient financial and other resources to TSX Venture to ensure that TSX Venture can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order;

- (d) it will cause TMX Group to do everything in its control to cause TSX Venture to carry out its activities as a recognized exchange and to comply with the terms and conditions of its recognition order;
- (e) it will adopt TMX Group's existing undertaking to not cause or permit TSX Venture to cease to operate or suspend, discontinue or wind-up all or a significant portion of TSX Venture's operations, or dispose of all or substantially all of TSX Venture's assets, without six month's prior notice to the ASC and BCSC and complying with such terms and conditions as the ASC and BCSC may impose;
- (f) it will adopt TMX Group's existing undertaking to not complete or authorize a transaction that would result in TSX Venture ceasing to be wholly-owned or directly controlled by TSX without six month's prior notice to the ASC and BCSC and complying with such terms and conditions as the ASC and BCSC may impose;
- (g) it will adopt TMX Group's existing undertaking to advise the ASC and BCSC if it or TMX Group applies to the OSC for an order permitting Maple and, in turn, TMX Group to own, directly or indirectly, less than all of the issued and outstanding voting shares of TSX;
- (h) it will adopt TMX Group's existing undertakings with respect to TSX Venture's trading systems, operations and procedures;
- (i) it will adopt TMX Group's existing undertaking with respect to access by the ASC and BCSC to information possessed by Maple and its subsidiaries for the purposes of assessing the performance by TSX Venture of its regulation functions and the compliance of TSX Venture with the terms and conditions of its recognition order; and
- (j) it will adopt TMX Group's existing undertaking to maintain a committee of the Maple Board named the Public Venture Market Committee and to refer to such committee for recommendation and advice all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of Maple and/or TSX Venture in relation thereto.

The undertakings will be set out in full in Appendix B to Maple's application to the ASC and BCSC, a copy of which will be furnished to the Autorité.

These undertakings will take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would cease to have effect if (a) the ASC or BCSC, as applicable, revokes TSX Venture's recognition order for

any reason other than the failure by Maple to fulfill its undertakings, (b) TSX Venture ceases to carry on business after complying with any terms and conditions the ASC and/or BCSC, as applicable, may impose, or (c) TSX Venture ceases to be a subsidiary of Maple.

We respectfully requests that the Autorité make an order amending and restating the existing exemption order in respect of TSX Venture to update the representations supporting the existing exemption order to reflect the Maple Acquisition. Maple does not propose any changes to the terms and conditions of the exemption order.

8. Enclosures

We enclose the following in support of this application:

Appendix A: Integrated exchange overview.

Appendix B: Undertaking of Maple in respect of MX and CDCC.

Appendix C: Proposed amendment to CDS recognition order.

Appendix D: Additional obligations in respect of CDS.

I trust the foregoing is satisfactory.

Yours very truly,



Luc Bertrand
on behalf of
Maple Group Acquisition Corporation

cc. Susan Greenglass,
Ontario Securities Commission

Ashlyn D'Aoust,
Alberta Securities Commission

Mark Wang,
British Columbia Securities Commission

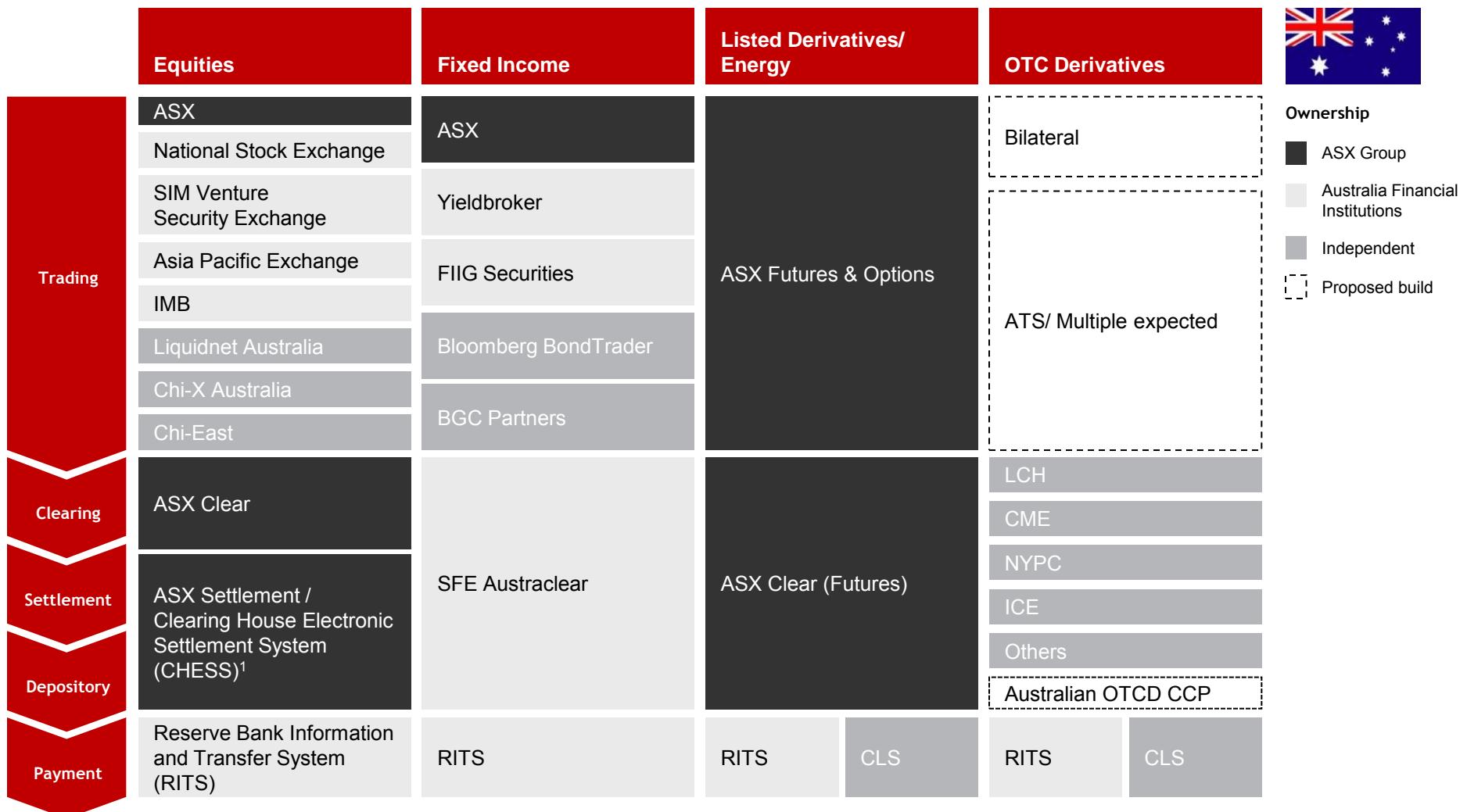
Appendix A – Integrated Exchanges

Integrated exchanges

- The integrated exchange model exists in several market places

| | ASX | DB | BM&F Bovespa | TMX (CURRENT) | TMX (Alpha+CDS) |
|----------------------------------|-----|----|-----------------|------------------|--------------------|
| Trading | | | | | |
| Equities Exchange | ✓ | ✓ | ✓ | ✓ | ✓ |
| Fixed Income Exchange | ✓ | ✓ | ✓ | ✓ | ✓ |
| Derivatives Exchange | ✓ | ✓ | ✓ | ✓ | ✓ |
| ATS | | | | ✓ | ✓ |
| Clearing & Settlement | | | | | |
| Equities | ✓ | ✓ | ✓ | | ✓ |
| Fixed Income | ✓ | ✓ | ✓ | | ✓ |
| Derivatives | ✓ | ✓ | ✓ | ✓ | ✓ |
| Depository | | | | | |
| Equities | ✓ | ✓ | ✓ | | ✓ |
| Fixed Income | | ✓ | ✓ | | ✓ |
| Derivatives | ✓ | ✓ | ✓ | ✓ | ✓ |

ASX is fully integrated, offering multi-asset trading and post-trade operations



1. CHESS operated by ASX Settlement

Note: ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear are all part of ASX Group

Overview of Australian Securities Exchange

- The Australian Securities Exchange functions as a market operator, clearing house and payments system facilitator

Business Overview

- Listing** - Offers both national and international companies the opportunity to access growth capital through IPOs or debt offerings
- Cash & Derivatives Trading** - Operates two trading platforms, ASX Trade and ASX Trade24, and executes more than 10 million equity trades per month
- Clearing** - Offers ASX Clear and ASX Clear (Futures) that provide central counterparty facilities as well as risk management systems
- Settlement** - Operates ASX Settlement and ASX Austraclear which offer a variety of settlement services
- Market Data & Access** - Provides the market with a reliable and timely information service

Key Milestones

- 2002 - Sydney Futures Exchange demutualised in 2000 and listed on the ASX
- 2006 - Australian Stock Exchange and SFE merged to create the ASX
- 2007 - ASX began trading ASX Contracts for Differences
- 2010 - SGX approached ASX for a potential takeover
- 2011 - Australian Government blocked the proposed takeover by SGX
- 2011 - Chi-X has been granted approval to operate an alternate exchange and is expected to commence operations late in 2011

Competitive Advantages

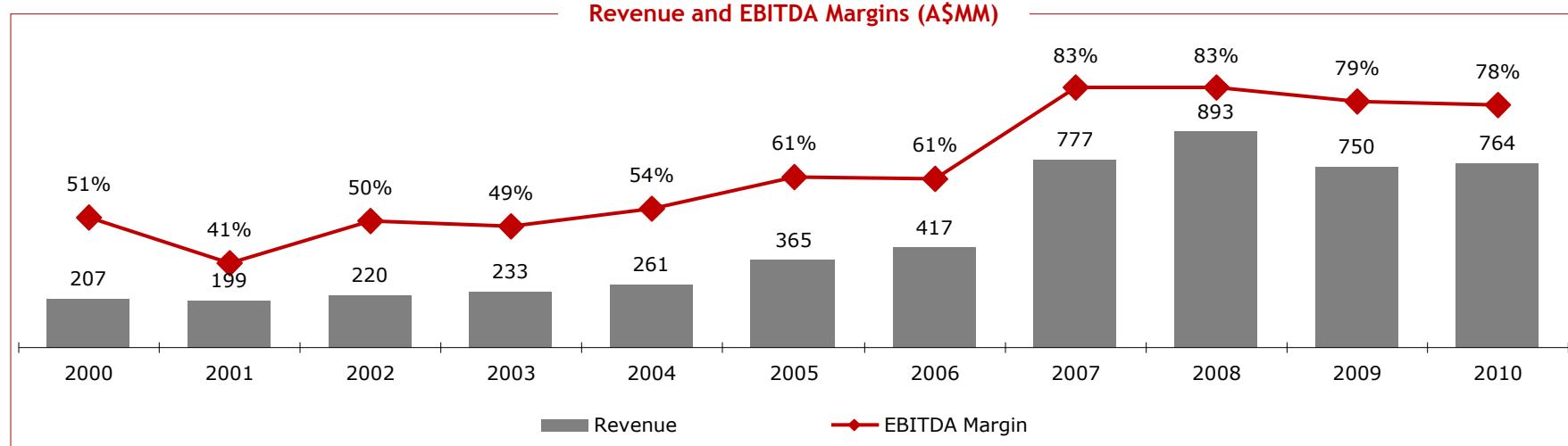
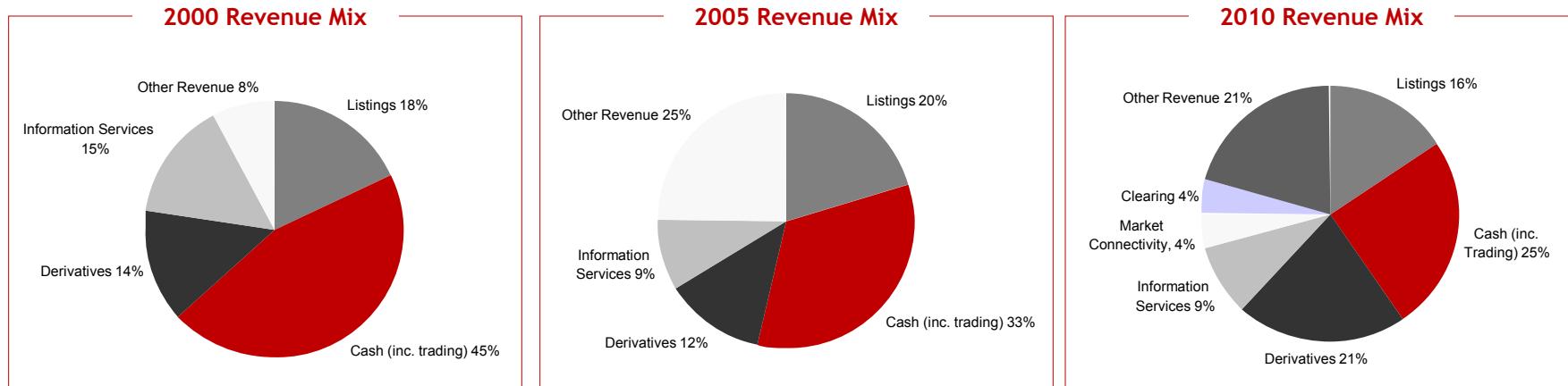
- Relatively fixed cost base provides positive leverage to improved markets
- Despite ASX's equity trading fees already being the third lowest globally (behind NDAQ and NYSE), its aggressive 35% reduction heading into FY11 sees it even better positioned to compete with other exchanges

Financial Highlights

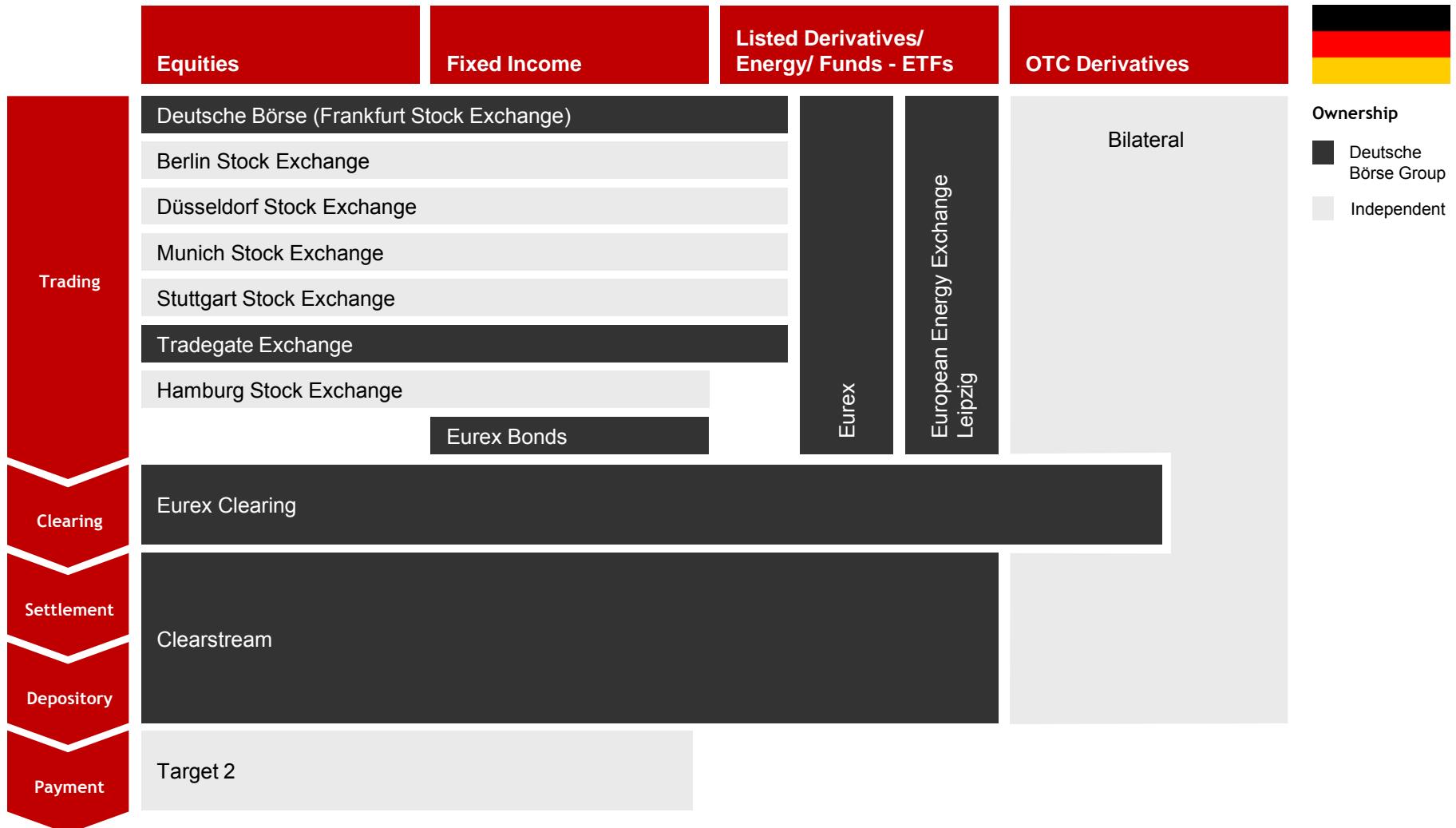
- Cash equity trading accounts for only 6.5% of the FY11F revenues, reflecting ASX's diversified and vertically integrated business and the impact of recent fee reductions
- Revenue grew from A\$207MM in 2000 to A\$764MM in 2010 (CAGR of 13.9%)
- The previous takeover offer by the SGX included improved operating efficiency (US\$30MM cost synergies, 10% of combined cost base) and enhanced revenue opportunities over the medium-term (not quantified)

Overview of Australian Securities Exchange (cont'd)

- The ASX has diversified its product offering, and increased its EBITDA margin to 78%



Deutsche Börse is vertically integrated, but operates separate entities between trading, clearing and CSD



Overview of Deutsche Börse

- Deutsche Börse AG operates electronic trading systems that provide securities and derivatives trading, clearing, settlement, custody, and market data services

Business Overview

- **Xetra:** Provides listing, trading and clearing services for issuers, intermediaries and investors in the cash market via its Xetra business
- **Eurex:** Leading global provider of trading and clearing services in the derivatives market
- **Clearstream:** Provides custody services to financial institutions across the globe
- **Market Data:** Offer market data and analyses
- **Information Technology:** Leading international full-service provider for the development and operation of trading and settlement systems

Key Milestones

- **June 1998:** Deutsche Börse and the Swiss exchange Schweizer Börse merged futures exchanges to form Eurex
- **January 2000:** Deutsche Börse Clearing AG merges with Cedel International S.A. to form Clearstream
- **May 2001:** Deutsche Börse introduces the centralized high-performance CEF data feed for market and price data
- **December 2007:** Eurex completes the acquisition of the US options exchange International Securities Exchange Holdings (ISE), creating the largest transatlantic marketplace for derivatives
- **February 2011:** Announced all-stock merger offer to purchase the NYSE Euronext. NYSE Euronext shareholders will vote on the offer on July 7, 2011

Competitive Advantages

- Currently pursuing operating efficiencies across the group, with the aim of saving €150MM in run-rate costs:

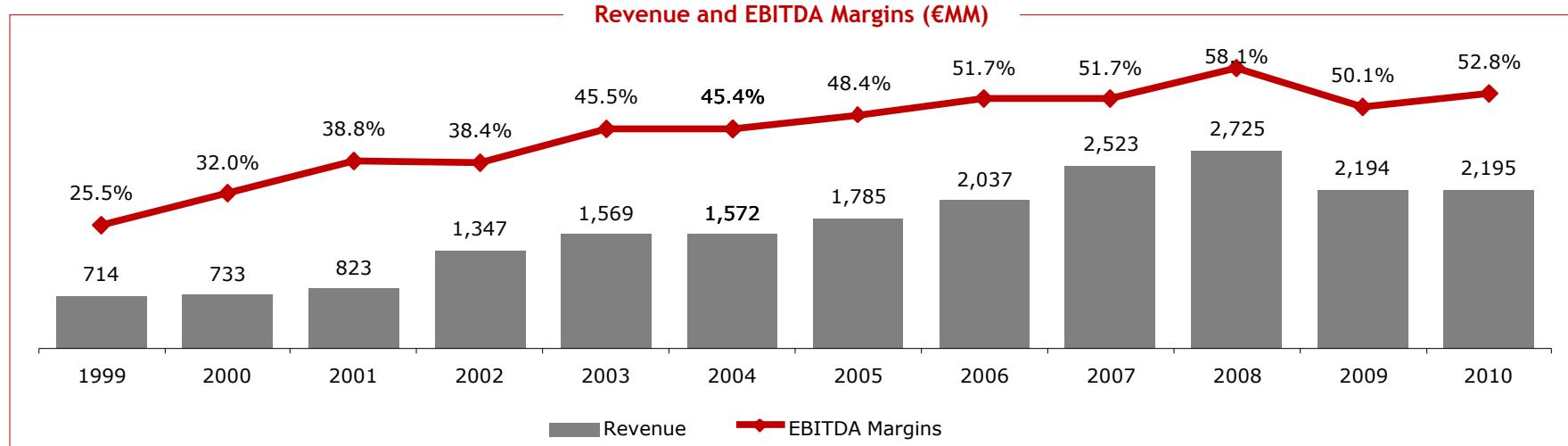
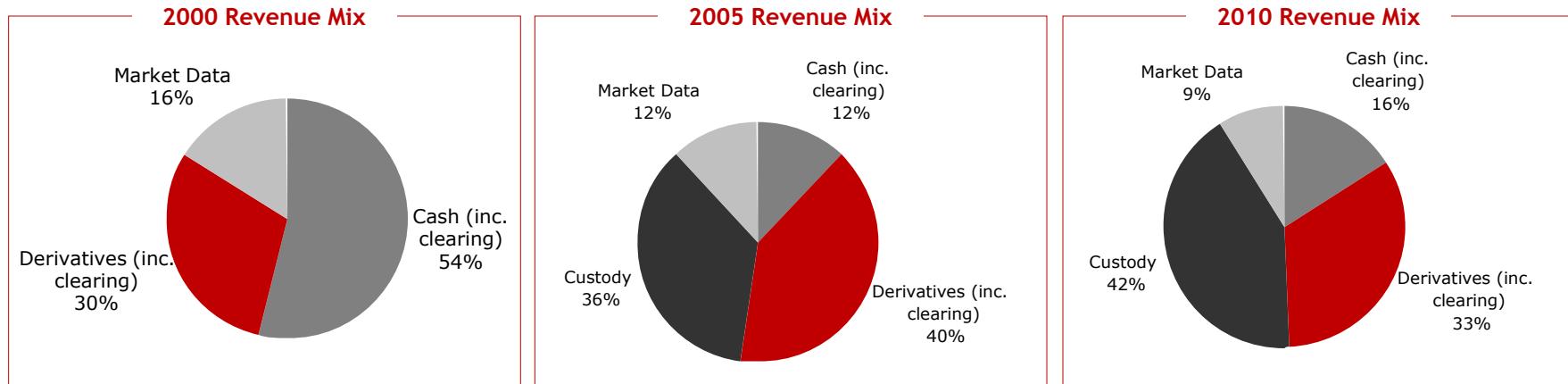
| | <u>% of savings</u> |
|--|---------------------|
| Headcount reduction (~370 staff) | 50% |
| Moving operational functions to Prague | 20% |
| Harmonisation of IT infrastructure | 10% |
| Reduction in management headcount | 10% |
| Focus on core activities | 10% |

Financial Highlights

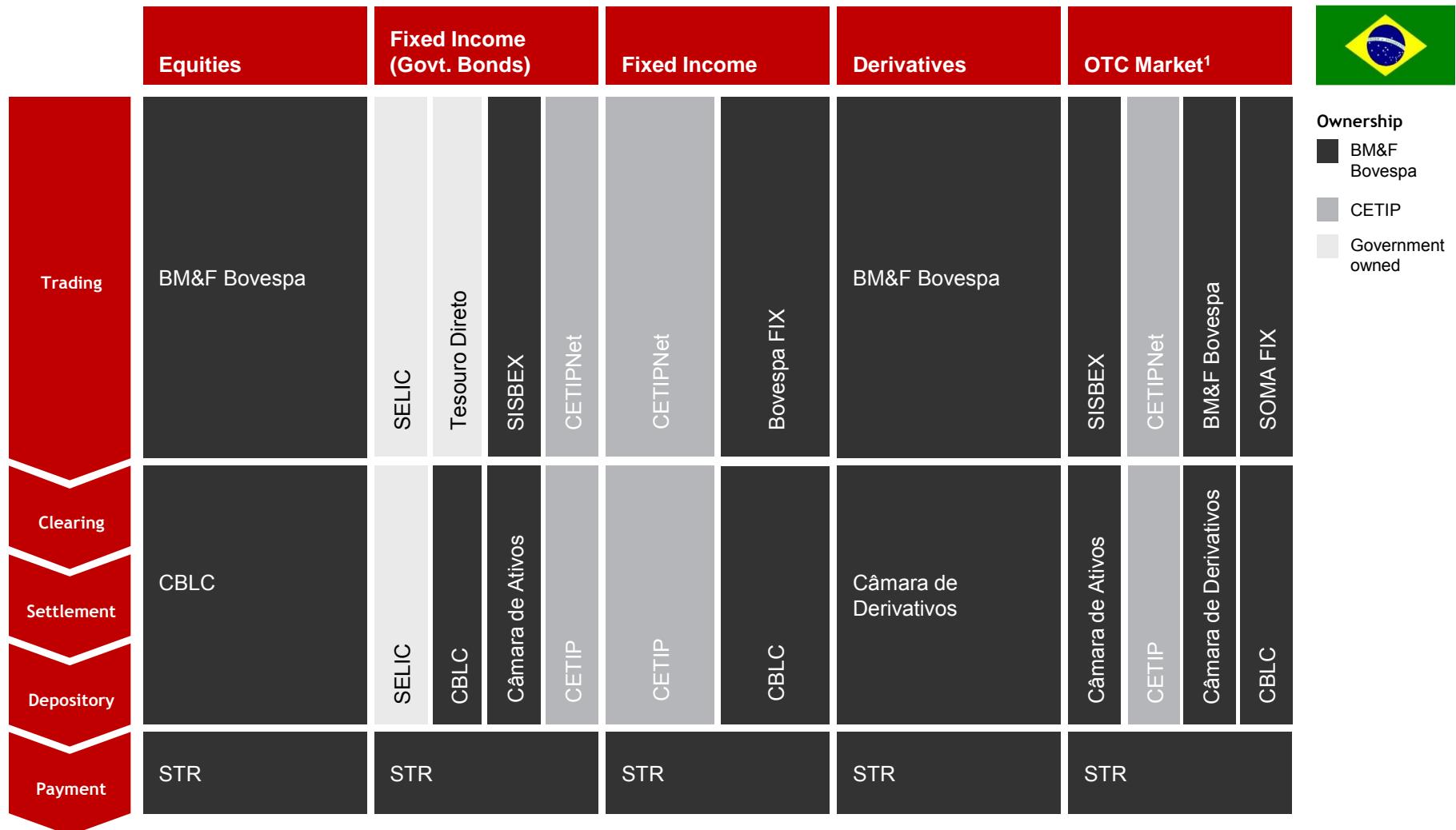
- The proposed purchase of the NYSE Euronext would generate cost savings of €300MM, principally from information technology, clearing and market operations, as well as from corporate administration and support functions; in addition, €100MM of revenue synergies are expected.
- The cost synergies are expected to be realized at an annual run rate of 25% by the end of the first year, 50% by the end of the second year, and 100% by the end of the 3rd year

Overview of Deutsche Börse (cont'd)

- Deutsche Börse's transformation has diversified its revenue mix during the last decade, and doubled its EBITDA margin



BM&F BOVESPA has integrated its trading platforms with plans to integrate its clearing and settlement operations



1. For OTC Market: SISBEX (public bonds); CETIPNet (private bonds and derivatives); SOMA FIX (private bonds); BM&F Bovespa (derivatives)

Source: Mercado Financeiro - Eduardo Fortuna; IPO memorandum; CVM; Central Bank; press clippings

Overview of BM&F BOVESPA

- BM&F BOVESPA is the only securities, commodities and futures exchange in Brazil; develops, implements and provides systems that allow for securities and derivatives trading, registration, clearing, settlement and central depository

Business Overview

- **BM&FBOVESPA S.A.:** Develops, implements and operates vertically integrated solutions for the trading, registration, clearing & settlement in markets for stocks, futures, FX, options, funds & ETFs, carbon credits, public and private auction and fixed-income
- **Bovespa Market Supervision:** Oversees and enforces compliance of applicable rules, standards of conduct and regulations
- **Brazilian Commodities Exchange:** Develops and provides operating system for trading in commodities, goods, services and securities, in the spot, term and full term mode
- **BM&F Settlement Bank:** Settlement and custody bank for trades in the markets managed by BM&F BOVESPA
- **Clearinghouses:** Renders clearing, settlement, risk management, central depository and securities lending services

Competitive Advantages

- Fully integrated business model comprising the entire chain of trading, including clearing and settlement activities under responsibility of equities and securities, derivatives and foreign exchange clearinghouses and a settlement bank, as well as a full service CSD (central securities depository)
- Upside potential due to current low penetration of Brazilian equity and derivatives in domestic & foreign investors' portfolios
- Larger exchange encouraging domestic companies to list locally rather than seek out international markets
- Product diversification initiatives strengthening competitive position

Key Milestones

- **2007:** Demutualization of Bovespa and BM&F; IPO of both entities
- **2008:** Merger of Bovespa and BM&F
- **2009:** End of open outcry derivatives transactions; Licensing agreement with NASDAQ regarding a variety of tools and platforms
- **2010:** Develops a "Global Preferred Strategic Partnership" with the CME Group aiming at the pursuit of strategic investments and commercial opportunities with other international exchanges, on a shared and equal basis; BM&F Bovespa increases its ownership interest in CME from 1.8% to 5%, receiving board representation

Financial Highlights

- Net operating revenue grew from BRL 1,602MM in 2008 to BRL 1,890MM in 2010 (CAGR of 8.6%)
- Cash equity trading accounts ~ 39% of the FY10A revenues reflecting a certain degree of diversification and vertical integration
- Announced growth initiatives regarding product diversification and expansion of investor base to help fuel future growth

APPENDIX B
DRAFT UNDERTAKINGS

[MAPLE GROUP ACQUISITION CORPORATION LETTERHEAD]

■, 2011

Mario Albert
President and Chief Executive Officer
Autorité des marchés financiers
800, Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Dear Mr. Albert

Re: TMX Group Inc. – Acquisition by Maple Group Acquisition Corporation

We are writing to provide certain undertakings to the Autorité des marchés financiers (the "Autorité") in support of the application by Maple Group Acquisition Corporation ("Maple") filed under section 65 and 66 of the *Act respecting the Autorité des marchés financiers* and under section 169 of the Québec Securities Act (the "Application") in respect of the proposed integrated transaction to acquire all of the outstanding common shares (the "Maple Acquisition") of TMX Group Inc. ("TMX Group"). In connection with the Maple Acquisition, TMX Group will become a subsidiary of Maple. In support of the Application, Maple undertakes to the Autorité as set out below. Maple understands that the Autorité is relying on these undertakings to rule on the Application.

Compliance

1. Maple undertakes that it will do everything within its control to cause TMX Group to perform its April 9, 2008 undertakings to the Autorité.
2. Maple undertakes that it will do everything within its control to cause Montreal Exchange Inc. ("MX") to comply with the terms and conditions of its recognition order (the "Recognition Order").

Maple Share Ownership Restrictions

3. Maple undertakes that it will be subject to the restriction that no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 10 per cent of any class or series of voting shares of Maple, without the prior approval of the Autorité.
4. Maple undertakes that it will inform the Autorité immediately in writing if it becomes aware that any person or company or any combination of persons or companies acting

jointly or in concert beneficially own or exercise control or direction over more than 10 per cent of any class or series of voting shares of Maple shall take the necessary steps to immediately remedy the situation, in compliance with Schedule B of Maple's articles of incorporation.

For purposes of these paragraphs 3 and 4, the expression "acting jointly or in concert" has the meaning provided under Section 1.9 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, as amended from time to time, *mutatis mutandis* and, for greater certainty, including persons deemed or presumed to be acting jointly or in concert within the meaning of that expression, and beneficial ownership and control or direction over any class or series of voting shares of Maple shall be determined in accordance with the *Securities Act* (Ontario);

[Note: The section "Maple Share Ownership Restrictions" to be removed from undertaking if Maple is recognized as an exchange and these provisions are included in the recognition order.]

Maple Board Representation

5. Maple undertakes that it will nominate every year, without limit as to time, for election to the board of directors of Maple, at every annual meeting of Maple held following the date hereof:

- (a) such number of directors who are independent and represent at least 50% of the total number of directors nominated for election for that year;
- (b) such number of directors who are resident of Québec and represent at least 25% of the total number of directors nominated for election that year;
- (c) such number of directors who have expertise in derivatives and represent at least 25% of the total number of directors nominated for election that year; and
- (d) one director drawn from the Canadian independent investment dealer community (for greater certainty, excluding investment dealers which are affiliates of Canadian Schedule I banks).

For the purposes of this paragraph 5, a director shall be resident of Québec if he or she is considered to be resident of Québec under the Taxation Act (R.S.Q., c.I-3) at the time of his or her election or appointment.

6. Maple undertakes that it will select as the chair of the Maple board an independent director.

For purposes of these paragraphs 5 and 6, a director shall be independent if they are independent within the meaning of section II (b) of the Recognition Order.

[Note: Sections 5 and 6 to be removed from undertaking if Maple is recognized as an exchange and these provisions are included in the recognition order.]

7. Maple undertakes that, unless it obtains the prior authorization of the Autorité to make changes, it will maintain mirror boards of directors for Maple, TMX Group and MX.

MX Special Regulatory Committee

8. Maple undertakes that at least 25% of the special regulatory committee of the MX will be comprised of directors who will have expertise in derivatives.

MX Operations

9. Maple undertakes that it will cause the existing derivatives trading and related products operations of the MX to remain in Montreal.

10. Maple undertakes not to do anything to cause MX, directly or indirectly, to cease to be the Canadian national exchange for all derivatives trading and related products, including being the sole platform for trading of carbon and other emission credits in Canada, without obtaining the prior authorization of the Autorité and complying with any terms and conditions that the Autorité may set in the public interest in connection with any change to MX's operations.

CDCC Board Representation

11. Maple undertakes that it will cause to be nominated every year, without limit as to time, for election to the board of directors of Canadian Derivatives Clearing Corporation ("CDCC"), at every annual meeting of CDCC held following the date hereof:

- (a) such number of directors who are independent and represent at least 45% of the total number of directors nominated for election for that year, of which at least two will not be an associate, partner, director, officer or employee of a participant of CDCC or its affiliates or an associate of such director, partner, officer or employee;
- (b) such number of directors who are a current or former associate, partner, director, officer or employee of a participant of CDCC or its affiliates and represent at least 33% of the total number of directors nominated for election for that year;
- (c) such number of directors who are resident of Québec and represent at least 25% of the total number of directors nominated for election that year; and
- (d) such number of directors who have expertise in derivatives clearing and represent at least 25% of the total number of directors nominated for election that year.

For the purposes of this paragraph 11, (i) a director shall be resident of Québec if he or she is considered to be resident of Québec under the Taxation Act (R.S.Q., c.I-3) at the time of his or her election or appointment, and (ii) a director shall be independent if the director is not (A) an associate, partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the

outstanding shares of Maple, or (B) an officer or employee of Maple or CDCC or an affiliate of Maple or CDCC or an associate of such officer or employee.

Change in Ownership

12. Maple undertakes that it will not complete or authorize a transaction that would result in any person or company, or any combination of persons or companies acting jointly or in concert, owning or exercising control or direction over more than 10 per cent of any class or series of voting shares of the MX, without obtaining the prior authorization of the Autorité, except for Maple or an affiliate of Maple.

For purposes of this paragraph 12, the expression "acting jointly or in concert" has the meaning provided under Section 1.9 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, as amended from time to time, *mutatis mutandis* and, for greater certainty, including persons deemed or presumed to be acting jointly or in concert within the meaning of that expression.

13. Maple undertakes that it will continue to exercise control or direction over more than 50 percent of all classes or series of voting shares of the MX.

14. Maple undertakes that it will not complete or authorize a transaction that would result in more than 50 percent of any class or series of voting shares of the MX ceasing to be controlled by Maple, directly or indirectly, without obtaining the prior authorization of the Autorité.

Strategic Plan for Derivatives

15. Maple undertakes that it will submit annually to the Autorité, within two months of its approval, its strategic plan for derivatives as approved by the board of directors of Maple. The strategic plan will address the progress achieved during the past year in the fulfillment of previous strategic plan for derivatives.

16. Maple undertakes that it will invest in the continued growth of trading and clearing of derivatives and related products.

17. Maple undertakes that if MX and/or CDCC determine from time to time to export their knowledge of derivatives trading and clearing, such international activity will be directed from Montréal.

18. Maple undertakes that MX will continue as the exclusive business unit responsible for exchange traded derivatives and related products.

19. Maple undertakes that if Maple establishes an exchange or clearing agency for trading or clearing derivatives that are presently over-the-counter derivatives, that exchange or clearing agency will comply with paragraphs 20 and 21 below.

20. Maple undertakes that the head office and executive office of MX, CDCC and any business unit designated under paragraph 19 will be located in Montreal. Maple further undertakes that the mind and management of MX, CDCC and any business unit under paragraph 19 responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal.

21. Maple undertakes that the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility for MX, CDCC and any business unit under paragraph 19 shall be a resident of Quebec at the time of his or her appointment and for the duration of his or her term of office and shall work in Montreal. Maple further undertakes that the executives responsible for managing the development and execution of the policy and direction of MX, CDCC and any business unit under paragraph 19 sufficient to permit the senior officer to execute his or her responsibilities, will work in Montreal.

For purposes of the undertakings contained in this letter, all references to derivatives and related products pertain to equity and fixed income derivatives and exclude any derivatives and related products of TMX Group or any affiliate thereof not under the direct responsibility of MX on the date hereof including, without limitation, derivatives and related products of Natural Gas Exchange Inc., Shorcan Brokers Limited, and Shorcan Energy Brokers Inc.

Access to Information

22. Maple undertakes that it will permit the Autorité to have access to and to inspect and to cause its subsidiaries to permit the Autorité to have access to and to inspect, all data and information in its or their possession that is required for the assessment by the Autorité of the performance by Maple, TMX Group, MX and CDCC of their regulatory functions and the compliance of these entities with the terms and conditions of the Autorité's decisions.

Resources

23. Maple undertakes that it will, subject to paragraph 24 and for so long as TMX Group, MX and CDCC carry on business as an exchange or clearing house, as applicable, allocate sufficient financial and other resources to TMX Group, MX and CDCC to ensure:

- (a) their financial viability and the proper performance of their functions; and
- (b) the exercise of the self-regulatory functions of MX and its self regulatory division;

in accordance with the terms and conditions set out in the Recognition Order.

24. Maple undertakes that it will notify the Autorité immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TMX Group, MX or CDCC to ensure that they can carry out their functions as an exchange, a self-regulatory organization, or a clearing house, as applicable, in a manner that is consistent with the terms and conditions of the Recognition Order.

Non-Compliance

25. Maple acknowledges that if it fails to comply with any of the terms and conditions set forth herein, the Autorité may revise the Recognition Order.

Canadian Derivatives Clearing Corporation

26. Maple undertakes that it will do everything within its control to cause the CDCC to comply with the terms and conditions of its recognition order.

General

These undertakings will, as applicable, cease to have effect if (a) the Autorité revokes the Recognition Order for any reason other than the failure by Maple to fulfill its undertakings with the Autorité, (b) TMX Group, MX or CDCC ceases to carry on business after complying with any terms and conditions the Autorité may impose, or (c) TMX Group, MX or CDCC ceases to be a subsidiary of Maple.

These undertakings will take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition.

Yours truly,



**[Chief Executive Officer]
[Maple Group Acquisition Corporation]**

APPENDIX C

Proposed Amendments to CDS Recognition Order

Section 5 be amended and restated as follows:

5 GOVERNANCE

5.1 CDS Ltd.'s governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholders.

5.2 Without limiting the generality of the foregoing, CDS Ltd.'s governance structure shall provide for:

- (a) fair and meaningful representation on its board of directors and any committee of the board of directors;
- (b) appropriate representation of persons independent of Maple Group Acquisition Corporation ("Maple") on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:
 - (i) an associate, partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple, or
 - (ii) an officer or employee of Maple or its affiliates or an associate of such officer or employee; and
- (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS Ltd.

5.2.1 CDS Ltd.'s governance structure shall provide for:

- (a) at least five (45%) independent directors on the board of directors of which at least two will not be an associate, partner, director, officer or employee of a participant of CDS or its affiliates or an associate of such director, partner, officer or employee,
- (b) at least four (33%) of the directors will be a current or former associate, partner, director, officer or employee of a participant of CDS or its affiliates, and
- (c) a quorum of directors shall be 60% of the number of directors.

5.3 CDS Ltd. shall not, without the AMF's prior written approval, make significant changes to its governance structure, constating documents or by-laws.

5.4 CDS Ltd. shall not, without the AMF's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this decision.

5.5 CDS Ltd. shall establish advisory committees to its board of directors, composed of representatives of participants, with formal written mandates which shall be subject to the approval of the AMF and which may not be amended without the AMF's prior written approval.

Section 13 be amended and restated as follows:

13 GOVERNANCE

13.1 CDS Clearing's governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholder and the users ("participants") of its Settlement Services.

13.2 Without limiting the generality of the foregoing, CDS Clearing's governance structure shall provide:

- (a) fair and meaningful representation on its board of directors and any committee of the board of directors;
- (b) appropriate representation of persons independent of Maple on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:
 - (i) an associate, partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple, or
 - (ii) an officer or employee of Maple or its affiliates or an associate of such officer or employee; and
- (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS Clearing.

13.2.1 CDS Clearing's governance structure shall provide for:

- (a) at least five (45%) independent directors on the board of directors of which at least two will not be an associate, partner, director, officer or employee of a participant of CDS or its affiliates or an associate of such director, partner, officer or employee,
- (b) at least four (33%) of the directors will be a current or former associate, partner, director, officer or employee of a participant of CDS or its affiliates, and

(c) a quorum of directors shall be 60% of the number of directors.

13.3 CDS Clearing shall not, without the AMF's prior written approval, make significant changes to its governance structure, constating documents or by-laws.

13.4 CDS Clearing shall not, without the AMF's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this decision.

13.5 CDS Clearing shall establish advisory committees to its board of directors, composed of representatives of participants, with formal written mandates which shall be subject to the approval of the Commission and which may not be amended without the Commission's prior written approval.

Section 16 be amended and restated as follows:

16 FEES AND COSTS

16.1 CDS Clearing shall equitably allocate its fees for Settlement Services. The fees shall not have the effect of unreasonably creating barriers to access such Settlement Services and shall be balanced with the criterion that CDS Clearing has sufficient revenues to satisfy its responsibilities.

16.2 CDS Clearing's process for setting fees for Settlement Services shall be fair, appropriate and transparent. The fees, costs or expenses borne by participants in the Settlement Services shall not reflect any cost or expense incurred by CDS Clearing in connection with an activity carried on by CDS Clearing that is not related to the Settlement Services.

Section 30.7 be amended by adding a new section (e) as follows:

(e) a report on the recommendations made to their boards of directors by the advisory committees established under sections 5.5 and 13.5 of the recognition order and the actions taken in respect thereof. Where any recommendation is rejected or implemented (or proposed to be implemented) in a partial or modified form, CDS Ltd. and CDS Clearing shall include in its report the basis for such rejection or partial or modified implementation.

New section 30.7.1 be added as follows:

30.7 Each advisory committee established under sections 5.5 and 13.5 of the recognition order shall file with the AMF annually a report adopting the report of CDS Ltd. and CDS Clearing prepared under section 30.7(e) or, where an advisory committee disagrees with some or all of the contents of such report, a detailed explanation of such disagreement. Notwithstanding this annual reporting requirement, where an advisory committee has made a recommendation to CDS Ltd. and CDS Clearing with respect to material systemic risk or other material risk concerns, it shall contemporaneously report such recommendation to the AMF.

APPENDIX D

Additional Obligations in Respect of CDS

Compliance

1. Each of Maple and TMX Group shall do everything within its control to cause CDS Ltd. and CDS Clearing and Depository Services Inc. ("CDS Clearing") to satisfy their obligations pursuant to their recognition order (the "Recognition Order") issued by the Autorité.

Risk Controls

2. Each of Maple and TMX Group shall have clearly defined procedures for the management of risk.
3. Each of Maple and TMX Group shall, without limiting the generality of paragraph 2:
 - (a) perform risk management activities in a manner that prevents the spillover of risk arising from activities in its subsidiaries where such risks might negatively impact the financial viability of CDS Ltd. or CDS Clearing; and
 - (b) where it materially outsources any of its services or systems affecting the existing securities clearing, settlement, and depository services of CDS Clearing to a third party service provider, which shall include affiliates or associates of Maple or TMX Group, proceed in accordance with best practices. Without limiting the generality of the foregoing, Each of Maple and TMX Group shall:
 - (i) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such outsourcing arrangements;
 - (ii) in entering any such outsourcing arrangement:
 - (A) assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by Maple or TMX Group, as applicable; and
 - (B) execute a contract with the third party service provider addressing all significant elements of such arrangement, including service levels and performance standards;
 - (iii) ensure that any contract implementing such outsourcing arrangement that is likely to impact the business of CDS Clearing permits the Autorité to have access to and inspect all data, information and systems maintained by the third party service provider on behalf of Maple or TMX Group, as applicable, for the purposes of determining Maple's or TMX Group's, as applicable, compliance with this order or securities legislation; and

- (iv) monitor the performance of the third party service provider under any such outsourcing arrangement.

Allocation of Costs

- 4. Each of Maple and TMX Group shall ensure that the costs for providing services to CDS Ltd. and its subsidiaries are equitably allocated.

Allocation of Resources

- 5. Each of Maple and TMX Group shall, for so long as CDS Clearing carries on business as a clearing agency, allocate or cause to be allocated sufficient financial and other resources to CDS Clearing to ensure that CDS Clearing can carry out its functions in a manner that is consistent with the public interest and the terms of Part B of the Recognition Order.
- 6. Each of Maple and TMX Group shall notify the Autorité immediately upon becoming aware that it is or will be unable to allocate or cause to be allocated sufficient financial or other resources to CDS Clearing to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms of Part B of the Recognition Order.

Information Sharing

- 7. Each of Maple and TMX Group shall share information and otherwise cooperate with the Autorité and its staff, other clearing agencies, stock exchanges, quotation and trade reporting systems, alternative trading systems, self-regulatory organizations, the Canadian Investor Protection Fund and any regulatory authority having jurisdiction over CDS Ltd., subject to (a) any applicable privacy or other laws governing the sharing of information and the protection of personal information, and (b) any confidentiality provisions contained in agreements entered into with the Bank of Canada by CDS Ltd. or its subsidiaries pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.
- 8. Each of Maple and TMX Group shall permit the Autorité to have access to and inspect all data and information in its possession or in the possession of any third party to whom they were transmitted in the outsourcing of Settlement Services that is required to assess compliance with the terms and conditions of this order, subject to (a) applicable privacy or other laws governing the sharing of information and the protection of personal information, and (b) any confidentiality provisions contained in agreements entered into with the Bank of Canada by CDS Ltd. or its subsidiaries pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.
- 9. Each of Maple and TMX Group shall cause its subsidiary, CDS Clearing, to permit the Autorité to have access to and inspect all data and information in its possession or in the possession of any third party to whom they were transmitted in the outsourcing of Settlement Services that is required to assess compliance with the terms and conditions of

the Recognition Order or securities legislation, subject to (a) applicable privacy or other laws governing the sharing of information and the protection of personal information, and (b) any confidentiality provisions contained in agreements entered into with the Bank of Canada by CDS Ltd. or its subsidiaries pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

SCHEDULE 2

DÉCISION N° 2008-PDG-0102

Autorisation donnée à Bourse de Montréal Inc. d'exercer l'activité de bourse au Québec, en vertu de l'article 170 de la *Loi sur les valeurs mobilières*, L.R.Q., c. V-1.1

et

Reconnaissance de Bourse de Montréal Inc. à titre d'organisme d'autoréglementation, en vertu de l'article 68 de la *Loi sur l'Autorité des marchés financiers*, L.R.Q., c. A-33.2

Considérant qu'une bourse doit être autorisée à ce titre pour exercer ses activités au Québec en vertu de l'article 169 de la *Loi sur les valeurs mobilières*, L.R.Q., c. V-1.1 (la « LVM »);

Considérant que l'Autorité des marchés financiers (l'« Autorité ») peut, en vertu de l'article 170 de la LVM, décider que la personne qui exerce une activité de bourse soit reconnue à titre d'organisme d'autoréglementation en vertu du titre III de la *Loi sur l'Autorité des marchés financiers*, L.R.Q., c. A-33.2 (la « LAMF »);

Considérant que le 17 décembre 2002, la Commission des valeurs mobilières du Québec, maintenant l'Autorité, prononçait la décision n° 2002-C-0470 (B.C.V.M.Q., 2003-01-17, Vol. XXXIV n° 02, 2), telle que modifiée le 13 mai 2003, par la décision n° 2003-C-0184 (B.C.V.M.Q., 2003-06-13, Vol. XXXIV n° 23, 10) à l'effet d'accorder à la société Bourse de Montréal Inc. la reconnaissance à titre d'organisme d'autoréglementation pour exercer ses activités au Québec en vertu de l'article 169 de la LVM;

Considérant qu'en vertu de l'article 740 de la LAMF, Bourse de Montréal Inc. a été autorisée à poursuivre l'exercice de son activité au Québec conformément aux conditions prescrites;

Considérant que Bourse de Montréal Inc. et Groupe TSX Inc. (le « Groupe TSX ») ont conclu une entente afin de regrouper leurs entreprises, aux termes de laquelle Bourse de Montréal Inc. et des filiales en propriété exclusive de Groupe TSX se regrouperont pour former une société qui remplace Bourse de Montréal Inc., et qui est appelée dans la présente décision la « Bourse »;

Considérant que, dans le cadre de son projet de regroupement avec Groupe TSX, Bourse de Montréal Inc. a présenté à l'Autorité une demande de modification de sa reconnaissance à titre d'organisme d'autoréglementation, en vertu des articles 65 et 66 de la LAMF, et de son autorisation d'exercer l'activité de bourse, en vertu de l'article 169 de la LVM, et lui a demandé de confirmer que les parties peuvent résilier le protocole d'entente intervenu le 15 mars 1999 entre la Bourse de l'Alberta, la Bourse de Montréal, la Bourse de Toronto et la Bourse de Vancouver (la « convention de 1999 »)

(collectivement, la « demande »), laquelle comprend un projet d'engagements de Groupe TSX envers l'Autorité;

Considérant qu'en vertu de la décision n° 1999-C-0241 prononcée le 29 juin 1999, la Commission des valeurs mobilières du Québec a approuvé à certaines conditions la convention de 1999 et que cette décision prévoyait que tout projet de modification importante de ce protocole devait être soumis à l'Autorité;

Considérant qu'en vertu de l'article 66 de la LAMF, l'Autorité a publié à son Bulletin (B.A.M.F., 2008-02-01, Vol. 5, n° 4, 380) un avis de la demande et invité les personnes intéressées à lui présenter leurs observations par écrit;

Considérant que les 26 et 27 mars 2008 lors d'une audience publique convoquée par l'Autorité, cette dernière a entendu les parties intéressées à leur faire part de leurs observations;

Considérant que Groupe TSX a déposé des engagements envers l'Autorité, lesquels sont joints à la présente à titre d'Annexe 1 (les « engagements »);

Considérant que Bourse de Montréal Inc. a déposé, à même la demande, un projet de modification de ses documents constitutifs et de son règlement intérieur, en vertu de l'article 74 de la LAMF et de l'article 171.1 de la LVM lesquels deviendront les documents constitutifs et le règlement intérieur de la Bourse;

Considérant que l'Autorité peut, en vertu de l'article 170 de la LVM, autoriser l'exercice d'une activité visée à l'article 169 de la LVM, aux conditions qu'elle détermine;

Considérant que l'Autorité a vérifié la conformité, aux articles 69 et 70 de la LAMF, des documents constitutifs, du règlement intérieur et des règles de fonctionnement proposés par la Bourse;

Considérant qu'en vertu de l'article 74 de la LAMF, tout projet de modification des documents constitutifs, du règlement intérieur ou des règles de fonctionnement d'un organisme reconnu est soumis à l'approbation de l'Autorité;

Considérant que l'Autorité estime que la Bourse possède une structure administrative, les ressources financières et autres pour exercer, de manière objective, équitable et efficace, ses fonctions et pouvoirs, conformément à l'article 68 de la LAMF;

Considérant que la Bourse maintiendra une division indépendante chargée de la fonction de réglementation (la « Division ») ayant pour mission principale de surveiller les fonctions et les activités réglementaires de la Bourse;

Considérant que la Bourse et Groupe TSX sont en accord avec les modalités et conditions de la présente décision;

Considérant que l'Autorité juge opportun d'accorder l'autorisation d'exercer l'activité de bourse à la Bourse, sous réserve du respect de certaines modalités et conditions ainsi que des engagements;

Considérant que l'Autorité juge opportun d'accorder la reconnaissance à titre d'organisme d'autoréglementation à la Bourse, sous réserve du respect de certaines modalités et conditions ainsi que des engagements;

Considérant que l'Autorité juge opportun de ne pas s'opposer à la demande de Bourse de Montréal Inc. de résilier la convention de 1999 à laquelle elle est partie;

En conséquence :

L'Autorité accorde, en vertu de l'article 170 de la LVM, l'autorisation d'exercer l'activité de bourse et, en vertu de l'article 68 de la LAMF, la reconnaissance à titre d'organisme d'autoréglementation à la Bourse sous la dénomination sociale de « Bourse de Montréal Inc. » pour exercer ses activités au Québec.

En outre, l'Autorité ne s'oppose pas à ce que la convention de 1999 soit résiliée.

De plus, l'Autorité, en vertu de l'article 74 de la LAMF, approuve les modifications proposées aux documents constitutifs et au règlement intérieur de la Bourse.

Enfin, l'Autorité révoque la décision n° 2002-C-0470 prononcée le 17 décembre 2002 (B.C.V.M.Q., 2003-01-17, Vol. XXXIV n° 02, 2) ainsi que la décision n° 2003-C-0184 qu'elle a prononcée le 13 mai 2003 (B.C.V.M.Q., 2003-06-13, Vol. XXXIV n° 23, 10).

La présente décision est sujette aux modalités et conditions suivantes :

Aux fins de la présente décision :

- a) le terme « participant » inclut les termes « participant agréé », « participant agréé étranger » et « détenteur de permis restreint de négociation »;
- b) une personne résidente du Québec s'entend d'un particulier qui est considéré comme un résident du Québec en vertu de la *Loi sur les impôts*, L.R.Q., c. I-3;
- c) l'expression « agissant conjointement ou de concert » s'entend du sens donné à « agir de concert » à l'article 1.9 du *Règlement 62-104 sur les offres publiques d'achat et de rachat*, dans sa version modifiée à l'occasion, en y apportant les adaptations nécessaires et, pour plus de certitude, inclut les personnes réputées ou présumées agir de concert au sens de cette expression.

I. ACTIONNARIAT

a) Aucune personne ou société et aucun groupement de personnes ou de sociétés, agissant conjointement ou de concert, ne peut devenir propriétaire ou exercer une emprise sur plus de dix pour cent (10 %) de toute catégorie ou série d'actions avec droit de vote de la Bourse, sans l'approbation préalable de l'Autorité, à l'exception de Groupe TSX ou d'un membre du même groupe que celui-ci.

b) La Bourse informera l'Autorité, par écrit et sans délai, si, à sa connaissance, une personne ou société ou un groupement de personnes ou de sociétés, agissant conjointement ou de concert, est propriétaire ou exerce une emprise,

sur plus de dix pour cent (10 %) des actions de toute catégorie ou série d'actions avec droit de vote de la Bourse, sans avoir obtenu l'approbation préalable de l'Autorité, et prendra les mesures nécessaires pour remédier à la situation, sans délai.

c) La Bourse informera l'Autorité, par écrit et sans délai, de tout changement dans la liste de ses actionnaires.

d) La Bourse informera, par écrit et sans délai, l'Autorité, de toute convention entre actionnaires dont elle aurait été informée.

II. STRUCTURE DE GOUVERNANCE

a) Les dispositions prises par la Bourse doivent assurer une représentation juste et significative à son conseil d'administration et aux comités du conseil, compte tenu de la nature et de la structure de la Bourse ainsi que le maintien d'un nombre et d'une proportion raisonnables d'administrateurs qui n'ont pas de liens avec la Bourse, ses participants ou ses actionnaires (autres que Groupe TSX ou un membre de son groupe, à titre d'actionnaires), dans le but d'assurer la diversité du conseil.

b) La structure de gouvernance de la Bourse devra prévoir :

i) une représentation d'au moins cinquante pour cent (50 %) d'administrateurs indépendants au conseil d'administration et aux comités du conseil;

ii) une représentation d'au moins vingt-cinq pour cent (25%) d'administrateurs résidents du Québec sur le conseil d'administration au moment de leur élection ou de leur nomination;

iii) une représentation juste et significative d'administrateurs disposant d'une expertise en matière de produits dérivés au conseil d'administration et au comité spécial de la réglementation (le « comité spécial »);

iv) des dispositions appropriées en matière de qualifications et de rémunération, une limitation de responsabilités et des mesures d'indemnisation pour les administrateurs, les membres de la direction et les employés en général;

v) un code de conduite et d'éthique et une politique écrite concernant les conflits d'intérêts potentiels des membres du conseil d'administration et des comités de la Bourse, incluant la Division, le comité spécial et la Corporation canadienne de compensation de produits dérivés (la « CDCC »), révisés afin de tenir compte du regroupement, et déposés auprès de l'Autorité dans l'année qui suit la date de la présente décision;

vi) des politiques et procédures en matière de conflits d'intérêts permettant aux membres de la direction de la Bourse et de la CDCC

de divulguer leurs intérêts et pour prévoir la possibilité qu'une personne puisse se retirer d'un dossier et d'une décision.

La Bourse devra s'assurer, chaque année et chaque fois qu'une nouvelle personne est élue au conseil d'administration, qu'au moins cinquante pour cent (50 %) de ses administrateurs sont indépendants. Un administrateur indépendant s'entend d'une personne qui, notamment, satisfait aux conditions d'indépendance énoncées au paragraphe 1.4 du *Règlement 52-110 sur le comité de vérification*, dans sa version modifiée à l'occasion, et n'a pas de liens avec un participant, un membre de la direction, un employé ou un actionnaire qui est propriétaire ou qui exerce une emprise, directement ou indirectement, sur plus de dix pour cent (10 %) des actions d'une catégorie ou série d'actions avec droit de vote de la Bourse (autre que Groupe TSX ou un membre de son groupe, à titre d'actionnaires).

La Bourse prendra les mesures raisonnables pour s'assurer que chaque administrateur de la Bourse est une personne apte et compétente et que la conduite antérieure de chaque administrateur donne des motifs raisonnables de croire que l'administrateur s'acquittera de ses fonctions avec intégrité.

Les dispositions prises par la Bourse, relativement à l'indépendance des administrateurs, notamment des critères permettant de déterminer si une personne a une relation importante avec la Bourse et, par conséquent, est considérée comme n'étant pas indépendante, ne pourront être modifiées sans l'approbation préalable de l'Autorité.

Toute modification du code de conduite et d'éthique et de la politique écrite concernant les conflits d'intérêts de la Bourse doit être soumise à l'Autorité, dès son approbation.

c) La Bourse devra voir à ce que le quorum des réunions des administrateurs ne soit pas inférieur à la majorité des administrateurs en fonction.

Si, à un moment quelconque, la Bourse ne satisfait pas aux exigences de la présente section relative à la structure de gouvernance, elle remédiera sans délai à cette situation.

III. PÉRENNITÉ DES ACTIVITÉS AU QUÉBEC

a) Le siège et le bureau de direction de la Bourse et de la CDCC demeureront à Montréal.

b) Le plus haut dirigeant de la Bourse et de la CDCC devront être des résidents du Québec, au moment de leur nomination et pour la durée de leur mandat, et travailler à Montréal.

c) La Bourse conservera et utilisera le nom « Bourse de Montréal Inc./Montréal Exchange Inc. ».

d) La Bourse ne mettra pas fin à son exploitation ni ne suspendra, n'abandonnera ou ne liquidera la totalité ou une partie importante de ses activités ni ne cédera la totalité ou la quasi-totalité de ses actifs, à moins :

- i) d'avoir déposé à l'Autorité un préavis écrit d'au moins six mois de son intention de le faire;
- ii) de respecter toutes les modalités et les conditions que l'Autorité pourrait imposer dans l'intérêt public pour que l'abandon de ses activités ou la disposition de ses actifs s'effectue de façon ordonnée.

IV. LANGUE DES SERVICES

La Bourse fera en sorte de maintenir :

- i) la gamme étendue de services de la Bourse au Québec requis en vertu des présentes, en français et en anglais, notamment les services d'adhésion, de réglementation et de surveillance des activités des participants de la Bourse;
- ii) la disponibilité simultanée en français et en anglais de tout document d'information de la Bourse destiné aux participants ou au public;
- iii) le français comme langue utilisée dans toutes les communications et correspondances avec l'Autorité.

V. ACCÈS

a) La Bourse doit permettre à toute personne qui satisfait aux critères d'adhésion applicables d'effectuer des opérations à la Bourse.

- b) Sans restreindre le caractère général de ce qui précède, la Bourse :
 - i) doit énoncer par écrit les critères auxquels doit satisfaire une personne pour pouvoir effectuer des opérations à la Bourse;
 - ii) ne doit pas déraisonnablement interdire ou limiter l'accès à ses services d'une personne; et
 - iii) doit tenir des registres de ce qui suit :
 - a) toutes les demandes d'adhésion acceptées, en précisant les personnes à qui elle a donné accès, et les motifs à l'appui de sa décision; et
 - b) toutes les demandes d'adhésion refusées ou limitations d'accès, en précisant les motifs à l'appui de sa décision.

VI. FRAIS

a) Tous les frais qu'impose la Bourse à ses participants doivent être transparents et être répartis de façon juste et équitable.

b) Les frais ne doivent pas être un obstacle à l'accès, mais doivent tenir compte du fait que la Bourse doit disposer de revenus suffisants pour remplir ses fonctions et activités de réglementation ainsi que ses activités de Bourse.

c) Toute modification à la liste des frais exigés par la Bourse sera déposée à l'Autorité et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

VII. DIVISION DE LA RÉGLEMENTATION

a) La Bourse maintiendra une division de la réglementation distincte sous l'autorité d'un comité spécial de la réglementation (le « comité spécial »), nommé par le conseil d'administration de la Bourse et ayant des responsabilités clairement définies de réglementation du marché et de ses participants, et une structure administrative distincte.

b) La Bourse obtiendra l'approbation préalable de l'Autorité avant d'effectuer tout changement à la structure organisationnelle et administrative de la Division ou du comité spécial qui aurait une incidence importante sur les fonctions et activités de réglementation.

c) La Division sera pleinement autonome dans l'accomplissement de ses fonctions et dans son processus décisionnel. L'indépendance de la Division et de son personnel sera assurée et des mesures de cloisonnement strictes seront maintenues, afin d'assurer l'absence de conflits d'intérêts avec les autres activités de la Bourse et de Groupe TSX.

d) La Division remettra à tous les trimestres à l'Autorité son rapport d'activités conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

e) La Bourse remettra tous les ans à l'Autorité un rapport d'activités incluant un rapport d'activités de la Division préparé par cette dernière. Ce rapport devra comprendre l'information qui peut lui être demandée par l'Autorité. Il devra rendre compte du respect des modalités et des conditions relatives à la Division. De plus, il devra être présenté dans une forme acceptable par l'Autorité conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

f) La Division devra informer sans délai l'Autorité lorsqu'elle a des motifs raisonnables de croire à un cas d'inconduite ou de fraude de la part de ses participants et d'autres personnes pouvant entraîner de graves dommages pour les épargnants, les participants, le Fonds canadien de protection des épargnants ou la Bourse.

g) L'Autorité doit être informée tous les mois, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2, de ce qui suit :

- i) toute nouvelle analyse ou enquête entreprise par la Division, et notamment le nom du participant et de la personne approuvée concernés et de l'enquêteur responsable, la date d'ouverture du dossier ainsi que la nature de l'enquête;
- ii) toutes les analyses ou enquêtes qui ne se traduisent pas par des procédures disciplinaires et qui sont closes, et notamment la date à laquelle l'enquête a été amorcée, la conduite et les personnes en cause et le règlement de l'enquête.

h) Une politique en matière de conflits d'intérêts devra être maintenue par la Bourse pour permettre au personnel et aux membres du comité spécial de divulguer leurs intérêts et pour prévoir la possibilité qu'une personne puisse se retirer d'un dossier et/ou d'une décision.

i) Toute modification à la politique en matière de conflits d'intérêts sera soumise à l'Autorité dès son approbation.

j) Sous réserve de tout changement dont peuvent convenir la Bourse et l'Autorité, la Division doit être exploitée comme suit :

- i) Les fonctions et activités de la Division doivent être indépendantes des activités à but lucratif de la Bourse et distinctes sur le plan organisationnel. La Division doit opérer ses fonctions et activités selon le principe de l'autofinancement et doit être sans but lucratif;
- ii) La Division doit constituer une unité d'affaires distincte de la Bourse régie par le conseil d'administration de la Bourse;
- iii) Le conseil d'administration doit établir un comité spécial chargé de superviser les fonctions et activités de la Division, composé d'une majorité de personnes qui sont des résidents du Québec, au moment de leur nomination et pour la durée de leur mandat, et de personnes qui satisfont aux conditions d'indépendance applicables aux administrateurs de la Bourse;
- iv) Le quorum du comité spécial doit être constitué de la majorité des membres en fonction, et de ce nombre :
 - a) d'une majorité de personnes qui sont des résidents du Québec au moment de leur nomination et pour la durée de leur mandat;
 - b) d'une majorité de personnes qui satisfont aux critères d'indépendance applicables aux administrateurs de la Bourse;
- v) Le chef de l'exploitation de la Division (le « vice-président de la Division ») doit rendre compte au comité spécial de toute question de

nature réglementaire ou disciplinaire. Le vice-président de la Division, ou la personne désignée par lui, doit être présent aux réunions du comité spécial portant sur les fonctions et activités de la Division, sauf indication contraire du comité spécial, et doit fournir, sur demande, au comité spécial, des renseignements concernant les fonctions et activités de la Division. Le comité spécial et le vice-président de la Division sont tous deux tenus de s'assurer que les fonctions et activités de la Division sont exercées convenablement;

vi) La structure financière de la Division devra être distincte de celle de la Bourse. Elle devra opérer sur une base de recouvrement de coûts. Tout surplus, autre que les amendes et autres sommes prévues en VII. j) vii), devra être redistribué aux participants et tout déficit devra être comblé par une cotisation spéciale des participants ou par la Bourse sur recommandation du comité spécial au conseil d'administration;

vii) Les amendes et autres sommes encaissées par la Division aux termes de règlements amiables conclus avec la Division ou de procédures de nature disciplinaire doivent être traitées de la façon suivante :

a) aucun montant ne sera redistribué aux participants de la Bourse;

b) une comptabilité distincte sera maintenue afin de comptabiliser les revenus et les dépenses liés aux dossiers de nature disciplinaire;

c) tout montant encaissé servira d'abord à compenser les coûts directs encourus dans le cadre de telles procédures;

d) tout excédent net devra servir, avec l'approbation préalable du comité spécial à l'une ou l'autre des fins suivantes :

1) à la formation et à l'information des participants aux marchés des produits dérivés et aux membres du public ou aux frais de recherche dans ce domaine;

2) aux versements faits à un organisme exonéré d'impôt, sans but lucratif, qui a notamment pour mission de protéger les investisseurs ou d'exercer les activités mentionnées en VII. j) vii) d) 1);

3) aux projets d'éducation;

4) aux autres fins approuvées par l'Autorité;

viii) La Division doit disposer d'un budget distinct qui doit être approuvé par le conseil d'administration sur recommandation du comité

spécial et administré par le vice-président de la Division et le déposer annuellement, à l'Autorité, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision;

ix) La Bourse doit allouer à la Division le soutien nécessaire de ses autres services, notamment dans le domaine technique, conformément à ses budgets et à ses exigences raisonnables tout en assurant son indépendance;

x) La Bourse doit adopter des politiques et des procédures visant à assurer que les renseignements confidentiels concernant les fonctions et activités de la Division demeurent confidentiels et ne soient pas divulgués de façon inappropriée aux services à but lucratif de la Bourse, de Groupe TSX ou à d'autres personnes. Elle doit aussi déployer tous les efforts raisonnables afin de les respecter;

xi) Le vice-président de la Division, le président de la Bourse, le comité spécial et le conseil d'administration doivent rendre compte à l'Autorité, sur demande, des fonctions et activités de la Division;

xii) La Bourse doit rendre compte à l'Autorité, semestriellement, de l'effectif de la Division, par fonction, en précisant les postes autorisés, comblés et vacants et de toute réduction ou tout changement important de cet effectif, par fonction et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision;

xiii) La direction de la Bourse, y compris le vice-président de la Division, doit procéder au moins une fois par année à une évaluation interne de l'exécution par la Division de ses fonctions réglementaires et présenter un rapport à ce sujet au comité spécial, accompagné de ses recommandations quant aux améliorations possibles, le cas échéant. Le comité spécial doit, pour sa part, rendre compte au conseil d'administration de l'exécution par la Division de ses fonctions réglementaires. La Bourse doit remettre des exemplaires de ces rapports à l'Autorité et l'informer de toute mesure proposée par suite de ces évaluations et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision;

xiv) Les décisions du comité spécial dans les matières disciplinaires sont révisables conformément à la loi;

xv) Les règles concernant le comité spécial et la Division devront être révisées afin de se conformer aux exigences de la présente section sur la Division et être soumises à l'approbation de l'Autorité dans un délai de six mois de la présente décision.

VIII. RESSOURCES FINANCIÈRES ET AUTRES

a) La Bourse maintiendra des ressources financières et autres suffisantes pour assurer :

- i) sa viabilité financière et le suivi quotidien de ses opérations;
 - ii) l'exercice des fonctions d'organisme d'autoréglementation de la Division;
- et ce, en conformité avec les modalités et conditions prévues à la présente décision.

IX. RATIOS ET RAPPORTS FINANCIERS

a) La Bourse sera en défaut et informera sans délai l'Autorité lorsque, calculé à partir de ses états financiers consolidés et non consolidés :

- i) Son ratio de fonds de roulement sera égal ou inférieur à 1,5 pour 1 (actif court terme liquide, c'est-à-dire l'encaisse, les placements temporaires, les comptes à recevoir et les placements à long terme encaissables en tout temps / passif court terme);
- ii) Son ratio de marge brute d'autofinancement-endettement sera inférieur ou égal à vingt pour cent (20 %) (bénéfice net pour les 12 mois les plus récents ajusté des éléments sans incidence sur les liquidités, c'est-à-dire l'amortissement, les impôts reportés et toutes les autres dépenses sans impact sur les liquidités / dettes à court et à long terme);
- iii) Son ratio de levier financier sera égal ou supérieur à 4,0 (actif total / capital).

Les ratios mentionnés ci-dessus calculés à partir des états financiers consolidés excluront les éléments suivants :

- a) règlements quotidiens à recevoir des membres de la chambre de compensation;
- b) règlements quotidiens à payer aux membres de la chambre de compensation;
- c) les dépôts de couverture des membres (à l'actif et au passif);
- d) les dépôts au fonds de compensation (à l'actif et au passif).

b) Si la Bourse est en défaut de respecter les ratios financiers pendant une période excédant trois mois, la Bourse informera, par écrit et sans délai, l'Autorité des motifs de la déficience et des mesures qui seront prises pour remédier à la situation et rétablir son équilibre financier. De plus, à partir du moment où la Bourse sera en défaut

de respecter les ratios financiers pour une période excédant 3 mois et jusqu'à la fin d'une période d'au moins 6 mois suivant le moment où les déficiences auront été éliminées, la Bourse ne procédera pas, sans avoir obtenu l'approbation préalable de l'Autorité, à des dépenses en immobilisations qui n'étaient pas déjà reflétées dans les états financiers ou à des prêts, bonus, dividendes ou toute autre distribution d'actifs à tout administrateur, dirigeant, compagnie liée ou actionnaire.

c) La Bourse fournira un rapport faisant état de chacun des ratios, calculés mensuellement à partir des états financiers consolidés, et non consolidés, joint aux états financiers trimestriels pour les trois premiers trimestres de l'exercice et aux états financiers annuels vérifiés pour le quatrième trimestre, et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

d) La Bourse déposera ses états financiers annuels vérifiés consolidés et non consolidés ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

e) La Bourse déposera ses états financiers trimestriels consolidés et non consolidés de la Bourse ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

f) Les états financiers annuels vérifiés et trimestriels consolidés comprendront une analyse budgétaire des résultats ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent. Ces analyses seront présentées conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

g) Les états financiers annuels vérifiés et trimestriels non consolidés de la Bourse ainsi que ceux de ses filiales comprendront une analyse budgétaire des résultats ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent. Ces analyses seront présentées conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

h) La Bourse fournira l'information sectorielle portant sur les résultats annuels et trimestriels de la Division comprenant une analyse budgétaire des résultats, et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

i) La Bourse déposera son budget annuel consolidé et non consolidé de même que celui de ses filiales ainsi que, le cas échéant, les prévisions budgétaires à long terme, et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

j) La Bourse informera, par écrit et sans délai, l'Autorité de toute modification importante aux budgets consolidés et non consolidés approuvés par le conseil d'administration.

k) La Bourse fournira toutes autres informations financières qui seront exigées par l'Autorité.

X. IMPARTITION

a) La Bourse devra obtenir l'approbation préalable de l'Autorité avant de conclure ou réaliser toute opération d'impartition de ses fonctions ou activités réglementaires de bourse ou d'organisme d'autoréglementation.

b) La Bourse devra obtenir l'approbation préalable de l'Autorité avant de conclure ou réaliser toute opération en vue de fournir des fonctions ou activités réglementaires de bourse ou d'organisme d'autoréglementation à d'autres bourses de valeurs, organismes d'autoréglementation, personnes exploitant des systèmes de négociation parallèle ou d'autres personnes.

c) Si elle impartit de façon importante certaines de ses fonctions commerciales à des parties autres que Groupe TSX, un membre du même groupe que celui-ci ou une personne qui a un lien avec celui-ci, la Bourse doit procéder conformément aux pratiques exemplaires du secteur. Sans que soit restreinte la portée générale de ce qui précède, la Bourse doit faire ce qui suit :

- i) établir et appliquer des politiques et des procédures qui sont approuvées par son conseil d'administration pour l'évaluation et l'approbation des ententes d'impartition importante;
- ii) lorsqu'elle conclut une telle entente d'impartition importante, elle doit :
 - A) évaluer le risque associé à l'entente, la qualité des services devant être fournis et le degré de contrôle qu'elle exercera;
 - B) signer un contrat avec le fournisseur de services qui traite de tous les éléments importants de l'entente, y compris les niveaux de service et les normes d'exécution;
- iii) s'assurer que tout contrat donnant effet à une telle entente d'impartition importante qui est susceptible d'avoir une incidence sur les fonctions de réglementation de la Bourse permette à la Bourse, à ses mandataires et à l'Autorité d'avoir accès à l'ensemble des données et des renseignements tenus par le fournisseur de service que la Bourse doit partager aux termes de l'article 78 de la LAMF ou qui sont nécessaires pour que l'Autorité puisse évaluer l'exécution par la Bourse de ses fonctions de réglementation et la conformité de la Bourse aux modalités et aux conditions des présentes;
- iv) surveiller l'exécution des services fournis aux termes d'une telle entente d'impartition importante.

XI. SYSTÈMES INFORMATIQUES

a) À l'égard de chacun de ses systèmes de soutien de l'enregistrement, de l'acheminement et de l'exécution des ordres, de transmission de données, d'information sur les opérations et de comparaison d'opérations et des exigences en matière d'intégrité et de capacité, la Bourse devra aviser, par écrit et sans délai, l'Autorité de toutes défaillances importantes d'un système qui auraient pour impact d'affecter le bon fonctionnement du marché.

b) Avant de procéder à tout changement important à l'égard de chacun de ses systèmes de soutien de l'enregistrement, de l'acheminement et de l'exécution des ordres, de transmission de données, d'information sur les opérations et de comparaison d'opérations et des exigences en matière d'intégrité et de capacité, la Bourse transmettra un préavis écrit de 45 jours à l'Autorité.

XII. COMPENSATION ET RÈGLEMENT

a) La Bourse devra s'assurer que les services de règlement et de compensation sont dispensés par une chambre de compensation autorisée par l'Autorité et disposer de règles et politiques pour encadrer les problèmes liés au règlement et à la compensation des contrats négociés.

XIII. RÈGLES

a) La Bourse et la Division doivent établir les règles, règlements, politiques, procédures, pratiques ou autres normes semblables (ensemble les « règles ») qui sont nécessaires ou appropriés pour régir et réglementer tous les aspects de ses activités et de ses affaires internes de façon à, notamment :

- i) assurer le respect de la législation en valeurs mobilières;
- ii) empêcher les actes et pratiques frauduleux et de manipulation;
- iii) favoriser des principes commerciaux de justice et d'équité; et
- iv) encourager la collaboration et la coordination des efforts des personnes chargées de réglementer, de compenser, de régler et de faciliter les opérations sur valeurs mobilières et de traiter l'information concernant ces opérations.

b) Toute modification aux règles de la Bourse devra être soumise pour approbation préalable à l'Autorité conformément à la procédure d'approbation des règles établie de temps à autre par l'Autorité.

XIV. MESURES DISCIPLINAIRES À L'ENDROIT DES PARTICIPANTS ET DE LEURS REPRÉSENTANTS

a) La Bourse, par l'intermédiaire de la Division, doit prendre les mesures disciplinaires qui s'imposent à l'endroit de ses participants et de leurs représentants en cas de violation des règles de la Bourse. En outre, la Bourse remettra à l'Autorité un avis de toute violation de la législation en valeurs mobilières dont elle a connaissance dans le cours normal de ses activités.

XV. ÉQUITÉ DES PROCÉDURES

a) La Bourse, y compris la Division, doit s'assurer que ses exigences en ce qui a trait à l'accès à la Bourse, à l'imposition de limitations ou de conditions à l'accès et au refus d'accès sont justes et raisonnables, notamment pour ce qui est des avis, de la possibilité d'être entendu ou de faire des déclarations, de la tenue de registres, de la présentation de motifs et de la possibilité d'en appeler d'une décision.

b) La Bourse, y compris la Division, doit s'assurer d'entendre les affaires disciplinaires en séance publique.

c) Malgré le paragraphe b), la Bourse, y compris la Division, peut, d'office ou sur demande, ordonner le huis clos ou interdire la publication ou la diffusion de renseignements ou de documents qu'elle indique, dans l'intérêt de la morale ou de l'ordre public.

d) La Bourse, y compris la Division, doit établir par écrit des critères servant à déterminer si une décision est requise dans l'intérêt de la morale ou de l'ordre public et les déposer auprès de l'Autorité dans un délai de six mois de la présente décision.

XVI. TRANSACTIONS D'INITIÉS ET PARTAGE D'INFORMATION

a) La Bourse, y compris la Division, doit maintenir :

- i) des règles portant sur les opérations d'initiés;
- ii) des systèmes adéquats de surveillance des opérations d'initiés;
- iii) une entente écrite avec tout marché sur lequel des titres sous-jacents ou liés à ses produits sont négociés, ou avec le fournisseur de services de réglementation de ce marché, en vue de détecter les opérations d'initiés, les pratiques abusives et la manipulation et faire respecter les règles à cet égard, et mettre en œuvre des procédures en vue de coordonner avec ce marché la surveillance des opérations d'initiés et la mise en application des règles les régissant;
- iv) des procédures écrites visant à coordonner les interdictions d'opérations, ajoutées aux coupe-circuits, avec tout marché sur lequel des titres sous-jacents ou liés à ses produits sont négociés, ou avec le fournisseur de services de réglementation de ce marché.

b) La Bourse, y compris la Division, doit collaborer, notamment par le partage d'information, avec l'Autorité et son personnel, le Fonds canadien de protection des épargnants et d'autres bourses, organismes d'autoréglementation et autorités de réglementation chargés de la supervision ou de la réglementation en valeurs mobilières, sous réserve des lois applicables en matière de partage d'information et de protection des renseignements personnels.

XVII. OPÉRATIONS ENTRE PERSONNES APPARENTÉES

Toutes les opérations ou ententes importantes qui seront réalisées entre la Bourse et Groupe TSX ainsi que toutes les sociétés qui lui sont liées devront comprendre des conditions aussi favorables pour la Bourse que les conditions du marché dans de telles circonstances.

XVIII. INFORMATION SUPPLÉMENTAIRE

La Bourse devra déposer toute information la concernant qui sera requise conformément au *Règlement 21-101 sur le fonctionnement du marché*. Le rapport d'examen indépendant portant sur la capacité, l'intégrité et la sécurité des systèmes de la Bourse qui est prévu à ce règlement doit être déposé conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

XIX. DÉFAUT DE SE CONFORMER

Si la Bourse ou Groupe TSX fait défaut de se conformer à une ou plusieurs des modalités ou conditions qui sont énoncées dans la présente décision ou aux engagements, l'Autorité pourra réviser la présente décision.

XX. DROIT APPLICABLE

La Bourse reconnaît et s'engage à respecter le droit applicable au Québec.

La présente décision prendra effet à la date effective du regroupement, date qui sera confirmée dans un avis publié par l'Autorité au *Bulletin de l'Autorité des marchés financiers*.

Fait le 10 avril 2008.

Jean St-Gelais
Président-directeur général



April 9, 2008

REMIS EN MAIN PROPRE ET PAR COURRIEL

M. Jean St-Gelais
 Président-directeur général
 Autorité des marchés financiers
 800, Square Victoria, 22^e étage
 C.P. 246, Tour de la Bourse
 Montréal (Québec) H4Z 1G3

The Exchange Tower
 130 King Street West
 Toronto, Canada M5X 1J2
 Tél 416-947-4320
 Téléc 416-947-4431

Objet : Demandes de la Bourse de Montréal Inc. / Montréal Exchange Inc. (la « demanderesse ») dans le cadre du regroupement de la demanderesse et de Groupe TSX Inc. (« Groupe TSX »)

Monsieur St-Gelais,

Nous vous communiquons par la présente certains engagements envers l'Autorité des marchés financiers (l'« Autorité ») à l'appui des demandes de la demanderesse déposées aux termes de l'article 169 de la *Loi sur les valeurs mobilières* (Québec) ainsi que de l'article 65 et du deuxième paragraphe de l'article 66 de la *Loi sur l'Autorité des marchés financiers* (les « demandes »), le tout en rapport avec le regroupement mentionné ci-dessus. Dans le cadre du regroupement, la demanderesse participera à une série de fusions dans le cadre desquelles la société issue de ces fusions (la « Bourse ») deviendra une filiale directe de Groupe TSX. À l'appui de ces demandes, Groupe TSX prend envers l'Autorité les engagements énoncés ci-dessous. Groupe TSX comprend que l'Autorité se fonde sur ces engagements en vue de rendre sa décision sur les demandes.

Restrictions relatives à la propriété des actions de Groupe TSX

1. a) Groupe TSX reconnaît qu'il est assujetti à la restriction selon laquelle aucune personne ou société et aucun groupe de personnes ou de sociétés, agissant conjointement ou de concert, ne doit être propriétaire bénéficiaire ni avoir le contrôle de plus de dix pour cent (10 %) de toute catégorie ou série d'actions à droit de vote de Groupe TSX Inc. sans l'approbation préalable de l'Autorité;
- b) Groupe TSX s'engage à informer l'Autorité immédiatement par écrit s'il a connaissance qu'une personne ou société ou un groupe de personnes ou de sociétés, agissant conjointement ou de concert, devient propriétaire bénéficiaire ou exerce le contrôle sur plus de dix pour cent (10 %) de toute catégorie ou série d'actions à droit de vote de Groupe TSX et Groupe TSX devra prendre les mesures nécessaires pour y remédier immédiatement, conformément à l'annexe B des statuts de Groupe TSX.

Aux fins du présent paragraphe 1, le fait qu'une personne ou une société ou un groupe de personnes ou de sociétés agissant conjointement ou de concert soit propriétaire bénéficiaire ou ait le contrôle d'une catégorie ou série d'actions à droit de vote de Groupe TSX sera déterminé conformément aux lois du territoire d'incorporation de Groupe TSX.

Composition du conseil d'administration de Groupe TSX

2. Groupe TSX s'est engagé à désigner chaque année et ce, sans limite de temps, à des fins d'élection au conseil d'administration de Groupe TSX, à chacune de ses assemblées annuelles tenue après la date des présentes, le nombre d'administrateurs résidents du Québec qui représente 25 % du nombre total des candidats aux postes d'administrateurs pour cette année-là.
3. Groupe TSX devra faire en sorte que les cinq candidats désignés par la Bourse soient mis en nomination à des fins d'élection au conseil d'administration de Groupe TSX à chacune de ses trois premières assemblées annuelles convoquées après la date des présentes; toutefois, si l'un ou l'autre des candidats désignés par la Bourse démissionnait de son poste, était inéligible ou était par ailleurs incapable d'exercer ses fonctions d'administrateur de Groupe TSX, les autres candidats désignés par la Bourse auront le droit de désigner le nombre requis de candidats de remplacement à des fins d'élection (les « **autres candidats** »). Parmi ces autres candidats, Groupe TSX sera uniquement tenue de désigner à des fins d'élection à son conseil d'administration ceux qui sont aptes et éligibles à siéger à titre d'administrateur de Groupe TSX selon les exigences applicables aux administrateurs de Groupe TSX.
4. Groupe TSX doit voir à ce qu'au moins une personne parmi les candidats désignés par la Bourse ou les autres candidats qui les remplacent siège à chaque comité du conseil d'administration de Groupe TSX pour une période de trois ans après la date des présentes.

Pour l'application des présentes :

- a) les « candidats de la Bourse » sont les cinq personnes désignées par la Bourse à la clôture du regroupement susmentionné en vue de leur élection au conseil d'administration de Groupe TSX;
- b) un candidat désigné par la Bourse ou un autre candidat est éligible à siéger au conseil d'administration de Groupe TSX s'il : (i) est indépendant par rapport à Groupe TSX et à ses filiales et n'a aucun lien avec elles (sauf M. Luc Bertrand); (ii) n'a aucun conflit d'intérêts avec Groupe TSX ou ses filiales; (iii) est résident du Québec et (iv) respecte toutes les exigences des lois et politiques applicables, y compris aux termes de la décision de reconnaissance de Groupe TSX; et
- c) un administrateur est un résident du Québec s'il est considéré comme un résident du Québec aux termes de la *Loi sur les impôts* (L.R.Q., ch. I-3) au moment de son élection ou de sa nomination.

Activités de la Bourse

5. Groupe TSX s'engage à faire en sorte que les activités existantes liées à la négociation d'instruments dérivés et aux produits connexes de la Bourse continueront à être exercées à Montréal.
6. Groupe TSX s'engage à ne rien entreprendre qui ferait que la Bourse cesse d'être la bourse nationale canadienne de négociation de tous les instruments dérivés et produits

connexes, y compris d'être l'unique plateforme de négociation du commerce d'échange de droits d'émission de carbone et d'autres droits d'émission au Canada, sans avoir obtenu l'autorisation préalable de l'Autorité et s'être conformé aux termes et conditions que l'Autorité peut établir dans l'intérêt public en rapport avec tout changement aux opérations de la Bourse.

Changement de propriété

7. Groupe TSX s'engage à ne pas compléter ou autoriser une transaction qui ferait en sorte qu'une personne ou société ou qu'un groupe de personnes ou de sociétés, agissant conjointement ou de concert, devienne propriétaire ou exerce une emprise sur plus de dix pour cent (10 %) de toute catégorie ou série d'actions avec droit de vote de la Bourse, sans l'approbation préalable de l'Autorité, à l'exception de Groupe TSX ou d'un membre du même groupe que celui-ci.

Aux fins du présent paragraphe 7, l'expression « agissant conjointement ou de concert » s'entend du sens donné à « agir de concert » à l'article 1.9 du Règlement 62-104 sur les offres publiques d'achat et de rachat, dans sa version modifiée à l'occasion en y apportant les adaptations nécessaires et, pour plus de certitude, inclut les personnes réputées ou présumées agir de concert au sens de cette expression.

8. Groupe TSX s'engage à continuer d'exercer une emprise sur plus de 50 % de toute catégorie ou série d'actions à droit de vote de la Bourse.
9. Groupe TSX s'engage à ne pas compléter ou autoriser une transaction en conséquence de laquelle il cesserait de contrôler, directement ou indirectement, plus de 50 % de toutes les catégories ou séries d'actions à droit de vote de la Bourse, sans l'approbation préalable de l'Autorité.

Plan stratégique relatif aux instruments dérivés

10. Groupe TSX s'engage à remettre chaque année à l'Autorité, dans les deux mois suivant son approbation, son plan stratégique relatif aux instruments dérivés approuvé par son conseil d'administration.

Accès à l'information

11. Groupe TSX s'engage à permettre à l'Autorité de consulter et d'inspecter et à s'assurer que ses filiales permettent à l'Autorité de consulter et d'inspecter, toutes les données et tous les renseignements qui sont en leur possession respective et dont l'Autorité a besoin pour procéder à son évaluation de l'exercice par la Bourse de ses fonctions de réglementation et de sa conformité avec les modalités et conditions de la décision d'autorisation à titre de bourse et de reconnaissance à titre d'organisme d'autoréglementation de la Bourse rendue par l'Autorité en date des présentes (la « Décision de reconnaissance »).

Ressources

12. Sous réserve du paragraphe 13 et tant et aussi longtemps que la Bourse continuera de faire affaires en tant que bourse, Groupe TSX s'engage à allouer à la Bourse les ressources financières et autres suffisantes pour assurer :
 - i) sa viabilité financière et le suivi quotidien de ses opérations;
 - ii) l'exercice des fonctions d'organisme d'autoréglementation de la Bourse et de sa Division,et ce, en conformité avec les modalités et les conditions prévues à la Décision de reconnaissance.
13. Groupe TSX s'engage à aviser l'Autorité immédiatement s'il se rend compte qu'il ne peut ou ne pourra allouer des ressources financières et autres suffisantes à assurer la viabilité financière de la Bourse et à s'assurer qu'elle pourra exercer ses fonctions de bourse et d'organisme d'autoréglementation de manière consistante avec les modalités et les conditions prévues à la Décision de reconnaissance.

Défaut de se conformer

14. Groupe TSX reconnaît que s'il fait défaut de se conformer à un ou des engagements qui sont énoncés aux présentes, l'Autorité pourra réviser la Décision de reconnaissance.

Généralités

15. Les engagements énoncés aux présentes prendront effet à la date effective du regroupement.
16. Les engagements énoncés aux présentes seront valides jusqu'à ce que l'une ou l'autre des éventualités suivantes se produise :
 - a) l'Autorité révoque la décision pour tout autre motif que le manquement de Groupe TSX à son engagement envers l'Autorité;
 - b) la Bourse cesse d'exercer ses activités après s'être conformée aux termes et conditions que l'Autorité peut imposer.

Veuillez agréer, cher Monsieur St-Gelais, l'expression de nos sentiments distingués.

Le Co-chef de la direction par intérim de
Groupe TSX,



ANNEXE 2

Rapports et documents à fournir par la Bourse

| Article visé | Libellé de l'article visé dans la décision de reconnaissance | Périodicité | Délai ou échéance |
|---------------------|---|--------------------|---|
| VI c) | Déposer toute modification à la liste des frais exigés par la Bourse. | Au besoin | 15 jours avant la mise en vigueur |
| VII d) | Remettre à l'Autorité un rapport d'activités de la Division. | Trimestriellement | 45 jours suivant la fin de chaque trimestre |
| VII e) | Remettre à l'Autorité un rapport d'activités de la Bourse incluant un rapport de la Division, préparé par cette dernière. Ce rapport doit rendre compte du respect des modalités et conditions relatives à la Division et être présenté dans une forme acceptable par l'Autorité. | Annuellement | 60 jours suivant la fin de l'exercice financier |
| VII g) i) | Informer l'Autorité de toute nouvelle analyse ou enquête entreprises par la Division, et notamment le nom du participant et de la personne approuvée concernés et de l'enquêteur responsable, la date d'ouverture du dossier et la nature de l'enquête. | Mensuellement | 30 jours suivant la fin du mois |
| VII g) ii) | Informer l'Autorité de toutes les analyses ou enquêtes qui ne se traduisent pas par des procédures disciplinaires et qui sont closes, et notamment la date à laquelle l'enquête a été amorcée, la conduite et les personnes en cause et le règlement de l'enquête. | Mensuellement | 30 jours suivant la fin du mois |
| VII j) viii) | Déposer à l'Autorité le budget de la Division. | Annuellement | Dès son approbation |

ANNEXE 2

Rapports et documents à fournir par la Bourse

| Article visé | Libellé de l'article visé dans la décision de reconnaissance | Périodicité | Délai ou échéance |
|--------------|--|-----------------------------|---|
| VII j) xii) | Rendre compte à l'Autorité de l'effectif de la Division, par fonction, en précisant les postes autorisés, comblés et vacants et de toute réduction ou tout changement important de cet effectif, par fonction. | Semestriellement | 30 jours suivant la fin du semestre |
| VII j) xiii) | Remettre à l'Autorité des exemplaires des rapports préparés par la direction de la Bourse, y compris le vice-président de la Division, résultant de l'évaluation interne de l'exécution par la Division de ses fonctions réglementaires, et présentés au comité spécial de la réglementation, accompagnés de ses recommandations quant aux améliorations possibles, le cas échéant et des rapports préparés par le comité spécial sur l'exécution par la Division de ses fonctions réglementaires. La Bourse doit aussi informer l'Autorité de toute mesure proposée par suite de ces évaluations. | Au moins une fois par année | 30 jours suivant le dépôt au comité spécial ou au conseil d'administration |
| IX c) | Fournir un rapport faisant état de chacun des ratios, calculés mensuellement, à partir des états financiers consolidés, et non consolidés, joint aux états financiers trimestriels pour les trois premiers trimestres de l'exercice et aux états financiers annuels vérifiés pour le quatrième trimestre. | Trimestriellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |

ANNEXE 2

Rapports et documents à fournir par la Bourse

| Article visé | Libellé de l'article visé dans la décision de reconnaissance | Périodicité | Délai ou échéance |
|---------------------|---|-----------------------------------|---|
| IX d) | Déposer ses états financiers annuels vérifiés consolidés et non consolidés ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite. | Annuellement | 90 jours suivant la fin de l'exercice financier |
| IX e) | Déposer les états financiers trimestriels consolidés et non consolidés de la Bourse ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite. | Trimestriellement | 60 jours suivant la fin de chaque trimestre |
| IX f) | Déposer, avec les états financiers annuels vérifiés et trimestriels consolidés de la Bourse ainsi que ceux de ses filiales, une analyse budgétaire des résultats et une analyse comparative des résultats avec la période correspondante de l'exercice précédent. | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |
| IX g) | Déposer, avec les états financiers annuels vérifiés et trimestriels non consolidés de la Bourse ainsi que ceux de ses filiales, une analyse budgétaire des résultats et une analyse comparative des résultats avec la période correspondante de l'exercice précédent. | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |
| IX h) | Déposer, avec les états financiers annuels vérifiés et trimestriels, les informations sectorielles pour la Division | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin |

ANNEXE 2

Rapports et documents à fournir par la Bourse

| Article visé | Libellé de l'article visé dans la décision de reconnaissance | Périodicité | Délai ou échéance |
|---------------------|--|--------------------|---|
| | incluant une analyse budgétaire des résultats. | | de chaque exercice financier |
| IX i) | Déposer son budget annuel consolidé et non consolidé de même que celui de ses filiales ainsi que les prévisions budgétaires à long terme, le cas échéant. | Annuellement | Dès son approbation |
| XVIII | Déposer le rapport d'examen indépendant portant sur la capacité, l'intégrité et la sécurité des systèmes de la Bourse qui est établi conformément au <i>Règlement 21-101 sur le fonctionnement du marché</i> . | Annuellement | Dès qu'il est soumis à l'examen de la haute direction |

DÉCISION N° 2010-PDG-0207

Bourse de Montréal Inc.

(Suspension de l'application de la condition prévue au paragraphe IX. *Ratios et rapports financiers* de la décision d'autorisation à exercer l'activité de bourse et de reconnaissance à titre d'organisme d'autoréglementation)

Vu la décision n° 2008-PDG-0102 prononcée le 10 avril 2008 (la « décision n° 2008-PDG-0102 ») par l'Autorité des marchés financiers (l'« Autorité ») autorisant Bourse de Montréal Inc. (la « Bourse ») à exercer l'activité de bourse en vertu de l'article 170 de la *Loi sur les valeurs mobilières du Québec* L.R.Q., c. V-1.1 (la « LVM »), et la reconnaissant à titre d'organisme d'autoréglementation en vertu de l'article 68 de la *Loi sur l'Autorité des marchés financiers*, L.R.Q., c. A-33.2, (la « LAMF »);

Vu l'entrée en vigueur de la *Loi sur les instruments dérivés*, L.R.Q., c. I-14.01 (la « LID ») le 1^{er} février 2009;

Vu l'article 230 de la LID, lequel autorise notamment une bourse autorisée en vertu du titre VI de la LVM, ou un organisme d'autoréglementation reconnu en vertu du titre III de la LAMF avant le 1^{er} février 2009, qui exerce des activités relativement aux opérations visées par la LID, à poursuivre l'exercice de ses activités au Québec conformément aux conditions prescrites par l'Autorité en vertu de ces lois ou, à compter de la date qu'elle détermine, aux nouvelles conditions qu'elle prescrit en vertu de la LID;

Vu la demande de la Bourse en date du 28 septembre 2010 (la « demande ») visant à suspendre l'application de la condition énoncée au paragraphe IX. *Ratios et rapports financiers* (la « condition IX ») de la décision n° 2008-PDG-0102, selon laquelle la Bourse doit déposer des rapports faisant état de ses ratios et des rapports financiers périodiquement;

Vu le tableau de rapports et de documents à fournir joint à l'Annexe 2 de la décision n° 2008-PDG-0102 qui précise la périodicité ainsi que le délai ou échéance des ratios et rapports financiers à déposer en vertu de la condition IX;

Vu l'évolution des activités de la Bourse depuis le prononcé de la décision n° 2008-PDG-0102;

Vu que le dépôt de certains rapports faisant état des ratios et rapports financiers n'est plus justifié;

Vu l'engagement de la Bourse à déposer les ratios et documents décrits à l'Annexe 1 de la présente décision, le tout, dans les délais et selon les modalités prévus à l'Annexe 2 de la présente décision;

Vu l'engagement de la Bourse à ne pas conclure d'entente ni d'opération qui serait hors du cours normal des affaires ou, avec le Groupe TMX ou une des filiales du Groupe TMX ou une personne ayant des liens avec le Groupe TMX, si elle prévoit que compte tenu de l'entente ou de l'opération, elle serait susceptible de ne pas maintenir le ratio de fonds de roulement, le ratio de marge brute d'autofinancement-endettement ou le ratio de levier financier aux niveaux indiqués à l'Annexe 1 de la présente décision;

Vu les motifs allégués au soutien de la demande qui justifient une suspension de la condition visée, à savoir :

- une partie de l'information financière présentée à l'Autorité conformément à la condition IX ne fournit plus à l'Autorité de l'information financière significative;
- le calcul des ratios non consolidés ne procure pas à l'Autorité toute l'information dont elle a besoin pour évaluer la viabilité financière de la Bourse;

- certaines des filiales de la Bourse sont inactives ou leurs activités commerciales et leur apport financier ne sont pas importants relativement aux opérations globales de la Bourse;
- sur une base trimestrielle, le coût pour la Bourse de la préparation et le coût pour l'Autorité de l'examen des états financiers individuels de filiales inactives ou de filiales dont les opérations ou l'apport financier ne sont pas importants pour la Bourse à titre d'entité consolidée dépassent les avantages tirés par l'Autorité en ce qui a trait à la supervision des opérations et du rendement financier de la Bourse;

Vu le premier alinéa de l'article 35.1 de la LAMF, ainsi que l'article 99 de la LID;

Vu la recommandation de la Direction de la supervision des OAR;

En conséquence :

L'Autorité suspend l'application de la condition prévue au paragraphe IX. *Ratios et rapports financiers* ainsi que des dispositions pertinentes de l'Annexe 2 de la décision n° 2008-PDG-0102, à la condition que la Bourse respecte les engagements qu'elle a pris, à savoir de :

- 1) déposer les ratios et documents décrits à l'Annexe 1 de la présente décision, le tout, dans les délais et selon les modalités prévus à l'Annexe 2 de la présente décision; et
- 2) ne pas conclure d'entente ni d'opération qui serait hors du cours normal des affaires ou, avec le Groupe TMX ou une des filiales du Groupe TMX ou une personne ayant des liens avec le Groupe TMX, si elle prévoit que compte tenu de l'entente ou de l'opération, elle serait susceptible de ne pas maintenir le ratio de fonds de roulement, le ratio de marge brute d'autofinancement-endettement ou le ratio de levier financier aux niveaux indiqués à l'Annexe 1 de la présente décision.

Fait le 22 novembre 2010.

Jean St-Gelais
Président-directeur général

Annexe 1

Ratios et documents à déposer à l'Autorité :

La Bourse déposera les ratios et rapports financiers prévus à la présente Annexe 1 conformément au tableau de périodicité de dépôt des rapports et documents à fournir par la Bourse, joint à l'Annexe 2 de la présente décision.

- a) La Bourse sera en défaut et informera l'Autorité, par écrit, lorsque, calculé à partir de ses états financiers consolidés :
 - i) Son ratio de fonds de roulement sera égal ou inférieur à 1,5 pour 1 (actif court terme liquide, c'est-à-dire l'encaisse, les placements temporaires, les comptes à recevoir et les placements à long terme encaissables en tout temps / passif court terme);
 - ii) Son ratio de marge brute d'autofinancement-endettement sera inférieur ou égal à vingt pour cent (20 %) (bénéfice net pour les 12 mois les plus récents ajusté des éléments sans incidence sur les liquidités, c'est-à-dire l'amortissement, les impôts reportés et

toutes les autres dépenses sans impact sur les liquidités / dettes à court et à long terme);

- iii) Son ratio de levier financier sera égal ou supérieur à 4,0 (actif total / capital).

Les ratios mentionnés ci-dessus calculés à partir des états financiers consolidés excluront les éléments suivants :

1. règlements quotidiens à recevoir des membres de la chambre de compensation;
 2. règlements quotidiens à payer aux membres de la chambre de compensation;
 3. les dépôts de couverture des membres (à l'actif et au passif);
 4. les dépôts au fonds de compensation (à l'actif et au passif).
- b) Si la Bourse est en défaut de respecter les ratios financiers pendant une période excédant 3 mois, la Bourse informera, par écrit, l'Autorité des motifs de la déficience et des mesures qui seront prises pour remédier à la situation et rétablir son équilibre financier. De plus, à partir du moment où la Bourse sera en défaut de respecter les ratios financiers pour une période excédant 3 mois et jusqu'à la fin d'une période d'au moins 6 mois suivant le moment où les déficiences auront été éliminées, la Bourse ne procédera pas, sans avoir obtenu l'approbation préalable de l'Autorité, à des dépenses en immobilisations qui n'étaient pas déjà reflétées dans les états financiers ou à des prêts, bonus, dividendes ou toute autre distribution d'actifs à tout administrateur, dirigeant, compagnie liée ou actionnaire.
 - c) La Bourse fournira un rapport faisant état de chacun des ratios, calculés mensuellement à partir des états financiers consolidés, joints aux états financiers trimestriels pour les trois premiers trimestres de l'exercice et aux états financiers annuels vérifiés pour le quatrième trimestre.
 - d) La Bourse déposera ses états financiers annuels vérifiés consolidés ainsi que les états financiers annuels vérifiés de la Corporation canadienne de compensation de produits dérivés (la « CDCC »).
 - e) La Bourse déposera les états financiers annuels non vérifiés de ses filiales et entreprises constituant un placement à long terme dans une société satellite, autres que la CDCC.
 - f) La Bourse déposera ses états financiers annuels non vérifiés non consolidés, ses états financiers trimestriels consolidés et non consolidés ainsi que les états financiers trimestriels de la CDCC.
 - g) Les états financiers annuels et trimestriels de la Bourse et de la CDCC, prévus aux paragraphes 0 et 0 de la présente Annexe 1, devront comprendre une analyse budgétaire des résultats ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent.
 - h) Les états financiers annuels non vérifiés des filiales et entreprises constituant un placement à long terme dans une société satellite de la Bourse, autres que la CDCC, prévus au paragraphe e) de la présente Annexe 1, devront comprendre une analyse budgétaire des résultats, le cas échéant, ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent.
 - i) La Bourse fournira l'information sectorielle portant sur les résultats annuels et trimestriels de la Division comprenant une analyse budgétaire des résultats.

- j) La Bourse déposera son budget annuel consolidé et non consolidé de même que celui de chacune de ses filiales pour lesquelles un budget a été préparé pour la direction ainsi que, le cas échéant, les prévisions budgétaires à long terme.
- k) La Bourse informera, par écrit, l'Autorité de toutes modifications importantes aux budgets consolidés et non consolidés approuvées par le conseil d'administration.
- l) La Bourse fournira toutes autres informations financières qui seront exigées par l'Autorité.

ANNEXE 2

Périodicité de dépôt des rapports et documents à fournir par la Bourse :

| Article visé | Libellé de l'article visé dans la décision de reconnaissance | Périodicité | Délai ou échéance |
|---------------------|---|-----------------------------------|---|
| a) | Informier l'Autorité de son défaut de respecter les ratios financiers. | Ponctuellement | Sans délai, dès l'occurrence d'un défaut |
| b) | Informier l'Autorité de son défaut de respecter les ratios financiers pendant une période excédant 3 mois. | Ponctuellement | Sans délai, dès l'occurrence d'un défaut, pour une période excédant 3 mois |
| c) | Fournir un rapport faisant état de chacun des ratios, calculés mensuellement, à partir des états financiers consolidés, joints aux états financiers trimestriels pour les 3 premiers trimestres de l'exercice et aux états financiers annuels vérifiés pour le quatrième trimestre. | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |
| d) | Déposer ses états financiers annuels vérifiés consolidés ainsi que les états financiers annuels vérifiés de la CDCC. | Annuellement | 90 jours suivant la fin de l'exercice financier |

| | | | |
|----|--|-----------------------------------|---|
| e) | Déposer les états financiers annuels non vérifiés de ses filiales et entreprises constituant un placement à long terme dans une société satellite, autres que la CDCC. | Annuellement | 90 jours suivant la fin de chaque exercice financier |
| f) | Déposer ses états financiers annuels non vérifiés non consolidés, ses états financiers trimestriels consolidés et non consolidés ainsi que les états financiers trimestriels de la CDCC. | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |
| g) | Déposer, avec les états financiers annuels et trimestriels de la Bourse et de la CDCC, prévus aux paragraphes d) et f) de l'Annexe 1 de la présente décision, une analyse budgétaire des résultats ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent. | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |
| h) | Déposer, avec les états financiers annuels non vérifiés des filiales et entreprises constituant un placement à long terme dans une société satellite de la Bourse, autres que la CDCC, prévus au paragraphe e) de l'Annexe 1 de la présente décision, une analyse budgétaire des résultats, le cas échéant, ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent. | Annuellement | 90 jours suivant la fin de chaque exercice financier |
| i) | Déposer l'information sectorielle portant sur les résultats annuels et trimestriels de la Division comprenant une analyse budgétaire des résultats. | Trimestriellement et annuellement | 60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier |

| | | | |
|----|---|--------------|---------------------------------------|
| j) | Déposer son budget annuel consolidé et non consolidé de même que celui de chacune de ses filiales pour lesquelles un budget a été préparé pour la direction ainsi que, le cas échéant, les prévisions budgétaires à long terme. | Annuellement | Dès leur approbation |
| k) | Informer, par écrit, l'Autorité de toutes modifications importantes aux budgets consolidés et non consolidés approuvées par le conseil d'administration. | Au besoin | Dès leur approbation |
| l) | Déposer toutes autres informations financières exigées par l'Autorité. | Au besoin | Dès que l'Autorité en fera la demande |

SCHEDULE 3

DÉCISION N° 2006-PDG-0180

AUTORISATION DONNÉE À LA CAISSE CANADIENNE DE DÉPÔT DE VALEURS LIMITÉE ET À SERVICES DE DÉPÔT ET DE COMPENSATION CDS INC. D'EXERCER L'ACTIVITÉ DE COMPENSATION DE VALEURS AU QUÉBEC EN VERTU DE LA LOI SUR LES VALEURS MOBILIÈRES, L.R.Q., c. V-1.1

ET

DISPENSE DE RECONNAISSANCE ACCORDÉE À LA CAISSE CANADIENNE DE DÉPÔT DE VALEURS LIMITÉE ET À SERVICES DE DÉPÔT ET DE COMPENSATION CDS INC. À TITRE D'ORGANISME D'AUTORÉGLEMENTATION EN VERTU DE LA LOI SUR L'AUTORITÉ DES MARCHÉS FINANCIERS, L.R.Q., c. A-7.03

ET

RÉVOCATION DE LA DÉCISION DE RECONNAISSANCE DE LA CAISSE CANADIENNE DE DÉPÔT DE VALEURS LIMITÉE À TITRE D'ORGANISME D'AUTORÉGLEMENTATION DU 22 AOÛT 1984 PORTANT LE NUMÉRO 7167 EN VERTU DE LA LOI SUR L'AUTORITÉ DES MARCHÉS FINANCIERS, L.R.Q., c. A-7.03

1. PRÉAMBULE

- 1.1 CONSIDÉRANT QUE** le 22 août 1984, par la décision portant le numéro 7167, la Commission des valeurs mobilières du Québec a reconnu La Caisse canadienne de dépôt de valeurs limitée (« CDS Itée ») à titre d'organisme d'autoréglementation en vertu de la *Loi sur les valeurs mobilières*, L.R.Q., c. V-1.1 (« LVM »);
- 1.2 CONSIDÉRANT QUE** depuis l'entrée en vigueur de la *Loi sur l'Autorité des marchés financiers*, L.R.Q., c. A-7.03 (« LAMF ») le 1^{er} février 2004, et plus précisément de son article 60, une personne morale, une société ou toute autre entité ne peut encadrer ou réglementer la conduite de ses membres ou de ses participants relativement à l'exercice au Québec d'une activité régie par une loi visée à l'annexe 1 de la LAMF que si elle est reconnue par l'Autorité des marchés financiers (l'**« Autorité »**) à titre d'organisme d'autoréglementation et aux conditions que cette dernière détermine;
- 1.3 CONSIDÉRANT QU'**en vertu de l'article 169 de la LVM, une personne morale, une société ou une autre entité ne peut exercer une activité de bourse ou de compensation de valeurs au Québec sans l'autorisation de l'Autorité;

- 1.4 CONSIDÉRANT QU'en vertu de l'article 73 de la LAMF, l'Autorité peut, aux conditions qu'elle détermine, dispenser une personne morale, une société ou toute autre entité de l'obligation de reconnaissance à titre d'organisme d'autoréglementation, lorsqu'elle estime que cette dispense ne porte pas atteinte à la protection du public;**
- 1.5 CONSIDÉRANT QU'en vertu de l'article 89 de la LAMF, l'Autorité peut, en tout temps, révoquer, en tout ou en partie, la reconnaissance accordée à un organisme reconnu;**
- 1.6 CONSIDÉRANT QUE le 25 août 2006, CDS Itée a déposé auprès de l'Autorité les demandes suivantes (collectivement, la « demande ») :**
- une autorisation en faveur de CDS Itée et de Services de dépôt et de compensation CDS inc. (« Compensation CDS ») pour exercer des activités de compensation de valeurs au Québec en vertu des articles 169 et 170 de la LVM;
 - une dispense en faveur de CDS Itée et de Compensation CDS de l'obligation de reconnaissance à titre d'organisme d'autoréglementation en vertu de l'article 73 de la LAMF;
 - la révocation de la décision de reconnaissance à titre d'organisme d'autoréglementation accordée à CDS Itée par la décision numéro 7167 mentionnée ci-haut, présentée en vertu de l'article 89 de la LAMF;
- 1.7 CONSIDÉRANT QUE l'Autorité a publié la demande de CDS Itée au *Bulletin de l'Autorité des marchés financiers* (le « Bulletin ») du 8 septembre 2006 (BAMF, Vol. 3, n° 36) et a invité les personnes intéressées à faire part de leurs commentaires relativement à la demande;**
- 1.8 CONSIDÉRANT QU'au terme de la période de commentaires, l'Autorité n'a reçu aucun commentaire de personnes intéressées;**
- 1.9 CONSIDÉRANT QUE dans sa demande, CDS Itée indique qu'elle a l'intention de restructurer ses activités à compter du 1^{er} novembre 2006 en les répartissant dans des filiales distinctes, dont l'une sera Compensation CDS;**
- 1.10 CONSIDÉRANT QUE Compensation CDS relèvera CDS Itée de la responsabilité de dispenser l'ensemble des services de dépôt, de compensation et de règlement (les « services de règlement ») de titres actuellement offerts et prendra en charge les éléments d'actif et de passif nécessaires de celle-ci;**
- 1.11 CONSIDÉRANT QUE, sur une base temporaire, soit jusqu'à ce que l'examen du modèle de gouvernance de CDS Itée soit terminé, tous les pouvoirs de direction et de gestion des affaires de Compensation CDS seront transférés à CDS Itée en vertu d'une convention unanime entre actionnaires;**
- 1.12 CONSIDÉRANT QUE CDS Itée doit fournir à Compensation CDS certains services de soutien, notamment l'élaboration, l'entretien et le fonctionnement des technologies de l'information, les services juridiques, la gestion du risque, la comptabilité, les ressources humaines, la vérification interne, la gestion des installations, la gouvernance des cadres**

et les communications, et que la prestation de ces services de soutien sera régie par une convention de services entre CDS Itée et Compensation CDS;

- 1.13 **CONSIDÉRANT QUE** l'Autorité a reçu certaines autres déclarations et certains autres engagements de CDS Itée et de Compensation CDS dans le cadre de la demande d'autorisation actuelle présentée par CDS Itée;
- 1.14 **CONSIDÉRANT QUE** l'Autorité juge indiqué d'assortir de conditions la présente décision d'autorisation à titre de chambre de compensation de CDS Itée et de Compensation CDS aux termes de la LVM, lesquelles figurent ci-après dans la présente décision;
- 1.15 **CONSIDÉRANT QUE** CDS Itée et Compensation CDS ont chacune accepté les conditions respectives énoncées ci-après dans la présente décision;
- 1.16 **CONSIDÉRANT QUE** les conditions énoncées ci-après dans la présente décision peuvent être modifiées par l'Autorité ou que celle-ci peut y renoncer;
- 1.17 **CONSIDÉRANT QUE** l'Autorité est d'avis qu'il n'est pas préjudiciable à la protection du public d'autoriser la demande de CDS Itée et qu'il est dans l'intérêt public d'autoriser CDS Itée et Compensation CDS à exercer l'activité de compensation aux termes des articles 169 et 170 de la LVM, de dispenser CDS Itée et Compensation CDS de reconnaissance à titre d'organisme d'autoréglementation en vertu de l'article 73 de la LAMF et de révoquer la reconnaissance à titre d'organisme d'autoréglementation accordée en 1984 à CDS Itée, et ce, aux conditions ci-après énoncées;
- 1.18 **CONSIDÉRANT QUE**, sous réserve des modalités ou conditions prévues aux présentes, l'Autorité est satisfaite que la restructuration proposée par CDS Itée soit conforme aux exigences de la LVM;
- 1.19 **CONSIDÉRANT QUE** l'Autorité estime que CDS Itée et Compensation CDS possèdent une structure administrative et les ressources financières, humaines et autres pour exercer de manière objective, équitable et efficace, l'activité de chambre de compensation;
- 1.20 **CONSIDÉRANT QUE** l'Autorité, CDS Itée et Compensation CDS ont convenu d'un protocole d'examen et d'approbation des règles de Compensation CDS par l'Autorité, joint à l'Annexe A de la présente décision pour en faire partie intégrante, lequel énonce le processus d'examen et d'approbation des règles de fonctionnement de Compensation CDS par l'Autorité (le « protocole »);
- 1.21 **CONSIDÉRANT QUE** la LAMF et la LVM confèrent à l'Autorité des pouvoirs et fonctions très étendus en matière d'inspection, d'approbation des règles de fonctionnement et de supervision des chambres de compensation et que CDS Itée et Compensation CDS sont assujetties à ces lois;
- 1.22 **CONSIDÉRANT QU'**une chambre de compensation qui désire œuvrer à la fois au Québec et dans les autres régions du Canada doit démontrer une capacité à œuvrer aussi bien dans la langue française que dans la langue anglaise ainsi que la capacité de s'intégrer et de répondre aux besoins et aux demandes particulières de chacune des régions;

1.23 CONSIDÉRANT l'ensemble des représentations faites par CDS Itée et Compensation CDS auprès de l'Autorité;

2. EN CONSÉQUENCE :

2.1 L'Autorité accueille la demande et :

- **AUTORISE** CDS Itée et Compensation CDS à exercer l'activité de compensation de valeurs en vertu des articles 169 et 170 de la LVM;
- **DISPENSE** CDS Itée et Compensation CDS de l'obligation de reconnaissance à titre d'organisme d'autoréglementation en vertu de l'article 73 de la LAMF;
- **RÉVOCUE** la décision de reconnaissance à titre d'organisme d'autoréglementation accordée en 1984 à CDS Itée en vertu de l'article 89 de la LAMF;

2.2 La présente décision est prononcée sous réserve des conditions et modalités prévues aux présentes et sous réserve du respect des modalités du protocole prévu à l'Annexe A.

3. CONDITIONS

PARTIE A - CONDITIONS À RESPECTER PAR CDS LTÉE

4. RESPECT PAR COMPENSATION CDS

4.1 CDS Itée doit en tout temps s'assurer du respect par Compensation CDS de l'ensemble des conditions de la présente décision, telles qu'elles sont énumérées à la Partie B de la présente décision, et de sa capacité à les respecter.

5. GOUVERNANCE

5.1 Les ententes en matière de gouvernance de CDS Itée doivent être conçues afin de respecter les exigences sur le plan de l'intérêt public et en vue de promouvoir les objectifs de ses actionnaires.

5.2 Sans limiter la généralité de ce qui précède, la structure de gouvernance de CDS Itée doit prévoir ce qui suit :

- a) une représentation équitable et efficace à son conseil d'administration et à tout comité du conseil d'administration;
- b) une représentation convenable de personnes indépendantes des actionnaires au conseil d'administration et aux comités du conseil d'administration et, à cette fin, une personne est « indépendante » si la personne n'est pas :

- (i) un administrateur, un associé, un dirigeant ou un salarié d'un actionnaire de CDS Itée ou une personne qui a des liens avec cet actionnaire;
 - (ii) un administrateur, un associé, un dirigeant ou un salarié d'un adhérent de CDS Itée ou d'un membre du même groupe que celle-ci, une personne qui a des liens avec cet adhérent ou avec un membre du même groupe que CDS Itée ou une personne qui a des liens avec l'administrateur, l'associé, le dirigeant ou le salarié de cet adhérent;
 - (iii) un dirigeant ou un salarié de CDS Itée ou d'un membre du même groupe qu'elle, ou une personne qui a des liens avec ce dirigeant ou ce salarié;
- c) des qualifications, une rémunération, des lignes directrices en matière de conflits d'intérêts convenables, ainsi que des protections en matière de limitations de la responsabilité et d'indemnisation pour les administrateurs, les dirigeants et les salariés de CDS Itée.
- 5.3 CDS Itée ne doit pas, sans l'approbation préalable écrite de l'Autorité, apporter de modifications importantes à sa structure de gouvernance, à ses documents constitutifs ou à son règlement intérieur.
- 5.4 CDS Itée ne doit pas, sans l'approbation préalable écrite de l'Autorité, conclure un contrat, une convention ou une entente qui peut limiter sa faculté de se conformer aux conditions énoncées dans la présente décision.

6. APTITUDES

- 6.1 CDS Itée doit prendre des mesures raisonnables afin de s'assurer que chacun de ses dirigeants et de ses administrateurs est une personne qualifiée et que le comportement antérieur de chaque dirigeant ou administrateur permet raisonnablement de croire que cette personne s'acquittera avec intégrité des fonctions qui lui incombent.

7. CONTRÔLES EN MATIÈRE DE RISQUE

- 7.1 CDS Itée doit disposer de procédures clairement définies en vue de la gestion du risque.
- 7.2 Sans limiter la généralité de ce qui précède :
- a) CDS Itée doit exercer ses activités de gestion du risque de façon à empêcher l'effet d'entraînement des risques découlant d'activités menées au sein de ses filiales lorsque ces risques pourraient avoir une incidence défavorable sur la viabilité financière de CDS Itée ou de Compensation CDS;
 - b) lorsque CDS Itée procède à une impartition importante de ses services ou systèmes, qui touche les services de règlement, à un fournisseur de services tiers, y compris des membres du même groupe qu'elle ou des personnes qui ont des liens avec elle, elle doit avoir recours à des pratiques exemplaires et, sans limiter la généralité de ce qui précède, CDS Itée doit faire ce qui suit :

- (i) elle doit établir et conserver des politiques et procédures approuvées par son conseil d'administration en vue de l'évaluation et de l'approbation de ces ententes en matière d'impartition;
- (ii) elle doit, lorsqu'elle conclut une entente en matière d'impartition :
 - A. évaluer le risque que comporte l'entente, la qualité du service à fournir et le degré de contrôle qu'elle doit conserver;
 - B. signer un contrat avec le fournisseur de services tiers qui porte sur tous les éléments importants de l'entente, y compris les niveaux de service et les normes de rendement;
- (iii) elle doit s'assurer que tout contrat qui met en œuvre une telle entente en matière d'impartition et qui est susceptible d'avoir une incidence sur les activités de Compensation CDS autorise l'Autorité à avoir accès à l'ensemble des données, des renseignements et des systèmes conservés et tenus par le fournisseur de services tiers pour le compte de CDS Itée et à les inspecter, aux fins d'établir la conformité de CDS Itée aux conditions de la présente décision ou de la législation en valeurs mobilières applicable;
- (iv) elle doit surveiller la prestation du fournisseur de services tiers aux termes de toute entente en matière d'impartition.

8. RÉPARTITION DES COÛTS

- 8.1 CDS Itée doit s'assurer que les coûts liés à la prestation de services à ses filiales sont répartis équitablement.

9. AFFECTATION DES RESSOURCES

- 9.1 CDS Itée doit, tant que Compensation CDS exerce des activités de chambre de compensation, affecter suffisamment de ressources, notamment financières, à Compensation CDS en vue de lui permettre d'exécuter les fonctions qui lui incombent d'une manière compatible avec l'intérêt public et les conditions de la Partie B de la présente décision.
- 9.2 CDS Itée doit aviser l'Autorité sans délai dès qu'elle a connaissance du fait qu'elle n'est ou ne sera pas en mesure d'affecter suffisamment de ressources, notamment financières, à Compensation CDS en vue de lui permettre d'exécuter les fonctions qui lui incombent d'une manière compatible avec l'intérêt public et les conditions de la Partie B de la présente décision.

10. VIABILITÉ FINANCIÈRE

- 10.1 CDS Itée doit s'assurer de disposer de suffisamment de ressources financières et sur le plan de la dotation en personnel afin de garantir la réalisation en bonne et due forme de ses services.

- 10.2 Afin d'exercer un contrôle sur sa viabilité financière, CDS Itée doit calculer, sur une base non consolidée, les ratios financiers suivants :
- a) le ratio de la dette sur les flux de trésorerie, soit le ratio de la dette totale par rapport au BAIIA (bénéfice avant intérêts, impôts et amortissement), pour les 12 derniers mois;
 - b) le ratio de levier financier, soit le ratio des éléments d'actif totaux par rapport aux capitaux propres des actionnaires.
- 10.3 CDS Itée doit immédiatement en aviser l'Autorité si elle omet exceptionnellement de conserver ou s'attend à ne pas pouvoir conserver :
- a) un ratio de la dette sur les flux de trésorerie égal ou inférieur à 4/1; ou
 - b) un ratio de levier financier égal ou inférieur à 4/1.

Si, exceptionnellement, CDS Itée omet de conserver soit le ratio de la dette sur les flux de trésorerie, soit le ratio de levier financier pendant une durée de plus de trois mois, son chef de la direction doit informer par écrit et sans délai l'Autorité des motifs de la déficience et des mesures qui sont prises pour remédier à la situation et pour rétablir son équilibre financier.

- 10.4 CDS Itée doit déclarer trimestriellement à l'Autorité (en même temps que les états financiers qu'elle est tenue de déposer aux termes du paragraphe 10.5) le calcul mensuel du ratio de la dette sur les flux de trésorerie et du ratio de levier financier.
- 10.5 CDS Itée doit déposer auprès de l'Autorité les états financiers trimestriels non vérifiés dans les 60 jours suivant chaque fin de trimestre, ainsi que les états financiers annuels vérifiés établis conformément aux principes comptables généralement reconnus dans les 90 jours suivant la fin de chaque exercice. Les états financiers trimestriels et annuels de CDS Itée doivent être fournis sur une base non consolidée et consolidée. Tout rapport annuel fourni aux actionnaires doit être déposé simultanément par CDS Itée auprès de l'Autorité.

11. CAPACITÉ ET INTÉGRITÉ DES SYSTÈMES

- 11.1 CDS Itée doit exploiter des systèmes (les « systèmes ») aux fins des services de règlement et des activités commerciales connexes de Compensation CDS. CDS Itée, dans le cadre de sa collaboration avec Compensation CDS, doit s'assurer de faire ce qui suit :
- a) elle doit, à une fréquence raisonnable et, en tout état de cause, au moins une fois par année :
 - (i) procéder à des estimations raisonnables de la capacité actuelle et future des systèmes;

- (ii) soumettre les systèmes à des tests avec charge élevée pour déterminer la capacité de ces systèmes à traiter les opérations de manière exacte, rapide et efficace;
 - (iii) élaborer et mettre en œuvre des procédures raisonnables pour réviser et garder à jour le développement et la méthodologie de test de ces systèmes;
 - (iv) examiner la vulnérabilité de ces systèmes et des opérations informatiques du centre de données face aux menaces informatiques provenant tant de l'interne que de l'externe, y compris des risques matériels et des catastrophes naturelles;
 - (v) élaborer des plans raisonnables de secours et de continuité de service;
- b) elle doit, une fois par année, faire effectuer une vérification indépendante de l'exploitation des services de règlement, conformément aux procédés et normes de vérification généralement reconnus;
 - c) elle doit aviser sans délai l'Autorité des pannes importantes de systèmes et des modifications importantes des systèmes.

12. PARTAGE DE RENSEIGNEMENTS

- 12.1 CDS Ltée doit partager ses renseignements avec l'Autorité et son personnel, d'autres chambres de compensation, des bourses, des systèmes de cotation et de déclaration d'opérations, des systèmes de négociation parallèles, des organismes d'autoréglementation, le Fonds canadien de protection des épargnants et toute autorité de réglementation qui exerce une compétence sur elle et, par ailleurs, collaborer avec ceux-ci, sous réserve :
- a) de toute loi applicable en matière de communication de l'information et de protection des renseignements personnels ou de toute autre loi régissant le partage de renseignements et la protection des renseignements personnels; et
 - b) de toute disposition en matière de confidentialité contenue dans les ententes conclues avec la Banque du Canada se rapportant à des renseignements reçus de la Banque du Canada en sa qualité d'agent comptable des registres, d'agent émetteur, d'agent des transferts ou d'agent payeur pour le gouvernement du Canada.

CDS Ltée doit se conformer notamment à l'article 5 de la *Charte des droits et libertés de la personne*, L.R.Q., c. C-12, aux articles 3 et 35 à 41 du *Code civil du Québec*, L.Q., 1991, c. 64, aux dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*, L.R.Q., c. P-39.1., et de la *Loi concernant le cadre juridique des technologies de l'information*, L.R.Q. c. C-1.1.

- 12.2 CDS Ltée doit autoriser l'Autorité à avoir accès à l'ensemble des données et des renseignements en sa possession ou en la possession de tout tiers à qui ils ont été transmis dans l'impartition de services de règlement et à les inspecter, selon ce qui est

nécessaire en vue d'évaluer la conformité aux conditions de la présente décision ou à la législation en valeurs mobilières applicable, sous réserve :

- a) de toute loi applicable en matière de protection des renseignements personnels ou de toute autre loi régissant le partage de renseignements et la protection des renseignements personnels; et
 - b) de toute disposition en matière de confidentialité contenue dans des ententes conclues avec la Banque du Canada se rapportant à des renseignements reçus de la Banque du Canada en sa qualité d'agent comptable des registres, d'agent émetteur, d'agent des transferts ou d'agent payeur pour le gouvernement du Canada.
- 12.3 CDS Itée doit faire en sorte que sa filiale, Compensation CDS, autorise l'Autorité à avoir accès à l'ensemble des données et des renseignements en sa possession ou en la possession de tout tiers à qui ils ont été transmis dans l'impartition de services de règlement et à les inspecter, selon ce qui est nécessaire en vue d'évaluer la conformité aux conditions de la présente décision ou à la législation en valeurs mobilières applicable, sous réserve :
- a) de toute loi applicable en matière de protection des renseignements personnels ou de toute autre loi régissant le partage de renseignements et la protection des renseignements personnels; et
 - b) de toute disposition en matière de confidentialité contenue dans des ententes conclues avec la Banque du Canada se rapportant à des renseignements reçus de la Banque du Canada en sa qualité d'agent comptable des registres, d'agent émetteur, d'agent des transferts ou d'agent payeur pour le gouvernement du Canada.
- 12.4 L'Autorité peut exiger de CDS Itée la communication de tout document ou de tout renseignement estimé utile à l'accomplissement de sa mission.
- 12.5 En outre, l'Autorité peut demander à CDS Itée de confirmer, par une déclaration sous serment ou par une déclaration solennelle, l'authenticité des documents ou la véracité des renseignements communiqués.

PARTIE B – CONDITIONS À RESPECTER PAR COMPENSATION CDS

13. GOUVERNANCE

- 13.1 Les ententes en matière de gouvernance de Compensation CDS doivent être conçues de façon à respecter les exigences sur le plan de l'intérêt public et à promouvoir les objectifs de ses actionnaires et des utilisateurs (les « adhérents ») des services de règlement.
- 13.2 Sans limiter la généralité de ce qui précède, la structure de gouvernance de Compensation CDS doit prévoir ce qui suit :

- a) une représentation équitable et efficace à son conseil d'administration et à tout comité du conseil d'administration;
 - b) une représentation convenable de personnes indépendantes de CDS Itée et des adhérents au conseil d'administration et aux comités du conseil d'administration et, à cette fin, une personne est « indépendante » si elle n'est pas :
 - (i) un associé, un dirigeant ou un salarié de CDS Itée ou d'un actionnaire de CDS Itée ou une personne qui a des liens avec CDS Itée ou cet actionnaire;
 - (ii) un administrateur, un associé, un dirigeant ou un salarié d'un adhérent de Compensation CDS ou d'un membre du même groupe que celle-ci, une personne qui a des liens avec cet adhérent ou avec un membre du même groupe que Compensation CDS ou une personne qui a des liens avec l'administrateur, l'associé, le dirigeant ou le salarié de cet adhérent;
 - (iii) un dirigeant ou un salarié de Compensation CDS ou d'un membre du même groupe qu'elle ou une personne qui a des liens avec ce dirigeant ou ce salarié;
 - c) des qualifications, une rémunération, des lignes directrices en matière de conflits d'intérêts convenables, ainsi que des protections en matière de limitations de la responsabilité et d'indemnisation pour les administrateurs, les dirigeants et les salariés de Compensation CDS.
- 13.3 Compensation CDS ne doit pas, sans l'approbation préalable écrite de l'Autorité, apporter de modifications importantes à sa structure de gouvernance, à ses documents constitutifs ou à son règlement intérieur.
- 13.4 Compensation CDS ne doit pas, sans l'approbation préalable écrite de l'Autorité, conclure un contrat, une convention ou une entente qui peut limiter sa faculté de se conformer aux conditions énoncées dans la présente décision.

14. APTITUDES

- 14.1 Compensation CDS doit prendre des mesures raisonnables afin de s'assurer que chacun de ses dirigeants et administrateurs est une personne qualifiée et que le comportement antérieur de chaque dirigeant ou administrateur permet raisonnablement de croire que cette personne s'acquittera avec intégrité des fonctions qui lui incombent.

15. ACCÈS

- 15.1 Les documents constitutifs, le règlement intérieur et les règles de fonctionnement de Compensation CDS doivent permettre la libre adhésion de toute personne qui remplit les conditions d'admission ainsi que l'égalité dans l'accès aux services offerts.
- 15.2 Sans limiter la généralité de ce qui précède, Compensation CDS doit faire ce qui suit :
- a) elle doit établir des normes écrites en vue de l'octroi de l'accès aux services de règlement;

- b) elle doit tenir des registres à l'égard de ce qui suit :
 - (i) chaque octroi d'accès, y compris à l'égard de chaque adhérent, des motifs de l'octroi de l'accès;
 - (ii) chaque refus ou limitation de l'accès, y compris les motifs du refus ou de la limitation de l'accès à tout demandeur.

16. FRAIS ET COÛTS

- 16.1 Compensation CDS doit répartir équitablement ses frais et coûts à l'égard des services de règlement. Les frais ne doivent pas avoir pour effet de créer déraisonnablement des obstacles à l'accès à ces services de règlement et doivent être équilibrés en considérant que Compensation CDS doit disposer de revenus suffisants en vue de s'acquitter des responsabilités qui lui incombent.
- 16.2 Le processus de Compensation CDS en vue de la fixation des frais et des coûts pour les services de règlement doit être équitable, convenable et transparent. Les frais, coûts ou dépenses pris en charge par les adhérents à l'égard des services de règlement ne doivent pas tenir compte de coûts ou de dépenses engagés par Compensation CDS dans le cadre d'une activité menée par elle qui ne se rapporte pas aux services de règlement.

17. PROCÉDURE ÉTABLIE

- 17.1 Compensation CDS doit veiller à ce que les procédures menant à une décision individuelle prise à l'égard d'un adhérent, en application des normes prescrites par la loi, les règlements ou les contrats, sont conduites dans le respect du devoir d'agir équitablement et des règles de justice naturelle.
- 17.2 Plus particulièrement, Compensation CDS doit prendre les mesures appropriées pour s'assurer du respect des dispositions énoncées aux articles 81 à 85 de la LAMF.

18. CONTRÔLES EN MATIÈRE DE RISQUE

- 18.1 Compensation CDS doit disposer de procédures clairement définies en vue de la gestion du risque, lesquelles précisent ses responsabilités et celles de ses adhérents.
- 18.2 Sans limiter la généralité de ce qui précède :
 - a) lorsque Compensation CDS offre un service de contrepartie centrale, elle doit rigoureusement contrôler les risques qu'elle prend en charge;
 - b) Compensation CDS doit réduire le risque en principal dans la plus grande mesure du possible en reliant les transferts de titres aux virements de fonds d'une manière qui assure le paiement contre livraison;
 - c) le règlement définitif doit se produire au plus tard à la fin du jour de règlement et une finalité intrajournalière ou en temps réel devrait être prévue, au besoin, en vue de réduire les risques;

- d) lorsque Compensation CDS consent un crédit intrajournalier à des adhérents, y compris lorsqu'elle exploite un système de règlement net, elle doit mettre en place des contrôles en matière de risque qui, à tout le moins, garantissent un règlement dans les délais si l'adhérent à qui incombe l'obligation de réaliser le paiement le plus important n'est pas en mesure de régler;
- e) les éléments d'actif acceptés par Compensation CDS et utilisés en vue de régler les obligations de paiement à terme découlant d'opérations sur titres doivent être assortis d'un faible risque en matière de liquidité ou de solvabilité, voire aucun. Si Compensation CDS n'exige pas le paiement le jour même en fonds définitifs irrévocables, elle doit prendre des mesures en vue de protéger les adhérents aux services de règlement contre les pertes éventuelles et les pressions exercées sur la liquidité découlant du défaut du payeur ou de son agent payeur;
- f) lorsque Compensation CDS établit des liens en vue de régler des opérations transfrontalières, elle doit concevoir et utiliser ces liens en vue de réduire efficacement les risques associés aux règlements transfrontaliers;
- g) Compensation CDS doit uniquement assurer la prestation de services visés par les règles régissant les adhérents;
- h) lorsque Compensation CDS procède à une impartition importante de ses services de règlement à un fournisseur de services tiers, y compris des membres du même groupe qu'elle ou des personnes qui ont des liens avec elle, elle doit avoir recours à des pratiques exemplaires. Sans limiter la généralité de ce qui précède, Compensation CDS doit faire ce qui suit :
 - (i) elle doit établir et conserver des politiques et procédures approuvées par son conseil d'administration en vue de l'évaluation et de l'approbation de ces ententes en matière d'impartition;
 - (ii) elle doit, lorsqu'elle conclut une entente en matière d'impartition :
 - A. évaluer le risque que comporte l'entente, la qualité du service à fournir et le degré de contrôle qu'elle doit conserver;
 - B. signer un contrat avec le fournisseur de services tiers qui porte sur tous les éléments importants de l'entente, y compris les niveaux de service et les normes de rendement;
 - (iii) elle doit s'assurer que tout contrat qui met en œuvre une telle entente en matière d'impartition autorise l'Autorité à avoir accès à l'ensemble des données, des renseignements et des systèmes conservés et tenus par le fournisseur de services tiers pour le compte de Compensation CDS et à les inspecter, aux fins d'établir la conformité de Compensation CDS aux conditions de la présente décision ou de la législation en valeurs mobilières applicable;
 - (iv) elle doit surveiller la prestation du fournisseur de services tiers aux termes de toute entente en matière d'impartition.

19. VIABILITÉ FINANCIÈRE

- 19.1 Compensation CDS doit s'assurer de disposer de suffisamment de ressources financières afin de garantir la réalisation en bonne et due forme des services de règlement.
- 19.2 Compensation CDS doit aviser l'Autorité dès que possible de toute décision prise de conserver la totalité ou une partie de ses primes en matière de volatilité des opérations qui ont été perçues ou doivent l'être.
- 19.3 Afin d'exercer un contrôle sur sa viabilité financière, Compensation CDS doit calculer, sur une base non consolidée, les ratios financiers suivants :
 - a) le ratio de la dette sur les flux de trésorerie, soit le ratio de la dette totale par rapport au BAIIA (bénéfice avant intérêts, impôts et amortissement), pour les 12 derniers mois;
 - b) le ratio de levier financier, soit le ratio des éléments d'actif totaux, déduction faite des dépôts des clients, par rapport aux capitaux propres.
- 19.4 Compensation CDS doit immédiatement en aviser l'Autorité si elle omet exceptionnellement de conserver ou s'attend à ne pas pouvoir conserver :
 - a) un ratio de la dette sur les flux de trésorerie égal ou inférieur à 4/1; ou
 - b) un ratio de levier financier égal ou inférieur à 4/1.

Si, exceptionnellement, Compensation CDS omet de conserver soit le ratio de la dette sur les flux de trésorerie, soit le ratio de levier financier pendant une durée de plus de trois mois, son chef de la direction doit informer par écrit et sans délai l'Autorité des motifs de la déficience et des mesures qui sont prises pour remédier à la situation et pour rétablir son équilibre financier.

- 19.5 Compensation CDS doit déclarer trimestriellement à l'Autorité (en même temps que les états financiers qu'elle est tenue de déposer aux termes du paragraphe 19.6) le calcul mensuel du ratio de la dette sur les flux de trésorerie et du ratio de levier financier.
- 19.6 Compensation CDS doit déposer auprès de l'Autorité les états financiers trimestriels non vérifiés dans les 60 jours suivant chaque fin de trimestre, ainsi que les états financiers annuels vérifiés établis conformément aux principes comptables généralement reconnus dans les 90 jours suivant la fin de chaque exercice.

20. FIABILITÉ EN MATIÈRE D'EXPLOITATION

- 20.1 Compensation CDS doit adopter des procédures et des processus qui, de façon permanente, garantissent la prestation de services exacts et fiables aux adhérents.
- 20.2 Compensation CDS doit apporter son aide à CDS Itée dans le cadre du dépôt annuel du rapport de vérification prévu au paragraphe 11.1 des présentes.

21. CAPACITÉ ET INTÉGRITÉ DES SYSTÈMES

- 21.1 À l'égard de ses systèmes, Compensation CDS doit faire ce qui suit ou, si un fournisseur de services tiers fournit ces systèmes ou en assure l'entretien, elle doit exiger que le fournisseur de services fasse ce qui suit :
 - a) à une fréquence raisonnable, et au moins une fois par année :
 - (i) procéder à des estimations raisonnables de la capacité actuelle et future des systèmes;
 - (ii) soumettre les systèmes à des tests avec charge élevée pour déterminer la capacité de ces systèmes à traiter les opérations de manière exacte, rapide et efficace;
 - (iii) élaborer et mettre en œuvre des procédures raisonnables pour réviser et garder à jour le développement et la méthodologie de test de ces systèmes;
 - (iv) examiner la vulnérabilité de ces systèmes et des opérations informatiques du centre de données face aux menaces informatiques provenant tant de l'interne que de l'externe, y compris des risques matériels et des catastrophes naturelles;
 - (v) élaborer des plans raisonnables de secours et de continuité de service;
 - b) une fois par année, faire effectuer une vérification indépendante de l'exploitation des services de règlement, conformément aux procédés et normes de vérification généralement reconnus;
 - c) aviser sans délai l'Autorité des pannes importantes de systèmes et des modifications importantes des systèmes.

22. PROTECTION DES TITRES DES CLIENTS

22.1 Compensation CDS doit avoir recours à des pratiques en matière de dépôt de valeurs, de tenue de comptes et de comptabilité, ainsi qu'à des procédures de garde qui protègent les titres des adhérents.

23. RÈGLES

23.1 Compensation CDS doit établir des règles de fonctionnement, notamment des règles à l'intention des adhérents, des procédés et méthodes d'exploitation, des guides de l'utilisateur, des manuels ou d'autres documents semblables (collectivement, les « règles ») qui sont nécessaires ou indiqués en vue de régir, réglementer et énoncer tous les aspects des services de règlement offerts par elle.

23.2 Les règles doivent être compatibles avec les objectifs généraux suivants :

- a) assurer la conformité à la législation en valeurs mobilières applicable;
- b) promouvoir la collaboration et la coordination avec les organismes d'autoréglementation et les personnes ou sociétés qui exploitent des marchés, des systèmes de compensation et de règlement et d'autres systèmes qui facilitent le traitement d'opérations sur titres et la garde de titres;
- c) contrôler le risque systémique.

23.3 Les règles ne doivent pas :

- a) permettre un traitement inéquitable des adhérents;
- b) imposer un fardeau concurrentiel qui n'est pas nécessaire ou indiqué en vue de se conformer à la législation en valeurs mobilières applicable ou aux objectifs et au mandat de la chambre de compensation.

23.4 Les règles de Compensation CDS et le processus en vue de l'adoption de nouvelles règles ou de modification des règles existantes doivent être transparents pour les adhérents et le public.

23.5 Compensation CDS doit déposer auprès de l'Autorité toutes les règles et toutes les modifications aux règles et se conformer au protocole.

23.6 Les règles de Compensation CDS doivent être adoptées par l'instance appropriée simultanément en langues française et anglaise.

24. APPLICATION DES RÈGLES ET DE SANCTIONS DISCIPLINAIRES

- 24.1 Les règles de Compensation CDS doivent énoncer des sanctions convenables en cas de non-conformité de la part des adhérents.
- 24.2 Compensation CDS doit exercer une surveillance raisonnable des activités des adhérents et imposer des sanctions en vue de garantir la conformité des adhérents à ses règles.

25. PARTAGE DE RENSEIGNEMENTS

- 25.1 Compensation CDS doit partager ses renseignements avec l'Autorité et son personnel, d'autres chambres de compensation, des bourses, des systèmes de cotation et de déclaration d'opérations, des systèmes de négociation parallèles, des organismes d'autoréglementation, le Fonds canadien de protection des épargnants et toute autorité de réglementation qui exerce une compétence sur elle et, par ailleurs, collaborer avec ceux-ci, sous réserve :
- a) de toute loi applicable en matière de communication de l'information et de protection des renseignements personnels ou de toute autre loi régissant le partage de renseignements et la protection des renseignements personnels; et
 - b) de toute disposition en matière de confidentialité contenue dans les ententes conclues avec la Banque du Canada se rapportant à des renseignements reçus de la Banque du Canada en sa qualité d'agent comptable des registres, d'agent émetteur, d'agent des transferts ou d'agent payeur pour le gouvernement du Canada.

Compensation CDS doit se conformer notamment à l'article 5 de la *Charte des droits et libertés de la personne*, L.R.Q., c. C-12, aux articles 3 et 35 à 41 du *Code civil du Québec*, L.Q., 1991, c. 64, aux dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*, L.R.Q., c. P-39.1, et de la *Loi concernant le cadre juridique des technologies de l'information*, L.R.Q. c. C-1.1.

- 25.2 Compensation CDS doit autoriser l'Autorité à avoir accès à l'ensemble des données et des renseignements en sa possession et à les consulter, selon ce qui est nécessaire en vue d'évaluer la conformité aux conditions de la présente décision ou la législation en valeurs mobilières applicable, sous réserve :
- a) de toute loi applicable en matière de protection des renseignements personnels ou de toute autre loi régissant le partage de renseignements et la protection des renseignements personnels; et
 - b) de toute disposition en matière de confidentialité contenue dans des ententes conclues avec la Banque du Canada se rapportant à des renseignements reçus de la Banque du Canada en sa qualité d'agent comptable des registres, d'agent émetteur, d'agent des transferts ou d'agent payeur pour le gouvernement du Canada.
- 25.3 L'Autorité peut exiger de Compensation CDS la communication de tout document ou de tout renseignement estimé utile à l'accomplissement de sa mission.

- 25.4 En outre, l'Autorité peut demander à Compensation CDS de confirmer, par une déclaration sous serment ou par une déclaration solennelle, l'authenticité des documents ou la véracité des renseignements communiqués.

PARTIE C – CONDITIONS À RESPECTER PAR CDS LTÉE ET COMPENSATION CDS

26. INFORMATION EN FRANÇAIS

- 26.1 Tous les documents d'information que CDS Ltée et Compensation CDS rendent publics sont disponibles en langues française et anglaise.

27. ASSUJETTISSEMENT AU DROIT DU QUÉBEC

- 27.1 CDS Ltée et Compensation CDS reconnaissent et s'engagent à respecter le droit applicable au Québec, notamment la législation en valeurs mobilières, la *Charte des droits et libertés de la personne*, L.R.Q., c. C-12, la *Charte de la langue française*, L.R.Q., c. C-11, le *Code civil du Québec*, L.Q., 1991, c. 64, et les dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*, L.R.Q., c. P-39.1.

28. ASSUJETTISSEMENT AUX TRIBUNAUX

- 28.1 À moins de convention contraire, pour toute réclamation, procédure ou poursuite à laquelle un résident du Québec est partie, qu'elle soit de nature administrative, de nature juridictionnelle ou de nature judiciaire et pour quelque motif que ce soit, CDS Ltée et Compensation CDS reconnaissent être assujetties aux tribunaux et organismes administratifs du Québec, notamment le Bureau de décision et de révision en valeurs mobilières.

29. ACTIVITÉS AU QUÉBEC

- 29.1 CDS Ltée et Compensation CDS maintiennent un bureau au Québec où elles offrent à leurs adhérents et aux émetteurs des services en français et en anglais.

30. OBLIGATIONS D'INFORMATION

- 30.1 En plus des obligations d'information énoncées aux paragraphes qui précèdent, CDS Ltée et Compensation CDS doivent également se conformer aux obligations d'information énoncées ci-dessous.

- 30.2. CDS Ltée et Compensation CDS doivent fournir à l'Autorité un préavis de ce qui suit :

- a) toute modification proposée à la structure de gouvernance de CDS Ltée et de Compensation CDS autre que des modifications importantes à la structure de gouvernance ou aux documents constitutifs à l'égard desquels une approbation préalable est nécessaire en vertu de l'article 5.3 de la présente décision;
- b) une décision de conclure une convention, un protocole d'entente ou une autre entente semblable avec un organisme gouvernemental ou réglementaire, un

organisme d'autoréglementation, une chambre de compensation, une bourse ou un autre marché;

- c) une décision, soit directement, soit par l'entremise d'une société membre du même groupe, de se livrer à une nouvelle activité commerciale ou de cesser d'exercer une activité commerciale qu'exploitent alors CDS Itée et Compensation CDS;
- d) toute modification importante à sa structure organisationnelle ou à la façon dont elle exerce ses fonctions, pouvoirs et activités lorsqu'une telle mesure pourrait affecter les services de règlement de Compensation CDS;
- e) l'impartition d'activités à l'extérieur du Canada lorsqu'une telle mesure pourrait affecter les services de règlement de Compensation CDS.

Malgré les exigences énoncées au paragraphe c) ci-dessus, CDS Itée n'est pas tenue de fournir de préavis à l'Autorité dans les cas mentionnés ci-dessus s'ils se rapportent aux activités commerciales d'une autre filiale de CDS Itée.

- 30.3 CDS Itée et Compensation CDS doivent fournir à l'Autorité une notification immédiate de :
 - a) la nomination de tout administrateur ou dirigeant;
 - b) la démission réelle ou prévue d'un administrateur ou d'un dirigeant ou des vérificateurs de CDS Itée et de Compensation CDS, y compris un énoncé des motifs de la démission réelle ou prévue;
 - c) l'une d'elles est visée par une ordonnance, une directive ou une action semblable de la part d'une instance gouvernementale ou réglementaire;
 - d) l'une d'elles a connaissance du fait qu'elle fait l'objet d'une enquête d'ordre pénal ou réglementaire;
 - e) l'une d'elles fait ou apprend qu'elle fera l'objet d'une poursuite importante.
- 30.4 Compensation CDS doit immédiatement déposer auprès de l'Autorité des exemplaires de tous les avis, bulletins et documents du même type qu'elle fait parvenir à l'ensemble de ses adhérents.
- 30.5 CDS Itée et Compensation CDS doivent immédiatement déposer auprès de l'Autorité toutes les conventions unanimes entre actionnaires auxquelles elles sont parties.
- 30.6 CDS Itée et Compensation CDS doivent déposer trimestriellement auprès de l'Autorité les rapports de vérification internes et les rapports sur la gestion du risque publiés au cours du trimestre précédent.
- 30.7 CDS Itée et Compensation CDS doivent fournir à l'Autorité, et ce, annuellement :
 - a) une liste des administrateurs et dirigeants de CDS Itée et de Compensation CDS;

- b) une liste des comités du conseil d'administration de CDS Itée et de Compensation CDS, précisant les membres, le mandat et les responsabilités de chacun des comités;
 - c) une liste de tous les adhérents à chaque service de règlement exploité par Compensation CDS;
 - d) la grille des frais afférents aux services de règlement rendus par Compensation CDS.
- 30.8 CDS Itée et Compensation CDS doivent faire parvenir à l'Autorité tous les documents exigés en vertu d'un programme intitulé *Automation Review Program*.

31. PRISE D'EFFET DE LA DÉCISION

- 31.1 La présente décision prendra effet le 1^{er} novembre 2006.

Fait le 17 octobre 2006.

Jean St-Gelais
Président-directeur général

ANNEXE A

PROTOCOLE D'EXAMEN ET D'APPROBATION DES RÈGLES DE SERVICES DE DÉPÔT ET DE COMPENSATION CDS INC. PAR L'AUTORITÉ DES MARCHÉS FINANCIERS

1. Objectif du protocole

Le 17 octobre 2006, l'Autorité des marchés financiers (l'« Autorité ») a prononcé, à certaines conditions, la décision portant le numéro 2006-PDG-0180 (la « Décision ») qui autorise La Caisse canadienne de dépôt de valeurs limitée (« CDS Itée ») et sa filiale en propriété exclusive Services de dépôt et de compensation CDS inc. (« Compensation CDS ») à exercer des activités de compensation de valeurs au Québec en vertu des articles 169 et 170 de la *Loi sur les valeurs mobilières* du Québec (« LVM »), qui dispense CDS Itée et Compensation CDS de l'exigence de reconnaissance à titre d'organisme d'autoréglementation en vertu de l'article 73 de la *Loi sur l'Autorité des marchés financiers* (« LAMF ») et qui révoque la décision de reconnaissance accordée à CDS Itée à titre d'organisme d'autoréglementation en vertu de l'article 89 de la LAMF. En vue de se conformer à la Décision, Compensation CDS doit, entre autres, déposer ses règles auprès de l'Autorité aux fins d'approbation. Le présent protocole énonce le processus relatif à la présentation d'une règle par Compensation CDS ainsi que le processus d'examen et à d'approbation de la règle par l'Autorité.

2. Définitions

Dans le présent protocole :

« règle » s'entend de l'adoption, de la modification ou de la suppression proposée d'une règle de fonctionnement, notamment d'une règle à l'intention des adhérents, de procédés et méthodes d'exploitation, d'un guide de l'utilisateur, d'un manuel ou d'un document semblable de Compensation CDS qui contient des modalités contractuelles énonçant les droits et obligations respectifs de Compensation CDS et de ses adhérents, d'une part, ou les droits et obligations mutuels des adhérents, d'autre part.

Toutes les autres expressions ont le sens qui leur est respectivement attribué dans la Décision et dans la législation en valeurs mobilières applicable, selon leur définition figurant à la Norme canadienne 14-101, *Définitions*.

3. Classification des règles

Compensation CDS doit qualifier les règles, soit de règles importantes, soit de règles d'ordre technique ou administratif, aux fins du processus d'examen et d'approbation énoncé dans le présent protocole.

a) Règles d'ordre technique ou administratif

Aux fins du présent protocole, une règle constitue une « règle d'ordre technique ou administratif » si elle ne porte que sur l'un ou l'autre des sujets suivants :

- (i) des questions d'ordre technique dans le cadre de processus d'exploitation habituels et des pratiques administratives se rapportant aux services de dépôt, de compensation et de règlement;
- (ii) des modifications corrélatives destinées à mettre en œuvre une règle importante qui a été publiée pour consultation aux termes du présent protocole et qui ne contiennent que les aspects importants figurant déjà dans la règle importante ou communiqués dans l'avis accompagnant la règle importante;
- (iii) des modifications destinées à assurer l'harmonisation ou la conformité à une règle existante, à la législation en valeurs mobilières applicable ou à une autre exigence réglementaire;
- (iv) la rectification d'erreurs d'orthographe, de ponctuation, typographiques ou grammaticales ou dans les renvois;
- (v) la mise en forme stylistique, y compris des modifications aux titres ou aux numéros de paragraphes.

b) Règles importantes

Une règle qui ne correspond pas à une règle d'ordre technique ou administratif, selon la définition qui figure ci-dessus, constitue une « règle importante ».

4. Processus d'examen et d'approbation d'une règle importante

a) Préavis d'une règle importante

Si Compensation CDS élabore une règle importante dont elle prévoit qu'elle entraînera une modification importante de sa politique, la modification d'un nombre considérable de règles ou des observations importantes de personnes intéressées à la suite de sa publication, elle doit aviser l'Autorité par écrit au moins 30 jours civils avant de présenter une telle règle importante. L'objet de ce préavis est de permettre à l'Autorité de réagir rapidement après le dépôt de la règle importante. L'Autorité doit se garder d'interpréter le préavis comme une possibilité de participer à l'élaboration de la politique de Compensation CDS. L'Autorité ne doit pas entreprendre l'examen officiel d'une règle importante avant que tous les documents pertinents aient été déposés.

b) Documents exigés

À l'égard d'une règle importante, Compensation CDS doit déposer auprès de l'Autorité les documents suivants, simultanément en langue française et en langue anglaise, par voie électronique ou par tout autre moyen convenu entre l'Autorité et Compensation CDS :

- (i) une lettre de présentation précisant la classification de la règle et les motifs de cette classification ainsi qu'un énoncé selon lequel la règle n'est pas contraire à l'intérêt public;

- (ii) la règle et, au besoin, une version soulignée de celle-ci, indiquant les modifications proposées à une règle existante;
- (iii) un avis de publication que doit publier l'Autorité dans son Bulletin et qui contient les renseignements suivants :
 - A. une description de la règle;
 - B. une mention concise, accompagnée d'une analyse à l'appui, de la nature et de l'objet de la règle;
 - C. une description et une analyse des effets possibles de cette règle sur Compensation CDS, sur les adhérents et d'autres participants au marché ainsi que sur le marché des valeurs mobilières et les marchés financiers en général, notamment l'incidence sur la concurrence, sur les risques et sur les coûts de conformité pris en charge par l'une des parties ci-dessus ou au sein d'un marché, et, au besoin, une comparaison de la règle aux normes internationales promulguées par le Comité sur les systèmes de paiement et de règlement de la Banque des Règlements Internationaux, le Comité technique de l'Organisation internationale des commissions de valeurs et le Groupe des Trente;
 - D. une description du processus de rédaction des règles, y compris une description du contexte d'élaboration de la règle, du processus suivi, des questions examinées, des consultations faites, des solutions de recharge envisagées, des motifs de rejet des solutions de recharge et de l'examen des projets de mise en œuvre;
 - E. lorsque la règle exige que les adhérents, d'autres participants au marché ou Compensation CDS procède à des modifications à leurs systèmes technologiques, Compensation CDS doit fournir une description des incidences de la règle sur ces systèmes et, au besoin, un plan de mise en œuvre, y compris une description du mode et du moment de la mise en œuvre de la règle;
 - F. si Compensation CDS a connaissance du fait qu'une autre chambre de compensation possède une règle équivalente, elle doit inclure un renvoi aux règles de l'autre chambre de compensation, y compris une mention précisant si cette chambre de compensation possède une règle comparable ou a pris, ou envisage de prendre, une règle comparable, ainsi qu'une comparaison de la règle à celle-ci;
 - G. un énoncé précisant que Compensation CDS estime que la règle n'est pas contraire à l'intérêt public;
 - H. une explication selon laquelle toutes les observations devraient être adressées à Compensation CDS avec copie à l'Autorité, et selon laquelle Compensation CDS mettra à la disposition des membres du public, à la demande de ceux-ci, toutes les observations reçues au cours de la période de consultation.

c) Accusé de réception

L'Autorité doit, dans les 5 jours ouvrables, transmettre à Compensation CDS un accusé de réception des documents déposés par Compensation CDS en vertu du paragraphe b) précédent.

d) Publication d'une règle importante par l'Autorité

Dès que possible, l'Autorité doit publier dans son Bulletin l'avis et la règle déposés par Compensation CDS en vertu du paragraphe b) aux fins d'une période de consultation de 30 jours civils (la « période de consultation »), à compter de la date à laquelle l'avis est publié pour la première fois dans le Bulletin de l'Autorité ou est affiché sur son site Internet.

e) Examen par l'Autorité

L'Autorité doit, dans la mesure du possible, effectuer un examen initial de la règle importante et formuler des observations à Compensation CDS au cours de la période de consultation. Toutefois, l'examen de la règle importante n'est nullement limité dans le temps.

f) Réponses de Compensation CDS aux observations formulées par l'Autorité

Compensation CDS doit respecter les exigences suivantes :

- (i) Compensation CDS doit répondre par écrit à l'Autorité à l'égard de toutes les observations reçues;
- (ii) Compensation CDS doit fournir à l'Autorité un résumé de toutes les observations reçues du public et des réponses qu'elle a faites à ces observations, sinon confirmer qu'elle n'a reçu aucune observation du public;
- (iii) si Compensation CDS omet de répondre aux observations formulées par l'Autorité dans les 120 jours civils suivant la réception de sa lettre d'observations, elle est réputée avoir retiré la règle importante, sauf si l'Autorité convient du contraire.

g) Approbation par l'Autorité

L'Autorité doit, dans la mesure du possible, préparer la règle importante aux fins d'approbation dans les 30 jours civils de la plus éloignée des dates suivantes : a) la réception des réponses écrites de Compensation CDS aux observations de l'Autorité ou des demandes de renseignements supplémentaires, et b) la réception du résumé des observations du public et de la réponse de Compensation CDS aux observations du public, ou la confirmation de Compensation CDS qu'aucune observation n'a été reçue. Si, au cours de la période d'examen, l'Autorité établit qu'elle a d'autres observations à formuler ou exige des renseignements supplémentaires de Compensation CDS afin de préparer les documents aux fins d'approbation par l'Autorité, la période d'examen est prorogée d'une durée supplémentaire de 30 jours civils à compter du jour de la réception, par l'Autorité,

des réponses aux observations ou aux renseignements demandés. L'Autorité doit aviser Compensation CDS de son approbation de la règle importante dans les 5 jours ouvrables.

h) Publication de l'avis d'approbation

L'Autorité doit préparer et publier dans son Bulletin et sur son site Internet un bref avis d'approbation de la règle importante dans les 15 jours ouvrables suivant la transmission de l'avis à Compensation CDS de la décision d'approbation. Compensation CDS doit fournir les renseignements suivants qui doivent accompagner la publication de l'avis d'approbation :

- (i) un bref résumé de la règle importante;
- (ii) un résumé des observations du public et des réponses reçues, le cas échéant;
- (iii) si des modifications ont été apportées à la version publiée aux fins de consultation du public, une copie soulignée de la règle importante révisée.

i) Date de prise d'effet d'une règle importante

Une règle importante prend effet à compter de la date de l'avis d'approbation par l'Autorité conformément au paragraphe g) ou à une date ultérieure fixée par Compensation CDS.

j) Révisions importantes apportées à une règle importante

Lorsqu'une règle importante est révisée après sa publication pour consultation d'une manière qui, selon l'avis de l'Autorité et de Compensation CDS, a une incidence importante sur la règle quant au fond ou à ses effets, la révision doit être publiée dans le Bulletin de l'Autorité accompagnée d'un avis pour une deuxième période de consultation de 30 jours civils. L'avis de consultation doit inclure le résumé préparé par Compensation CDS des observations et des réponses données en réponse à l'avis de consultation antérieur, ainsi qu'une explication de la révision apportée à la règle importante et des motifs à l'appui de la modification.

k) Retrait d'une règle importante

Si Compensation CDS retire, ou est réputée avoir retiré, une règle qui a été présentée antérieurement, elle doit donner un avis de retrait qui doit être publié par l'Autorité dans son Bulletin dès que possible.

5. Processus d'examen et d'approbation d'une règle d'ordre technique ou administratif

a) Documents exigés

À l'égard d'une règle d'ordre technique ou administratif, Compensation CDS doit déposer auprès de l'Autorité les documents suivants, simultanément en langue

française et en langue anglaise, par voie électronique ou par tout autre moyen convenu entre l'Autorité et Compensation CDS :

- (i) une lettre de présentation qui précise la classification de la règle et les motifs de cette classification;
- (ii) la règle et, au besoin, une version soulignée de celle-ci, indiquant les modifications proposées à une règle existante;
- (iii) un bref avis de publication que doit publier l'Autorité dans son Bulletin et qui contient les renseignements suivants :
 - A. une brève description de la règle d'ordre technique ou administratif;
 - B. les motifs de la classification d'ordre technique ou administratif;
 - C. la date de prise d'effet de la règle d'ordre technique ou administratif ou un énoncé que celle-ci prendra effet à une date ultérieurement fixée par Compensation CDS.

b) Date de prise d'effet des règles d'ordre technique ou administratif

La règle d'ordre technique ou administratif prend effet au moment du dépôt, par Compensation CDS, des documents conformément au paragraphe a) ci-dessus ou à une date fixée par elle. Lorsqu'elle ne reçoit pas d'avis de désaccord sur la classification de l'Autorité conformément au paragraphe d) ci-dessous dans les 15 jours ouvrables suivant le dépôt de la règle, Compensation CDS peut présumer que l'Autorité est d'accord avec la classification.

c) Accusé de réception

L'Autorité doit, dans les 5 jours ouvrables, transmettre à Compensation CDS un accusé de réception des documents déposés par Compensation CDS en vertu du paragraphe a) ci-dessus.

d) Désaccord sur la classification

Lorsque Compensation CDS a qualifié une règle de « règle d'ordre technique ou administratif » et que l'Autorité est en désaccord avec cette classification :

- (i) l'Autorité doit communiquer à Compensation CDS par écrit les motifs du désaccord sur la classification de la règle dans les 15 jours ouvrables suivant la réception du dépôt par Compensation CDS;
- (ii) après réception de la communication écrite de l'Autorité, Compensation CDS doit qualifier à nouveau la règle comme étant une règle importante et l'Autorité doit examiner et approuver la règle selon le processus énoncé à l'article 4;

- (iii) l'Autorité peut exiger que Compensation CDS abroge immédiatement la règle d'ordre technique ou administratif et qu'elle avise ses adhérents des motifs de l'abrogation de la règle.

e) Publication des règles d'ordre technique ou administratif

L'Autorité doit publier l'avis déposé par Compensation CDS en vertu du sous-paragraphe (iii) du paragraphe a) ci-dessus dès que possible.

f) Observations reçues à l'égard des règles d'ordre technique ou administratif

Si des observations sont présentées en réponse à la publication de l'avis ou à la mise en œuvre de la règle d'ordre technique ou administratif, l'Autorité peut examiner la règle à la lumière des observations reçues. L'Autorité peut déterminer que la règle n'a pas été classifiée correctement et exiger qu'elle soit qualifiée à titre de règle importante, auquel cas la règle doit être examinée et approuvée par l'Autorité selon le processus énoncé à l'article 4, en faisant les adaptations nécessaires. Si, par la suite, l'Autorité rejette la règle importante, Compensation CDS doit immédiatement l'abroger et informer ses adhérents du rejet.

6. Mise en œuvre urgente d'une règle importante

a) Critères justifiant une mise en œuvre urgente

Compensation CDS peut mettre en œuvre une règle importante de manière urgente lorsqu'elle juge qu'il est pressant de le faire en raison d'un risque considérable et imminent de préjudice important pour elle, les adhérents, les autres participants du marché ou les marchés des capitaux canadiens ou en raison d'une modification du mode d'exploitation imposée par un tiers fournissant des services à Compensation CDS et à ses adhérents.

b) Préavis

Lorsque Compensation CDS juge nécessaire la mise en œuvre urgente d'une règle, elle doit aviser l'Autorité par écrit dès que possible mais, dans tous les cas, au moins 5 jours ouvrables avant la mise en œuvre de la règle. Ce préavis écrit doit faire état des motifs justifiant la mise en œuvre urgente.

c) Désaccord sur la nécessité d'une mise en œuvre urgente

Si l'Autorité ne juge pas nécessaire la mise en œuvre urgente d'une règle, le processus de règlement du désaccord est le suivant :

- (i) l'Autorité doit aviser Compensation CDS par écrit du désaccord ou exiger une prorogation du délai en vue de l'examen de la mise en œuvre urgente, et ce, dans les 3 jours ouvrables après avoir reçu l'avis de la part de Compensation CDS en vertu du paragraphe b) précédent;
- (ii) l'Autorité et Compensation CDS discutent des difficultés soulevées par l'Autorité et tentent de les résoudre;

- (iii) si Compensation CDS n'a pas reçu d'avis dans les 3 jours ouvrables suivant la réception de son préavis par l'Autorité, elle présume que l'Autorité est d'accord avec son évaluation de la situation.

d) Examen des règles importantes mises en œuvre de manière urgente

Une règle importante qui a été mise en œuvre d'une manière urgente doit être publiée, examinée et approuvée par l'Autorité conformément au processus énoncé à l'article 4, en faisant les adaptations nécessaires. Si l'Autorité rejette ultérieurement la règle importante, Compensation CDS doit immédiatement abroger la règle importante et aviser ses adhérents du rejet.

7. Dispositions diverses

a) Renonciation aux dispositions du protocole

L'Autorité peut renoncer à toute partie du présent protocole suivant une demande formulée par Compensation CDS en ce sens. Cette renonciation doit être accordée par écrit par l'Autorité.

b) Modifications

Le présent protocole et toute disposition de celui-ci peuvent être modifiés, par écrit et en tout temps, avec l'accord de l'Autorité et de Compensation CDS.

c) Valeur juridique du protocole

Le présent protocole fait partie intégrante de la Décision et a la même valeur juridique que celle-ci.

SCHEDULE 4

**RECONNAISSANCE DE TRANS CANADA OPTIONS À TITRE D'ORGANISME
D'AUTORÉGLEMENTATION**

Numéro : 8601

Date : 1987-11-12

Référence : Bulletin hebdomadaire : 1987-11-13, Vol. XVIII n° 46, page 3

La Commission reconnaît, en vertu de l'article 174 de la Loi, Trans Canada Options à titre d'organisme d'autoréglementation. L'avis prévu à l'article 173 de la Loi a été publié au Bulletin du 21 août 1987.

SCHEDULE 5

LA DEMANDE DE DISPENSE

La société TSX Inc. (ci-après « TSX ») a adressé à l'Agence nationale d'encadrement du secteur financier, aussi connue sous le nom Autorité des marchés financiers (ci-après l'*« Autorité »*) une demande afin que celle-ci prononce une décision, en vertu de l'article 263 de la *Loi sur les valeurs mobilières* (ci-après la *« Loi »*), à l'effet de dispenser TSX de façon permanente de l'application de l'article 169 de la Loi, afin de lui permettre d'exercer ses activités de Bourse de valeurs au Québec sans obtenir l'autorisation de l'Autorité.

LES FAITS

TSX a soumis à l'appui de sa demande de dispense un énoncé des faits ainsi que les arguments apparaissant ci-après.

LA DEMANDERESSE

La société Groupe TSX Inc. (ci-après le « Groupe TSX ») a été constituée en vertu de la *Loi sur les sociétés par actions* de l'Ontario⁽²⁾; il s'agit d'une société de portefeuille qui détient toutes les actions émises et en circulation de TSX.

TSX a été pour sa part constituée en vertu de la *Loi sur les sociétés par actions* de l'Ontario⁽³⁾. Elle mène actuellement ses activités par l'entremise de sa filiale, Bourse de croissance TSX Inc. (inscription de titres de participation de sociétés à petite capitalisation) et des quatre divisions d'exploitation suivantes, à savoir :

- la Bourse de Toronto (inscription de titres de participation de sociétés à grande capitalisation);
- Marchés boursiers TSX (négociations);
- Technologies TSX (services de technologies de l'information); et
- TSX Datalinx (données sur les marchés).

LES DÉCISIONS ET LES DISPENSES DE RECONNAISSANCE

TSX a été reconnue comme une Bourse de valeurs par la Commission des valeurs mobilières de l'Ontario (ci-après la « CVMO ») d'abord le 3 avril 2000⁽⁴⁾ puis le 29 janvier 2002⁽⁵⁾ et le 3 septembre 2002⁽⁶⁾. Le 3 septembre 2002, elle a reçu une dispense de reconnaissance à titre de Bourse de valeurs de la part de l'Alberta Securities Commission (ci-après l'*« ASC »*). À la même date, la British Columbia Securities Commission (ci-après la « BCSC ») accordait à TSX une dispense d'être reconnue à titre de Bourse de valeurs.

De plus, le 20 décembre 2002, la Commission des valeurs mobilières du Québec (la « Commission ») prononçait la décision n° 2002-C-0485 à l'effet de renouveler, de manière temporaire, la dispense pour TSX d'être reconnue à titre d'organisme d'autoréglementation au Québec⁽⁷⁾. Cette décision est arrivée à terme le 30 juin 2003; elle a été renouvelée par la Commission le 27 juin 2003, en vertu de la décision n° 2003-C-0244⁽⁸⁾, puis le 12 septembre 2003, en vertu de la décision n° 2003-C-0329⁽⁹⁾. Cette dernière décision est en vigueur jusqu'au 31 mars 2004, inclusivement.

LES ACTIVITÉS À MONTRÉAL

TSX a ouvert à Montréal un bureau d'affaires dans lequel elle offre aux émetteurs des services en français et en anglais. Ce bureau est desservi par des professionnels qualifiés qui sont à l'emploi de TSX.

LE PROTOCOLE D'ENTENTE SUR LA SURVEILLANCE DES BOURSES

L'ASC, la BCSC, la Commission, la CVMO et la Commission des valeurs mobilières du Manitoba (ci-après la « CVMM ») ont conclu le *Protocole d'entente sur la surveillance des Bourses et des systèmes de cotation et de déclaration d'opérations* (ci-après le « protocole d'entente sur la surveillance »)⁽¹⁰⁾, lequel a été approuvé par le gouvernement du Québec le 18 juin 2003⁽¹¹⁾. Le protocole d'entente sur la surveillance prévoit qu'il y aurait à l'égard de chaque Bourse reconnue (ci-après une « Bourse ») et de chaque système de cotation et de déclaration d'opérations reconnu (ci-après un « système de cotation ») une autorité principale (ci-après « l'autorité principale ») chargée de sa surveillance et une ou plusieurs autorités qui accordent une dispense (ci-après l'« autorité de dispense »).

Selon l'Annexe A du protocole d'entente sur la surveillance, la CVMO agit à titre d'autorité principale à l'égard de TSX tandis que l'Autorité (successeur de la Commission), l'ASC et la BCSC agissent à titre d'autorités de dispense.

Aux termes du protocole d'entente sur la surveillance, l'autorité de dispense d'une Bourse l'a dispensée ou la dispensera d'être reconnue en tant que Bourse en fonction de ce qui suit :

- a) la Bourse est reconnue et continuera d'être reconnue par l'autorité principale en tant que Bourse ou, au Québec, en tant qu'organisme d'autoréglementation;
- b) l'autorité principale est chargée de la surveillance de la Bourse exigée par la réglementation;
- c) l'autorité principale informera l'autorité de dispense de ses activités de surveillance et celle-ci aura l'occasion de lui faire part de ses observations sur la surveillance de la Bourse conformément aux termes du protocole d'entente sur la surveillance.

Le protocole d'entente sur la surveillance prévoit que la CVMO est chargée de la mise en application d'un plan de surveillance de cette Bourse visant à vérifier qu'elle observe des normes appropriées en matière de fonctionnement et de réglementation de marché. TSX soumet à l'examen et à l'approbation de la CVMO toute modification proposée à ses règles, politiques et autres instruments similaires (ci-après les « règles »), conformément aux procédures établies par la CVMO.

TSX remet simultanément à l'Autorité des copies de toutes les règles soumises à l'examen et à l'approbation de la CVMO. TSX remet également toutes les règles définitives à l'Autorité dès qu'elles sont approuvées par la CVMO.

LA DÉCISION

L'Autorité, après avoir considéré :

- a) le *Protocole d'entente* qui a été conclu le 15 mars 1999 par la Bourse de Montréal, The Alberta Stock Exchange, la Bourse de Toronto et le Vancouver Stock Exchange et qui a été depuis modifié le 10 novembre 1999 et le 22 septembre 2000. Ce protocole portait sur la restructuration des bourses canadiennes et définissait le cadre d'action en fonction duquel ces différentes Bourses de valeurs entendaient restructurer leurs activités pour répondre à certaines considérations stratégiques⁽¹¹⁾;
- b) la demande qui lui a été soumise par TSX et des arguments qui lui ont été présentés à son appui,

conclut qu'il ne serait pas contraire à l'intérêt public de prononcer la décision qui lui a été demandée.

Par conséquent, l'Autorité, en vertu de l'article 263 de la Loi, dispense la société TSX Inc. de l'application de l'article 169 de la Loi relativement à l'obtention d'une autorisation d'exercer une activité de bourse au Québec.

La présente dispense est accordée aux modalités et aux conditions suivantes :

1. LA RÉGIE D'ENTREPRISE

Pour assurer la diversité de la représentation, TSX s'assure que la composition de son conseil d'administration représente un équilibre approprié entre les intérêts des différentes entités qui utilisent ses services et ses installations.

2. LES ACTIVITÉS AU QUÉBEC

- a) TSX offre à Montréal une gamme étendue de services en français et en anglais aux émetteurs du Québec, notamment des services d'inscription, de

maintien à la cote et de suivi des émetteurs qui sont de qualité équivalente à ceux qui sont offerts à Toronto;

- b) les membres du personnel de TSX qui exercent leurs fonctions à Montréal participent activement au processus décisionnel à l'égard des émetteurs qui sont desservis par cette Bourse;
- c) les documents d'information de TSX qui sont destinés aux émetteurs québécois ainsi qu'aux organisations participantes dûment inscrites au Québec sont disponibles en français et en anglais.

3. LE FONCTIONNEMENT DE LA BOURSE

TSX exploitera une Bourse pour les émetteurs à grande capitalisation.

4. LE MAINTIEN DE LA RECONNAISSANCE

TSX continuera d'être reconnue à titre de Bourse par la CVMO, conformément à la *Loi sur les valeurs mobilières de l'Ontario*⁽¹³⁾.

5. LA SUPERVISION DE LA BOURSE

La CVMO continuera d'agir à titre d'autorité principale de TSX, en vertu du protocole d'entente sur la surveillance ou d'une entente modifiée ou similaire, et TSX demeure assujettie au programme de surveillance établi par la CVMO de temps à autre.

6. L'APPROBATION DES RÈGLES

- a) L'approbation des règles sera faite en respectant la procédure suivante :
 - i) tous les projets de modifications aux règles déposés auprès de la CVMO sont déposés en même temps auprès de l'Autorité;
 - ii) tous les projets de modifications aux règles qui sont rendus publics en vue de l'obtention de commentaires, sont rendus publics simultanément en anglais et en français par TSX; et
 - iii) la version définitive des règles qui ont été approuvées simultanément en anglais et en français par la CVMO est déposée auprès de l'Autorité;
- b) les règles sont disponibles, en anglais et en français, sur le site Internet de TSX.

7. L'ACCÈS À L'INFORMATION

- a) Lorsque l'Autorité en fait la demande par l'entremise de la CVMO, TSX lui remettra toutes les informations en sa possession, le cas échéant, sur les organisations participantes, sur les émetteurs et sur l'exploitation du marché par TSX, notamment les listes des organisations participantes, les informations sur les produits et les opérations et les décisions disciplinaires, le tout en conformité avec les dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*⁽¹⁴⁾, de la *Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels*⁽¹⁵⁾ et des articles 296, 297 et 297.1 de la Loi, ainsi que des autres lois applicables, notamment d'autres lois sur la protection de la vie privée, portant sur la collecte, l'utilisation et la communication de renseignements et la protection des renseignements personnels;
- b) TSX doit préserver la confidentialité des renseignements qui lui sont soumis dans le cadre de ses activités auprès des émetteurs et des organisations participantes faisant affaires au Québec, le tout en conformité avec l'article 5 de la *Charte des droits et libertés de la personne*⁽¹⁶⁾, les articles 3 et 35 à 41 du *Code civil du Québec*⁽¹⁷⁾ et les dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*⁽¹⁸⁾.

8. LES RENSEIGNEMENTS SUPPLÉMENTAIRES

TSX devra déposer auprès de l'Autorité toute information connexe qui la vise et qui sera requise conformément au règlement « Norme canadienne 21-101, *Le fonctionnement du marché* »⁽¹⁹⁾.

Si TSX fait défaut de se conformer à une ou à plusieurs conditions qui sont énoncées dans la présente décision, l'Autorité pourra réviser la présente décision.

Enfin, l'Autorité abroge la décision n° 2003-C-0329 prononcée par la Commission le 12 septembre 2003.

La présente décision entrera en vigueur à la date de sa signature.

Signé le 27 février 2004.

Pour l'Agence nationale d'encadrement du secteur financier

Jean St-Gelais
Président-directeur général

DÉCISION N° 2004 -PDG-0012

Date : 27 février 2004

-
- (1) L.R.Q., c. V-1.1.
 - (2) L.R.O., 1990, c. B.16.
 - (3) L.R.O., 1990, c. B.16.
 - (4) *The Toronto Stock Exchange – Recognition Order*, (2000) 23 OSCB 2495.
 - (5) *The Toronto Stock Exchange – Amendment to Recognition Order*, (2002) 25 OSCB 929.
 - (6) *TSX Group Inc. & TSX Inc. – Amendment to Recognition Order*, (2002) 25 OSCB 6134.
 - (7) *TSX Inc.*, 2003-03-21, Vol. XXXIV, n° 11, BCVMQ, 11.
 - (8) *TSX Inc.*, 2003-09-12, Vol. XXXIV, n° 36, BCVMQ, 16.
 - (9) *TSX Inc.*, 2003-10-03, Vol. XXXIV, n° 39, BCVMQ, 8.
 - (10) Le protocole d'entente a reçu son approbation finale de la part des autorités québécoises le 17 juillet 2003.
 - (11) *Décret 672-2003 concernant la signature d'une entente relative à la surveillance des bourses, des systèmes de cotation et des déclarations d'opérations*, (2003) G.O., II, 3182.
 - (12) *Dans l'affaire de la restructuration des bourses canadiennes*, 1999-07-02, Vol. XXX, n° 26, BCVMQ, 6.
 - (13) L.R.O., 1990, c. S-5.
 - (14) L.R.Q., c. P-39.1.
 - (15) L.R.Q., c. A-2.1.
 - (16) L.R.Q., c. C-12.
 - (17) L.Q., 1991, c. 64.
 - (18) L.R.Q., c. P-39.1.
 - (19) 2002-08-31, Vol. XXXI, n° 35, BCVMQ, 3 & Annexe D (Décision n° 2001-C-0409 du 28 août 2002), telle que modifiée.

SCHEDULE 6

Groupe TSX Inc.
Bourse de croissance TSX Inc.

Décision n° : 2004-PDG-0076

LA DEMANDE DE DISPENSE

Bourse de croissance TSX Inc. (ci-après la »Bourse de croissance TSX«) a adressé à l'Agence nationale d'encadrement du secteur financier, aussi connue sous le nom Autorité des marchés financiers (ci-après l' »Autorité«), une demande afin que celle-ci prononce une décision, en vertu de l'article 263 de la *Loi sur les valeurs mobilières*⁽¹⁾ (ci-après la « Loi »), à l'effet de dispenser la Bourse de croissance TSX de façon permanente de l'application de l'article 169 de la Loi, afin de lui permettre d'exercer ses activités de Bourse de valeurs au Québec sans obtenir l'autorisation de l'Autorité.

LES FAITS

La Bourse de croissance TSX a soumis à l'appui de sa demande de dispense un énoncé des faits ainsi que les arguments apparaissant ci-après.

La demanderesse

La société Groupe TSX Inc. a été constituée en vertu de la *Loi sur les sociétés par actions* de l'Ontario⁽²⁾, il s'agit d'une société de portefeuille qui détient toutes les actions émises et en circulation de TSX Inc. TSX Inc. a été constituée en vertu de la *Loi sur les sociétés par actions* de l'Ontario⁽³⁾. Elle détient pour sa part toutes les actions émises et en circulation de la Bourse de croissance TSX. La demanderesse, la Bourse de croissance TSX, a été constituée en vertu de la *Business Corporations Act* de l'Alberta⁽⁴⁾.

Les décisions et les dispenses de reconnaissance

La Bourse de croissance TSX a été reconnue comme une Bourse tant par l'Alberta Securities Commission (ci-après l' »ASC«) que par la British Columbia Securities Commission (ci-après la « BCSC »), d'abord le 26 novembre 1999⁽⁵⁾⁽⁶⁾, puis le 31 juillet 2001⁽⁷⁾⁽⁸⁾ et le 3 septembre 2002⁽⁹⁾⁽¹⁰⁾. Le 3 septembre 2002, elle a reçu une dispense de reconnaissance à titre de Bourse de la part de la Commission des valeurs mobilières de l'Ontario (ci-après la « CVMO »). Le 20 novembre 2000 (avec prise d'effet le 24 novembre 2000), la Commission des valeurs mobilières du Manitoba (ci-après la « CVMM ») a accordé à la Bourse de croissance TSX une dispense des exigences de reconnaissance afin de permettre à la Bourse de croissance TSX d'exercer des activités de Bourse au Manitoba.

Dans une première décision n° 2001-C-0430 en date du 14 septembre 2001, la Commission des valeurs mobilières du Québec (la « Commission») dispensait, de manière temporaire, la Canadian Venture Exchange Inc. (« CDN ») de l'obligation d'être reconnue à titre d'organisme d'autoréglementation pour exercer son activité au Québec, sous réserve du respect de certaines conditions. Le 31 mai 2002, par la décision n° 2002-C-0189, la Commission prolongeait, de manière temporaire, la dispense de reconnaissance à titre d'organisme d'autoréglementation de la CDN, faisant dorénavant affaire sous le nom Bourse de croissance TSX. Cette dispense a été renouvelée par la Commission un certain nombre de fois⁽¹¹⁾⁽¹²⁾ jusqu'à son renouvellement, le 12 septembre 2003, en vertu de la décision n° 2003-C-0330⁽¹³⁾. Cette dernière décision sera en vigueur jusqu'au 30 juin 2004, inclusivement.

Les activités à Montréal

La Bourse de croissance TSX a ouvert à Montréal un bureau d'affaires dans lequel elle offre aux émetteurs des services en français et en anglais. Ce bureau est desservi par des professionnels qualifiés.

Le protocole d'entente sur la surveillance des Bourses

L'ASC, la BCSC, la Commission, la CVMO et la CVMM ont conclu le *Protocole d'entente sur la surveillance des Bourses et des systèmes de cotation et de déclaration d'opérations* (ci-après le « protocole d'entente sur la surveillance »)⁽¹⁴⁾, lequel a été approuvé par le gouvernement du Québec le 18 juin 2003⁽¹⁵⁾. Le protocole d'entente sur la surveillance prévoit qu'il y aurait à l'égard de chaque Bourse reconnue (ci-après une « Bourse ») et de chaque système de cotation et de déclaration d'opérations reconnu une autorité principale (ci-après « l'autorité principale ») chargée de sa surveillance et une ou plusieurs autorités qui accordent une dispense (ci-après l'« autorité de dispense »).

Selon l'Annexe A du protocole d'entente sur la surveillance, l'ASC et la BCSC agissent conjointement à titre d'autorités principales à l'égard de la Bourse de croissance TSX, tandis que l'Autorité (successeur de la Commission), la CVMO et la CVMM agissent à titre d'autorités de dispense.

Aux termes du protocole d'entente sur la surveillance, l'autorité de dispense d'une Bourse l'a dispensée ou la dispenserá d'être reconnue en tant que Bourse en fonction de ce qui suit :

- i) la Bourse est reconnue et continuera d'être reconnue par l'autorité principale en tant que Bourse ou, au Québec, en tant qu'organisme d'autoréglementation;
- ii) l'autorité principale est chargée de la surveillance de la Bourse exigée par la réglementation;
- iii) l'autorité principale informera l'autorité de dispense de ses activités de surveillance et celle-ci aura l'occasion de lui faire part de ses observations sur la surveillance de la Bourse conformément aux termes du protocole d'entente sur la surveillance.

De plus, aux termes du protocole d'entente sur la surveillance, l'autorité principale reconnaît qu'une autorité de dispense peut exiger que la Bourse lui remette :

- i) une copie de tous les documents prescrits que dépose la Bourse auprès de l'autorité principale pour examen et approbation conformément aux procédures de l'autorité principale, au même moment où ils sont déposés auprès de l'autorité principale;
- ii) une copie de tous les documents prescrits définitifs dès qu'ils sont approuvés par l'autorité principale conformément aux procédures de l'autorité principale;
- iii) à la demande de l'autorité de dispense, une copie de l'information déposée par la Bourse qui est précisée dans la demande.

En vertu du protocole d'entente sur la surveillance, les documents prescrits désignent les règlements, règles, politiques et autres documents semblables de la Bourse. Les procédures d'examen et d'approbation de modifications aux documents prescrits sont établies par l'autorité principale de temps à autre.

Dans les faits, la Bourse de croissance TSX soumet à l'examen et à l'approbation de l'ASC et de la BCSC les modifications proposées à ses règlements, règles, politiques, procédures, pratiques, interprétations et autres instruments similaires, conformément aux procédures établies de temps à autre par l'ASC et la BCSC (ci-après les « Règles »).

LA DÉCISION

L'Autorité, après avoir considéré :

- a) le *Protocole d'entente* qui a été conclu le 15 mars 1999 par la Bourse de Montréal, The Alberta Stock Exchange, la Bourse de Toronto et le Vancouver Stock Exchange et qui a été depuis modifié le 10 novembre 1999 et le 22 septembre 2000 (ce protocole portait sur la restructuration des Bourses canadiennes et définissait le cadre d'action en fonction duquel ces différentes Bourses de valeurs entendaient restructurer leurs activités pour répondre à certaines considérations stratégiques⁽¹⁶⁾);
- b) la demande qui lui a été soumise par la Bourse de croissance TSX et les arguments qui lui ont été présentés à son appui,

conclut qu'il ne serait pas contraire à l'intérêt public de prononcer la décision qui lui a été demandée.

Par conséquent, l'Autorité, en vertu de l'article 263 de la Loi, dispense la Bourse de croissance TSX de l'application de l'article 169 de la Loi relativement à l'obtention d'une autorisation d'exercer une activité de Bourse au Québec. La présente dispense est accordée aux modalités et aux conditions suivantes :

1. La régie d'entreprise

Pour assurer la diversité de la représentation, la Bourse de croissance TSX s'assure que la composition de son conseil d'administration représente un équilibre approprié entre les intérêts des différentes entités qui utilisent ses services et ses installations.

2. Les activités au Québec

- a) La Bourse de croissance TSX offre à Montréal une gamme étendue de services en français et en anglais aux émetteurs du Québec, notamment des services d'inscription, de maintien à la cote et de suivi des émetteurs qui sont de qualité équivalente à ceux qui sont offerts dans les autres bureaux de la Bourse de croissance TSX;
- b) les membres du personnel de la Bourse de croissance TSX qui exercent leurs fonctions à Montréal participent activement au processus décisionnel à l'égard des émetteurs qui sont desservis par cette Bourse;
- c) les documents d'information de la Bourse de croissance TSX qui sont destinés aux émetteurs québécois, aux organisations participantes et aux membres dûment inscrits au Québec sont disponibles en français et en anglais.

3. Le fonctionnement de la Bourse

La Bourse de croissance TSX exploitera une Bourse pour les émetteurs à petite capitalisation.

4. Le maintien de la reconnaissance

La Bourse de croissance TSX continuera d'être reconnue à titre de Bourse par l'ASC et la BCSC, conformément à la *Securities Act* de l'Alberta⁽¹⁷⁾ et à la *Securities Act* de la Colombie-Britannique⁽¹⁸⁾, respectivement.

5. la supervision de la Bourse

L'ASC et la BCSC continueront d'agir à titre d'autorités principales conjointes de la Bourse de croissance TSX, en vertu du protocole d'entente sur la surveillance ou d'une entente modifiée ou similaire, et la Bourse de croissance TSX demeure assujettie au programme de surveillance établi conjointement par l'ASC et la BCSC de temps à autre.

6. L'approbation des Règles

a) L'approbation des Règles sera faite en respectant la procédure suivante :

- i) tous les projets de modifications aux Règles déposés auprès de l'ASC et de la BCSC sont déposés auprès de l'Autorité dès que ces modifications auront été identifiées comme étant importantes (« *significant* »), conformément aux procédures établies de temps à autre par l'ASC et la BCSC;
- ii) tous les projets de modifications aux Règles qui sont rendus publics en vue de l'obtention de commentaires, sont rendus publics simultanément en anglais et en français par la Bourse de croissance TSX; et
- iii) la version définitive des Règles qui ont été approuvées simultanément en anglais et en français par l'ASC et la BCSC, conformément aux procédures établies de temps à autre par l'ASC et la BCSC, est déposée auprès de l'Autorité;

b) les Règles qui sont disponibles sur le site Internet de la Bourse de croissance TSX le sont simultanément en anglais et en français.

7. L'accès à l'information

a) Lorsque l'Autorité en fait la demande par l'entremise de l'ASC et de la BCSC, la Bourse de croissance TSX lui remettra toutes les informations en sa possession, le cas échéant, sur les organisations participantes ou les membres, sur les émetteurs et sur l'exploitation du marché par la Bourse de croissance TSX, notamment les listes des organisations participantes et des membres, les informations sur les produits et les opérations et les décisions disciplinaires, le tout en conformité avec les dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*⁽¹⁹⁾, de la *Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels*⁽²⁰⁾ et des articles 296, 297 et 297.1 de la Loi, ainsi que des autres lois applicables, notamment d'autres lois sur la protection de la vie privée, portant sur la collecte, l'utilisation et la communication de renseignements et la protection des renseignements personnels;

b) La Bourse de croissance TSX doit préserver la confidentialité des renseignements qui lui sont soumis dans le cadre de ses activités auprès des émetteurs, des organisations participantes et des membres faisant affaire au Québec, le tout en conformité avec l'article 5 de la *Charte des droits et libertés de la personne*⁽²¹⁾, les articles 3 et 35 à 41 du *Code civil du Québec*⁽²²⁾ et les dispositions de la *Loi sur la protection des renseignements personnels dans le secteur privé*⁽²³⁾.

8. Les renseignements supplémentaires

La Bourse de croissance TSX devra déposer auprès de l'Autorité toute information connexe qui la vise et qui sera requise conformément au règlement « Norme canadienne 21-101, *Le fonctionnement du marché* »⁽²⁴⁾.

Si la Bourse de croissance TSX fait défaut de se conformer à une ou à plusieurs conditions qui sont énoncées dans la présente décision, l'Autorité pourra réviser la présente décision.

Enfin, l'Autorité abroge la décision n° 2003-C-0330 prononcée par la Commission le 12 septembre 2003.

La présente décision entrera en vigueur à la date de sa signature.

Signé le 28 juin 2004.

Pour l'Agence nationale d'encadrement du secteur financier

Jean St-Gelais
Président-directeur général

- (1) L.R.Q., c. V-1.1.
 - (2) L.R.O., 1990, c. B.16.
 - (3) L.R.O., 1990, c. B.16.
 - (4) R.S.A. 2000, c. B-9.
 - (5) *Recognition in the matter of the Canadian Venture Exchange* (1999) ASCS 3468.
 - (6) *In the matter of the Canadian Venture Exchange Inc.*, 1999, 48 BC Weekly Summary 6.
 - (7) *In the matter of the Canadian Venture Exchange* (2001) ABSECCOM ORD-#804409 V2.
 - (8) *In the matter of the Canadian Venture Exchange Inc.* BCSECCOM COR #01/086.
 - (9) *In the matter of the Canadian Venture Exchange* (3 septembre 2002).
 - (10) *In the matter of TSX Venture Exchange Inc.* BCN 2002/32 COR #02/096
 - (11) *TSX Venture Exchange Inc.*, 2003-03-21, Vol.XXXIV, no 11, BCVMQ, 13.
 - (12) *TSX Venture Exchange Inc.*, 2003-09-12, Vol. XXXIV, no 36, BCVMQ, 9.
 - (13) *TSX Venture Exchange Inc.*, 2003-10-03, Vol. XXXIV, no 39, BCVMQ, 7.
 - (14) Le protocole d'entente a reçu son approbation finale de la part des autorités québécoises le 17 juillet 2003.
 - (15) *Décret 672-2003 concernant la signature d'une entente relative à la surveillance des bourses, des systèmes de cotation et des déclarations d'opérations*, (2003) G.O., II, 3182.
 - (16) *Dans l'affaire de la restructuration des bourses canadiennes*, 1999-07-02, Vol. XXX, n° 26, BCVMQ, 6.
 - (17) R.S.A., 2000, c. S-4.
 - (18) R.S.B.C, 1996, c. 418.
 - (19) L.R.Q., c. P-39.1.
 - (20) L.R.Q., c. A-2.1.
 - (21) L.R.Q., c. C-12.
 - (22) L.Q., 1991, c. 64.
 - (23) L.R.Q., c. P-39.1.
 - (24) 2001-08-31, Vol. XXXII, n° 35, BCVMQ, 3 & Annexe D (Décision n° 2001-C-0409 du 28 août 2001), telle que modifiée.
- Article(s) : L-263, L-296, L-297, L-297.1, L-169

SCHEDULE 7

SELF-REGULATORY ORGANIZATION RECOGNITION CRITERIA

1. Governance

- a) The governance structure and arrangements must ensure:
 - (i) effective oversight of the entity;
 - (ii) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;
 - (iii) a proper balance among the interests of the different persons or companies subject to regulation by the entity; and
 - (iv) each director or officer is a fit and proper person.

2. Public Interest

The entity must regulate to serve the public interest in protecting investors and market integrity. It must articulate and ensure it meets a clear public interest mandate for its regulatory functions.

3. Conflicts of Interest

The entity must effectively identify and manage conflicts of interest.

4. Fees

- a) All fees imposed by the entity must be equitably allocated. Fees must not have the effect of creating unreasonable barriers to access.
- b) The process for setting fees must be fair and transparent.
- c) The entity must operate on a cost-recovery basis.

5. Access

- a) The entity must have reasonable written criteria that permit all persons or companies that satisfy the criteria to access the entity's regulatory services.
- b) The access criteria and the process for obtaining access should be fair and transparent.

SELF-REGULATORY ORGANIZATION RECOGNITION CRITERIA

6. Financial Viability

The entity must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

7. Capacity to Perform Regulatory Functions

- a) The entity must maintain its capacity to effectively and efficiently perform its regulatory functions, which include governing the conduct of persons or companies subject to its regulation and monitoring and enforcing applicable requirements.
- b) The entity must maintain in each jurisdiction where it has an office:
 - (i) sufficient financial, technological, human and other resources; and
 - (ii) appropriate organizational structures and adequate technological systems to efficiently, effectively and in a timely manner perform its regulatory functions and responsibilities.

8. Capacity and Integrity of Systems

The entity must maintain controls to ensure capacity, integrity requirements and security of its technology systems.

9. Rules

- a) The entity must establish and maintain Rules that:
 - (i) are necessary or appropriate to govern and regulate all aspects of its functions and responsibilities as a self-regulatory entity;
 - (ii) are designed to:
 - ensure compliance with securities laws;
 - prevent fraudulent and manipulative acts and practices;
 - promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith;
 - foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities;
 - foster fair, equitable and ethical business standards and practices;

SELF-REGULATORY ORGANIZATION RECOGNITION CRITERIA

- promote the protection of investors; and
 - provide for appropriate discipline of those whose conduct it regulates;
- (iii) do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of the entity's regulatory objectives;
- (iv) do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized; and
- (v) are not contrary to the public interest.

10. Disciplinary Matters

The process for discipline must be fair and transparent.

11. Information Sharing and Regulatory Cooperation

To assist other regulatory authorities in regulatory matters, the entity must share information and cooperate with:

- a) the Autorité des marchés financiers and any other securities regulatory authority, whether domestic or foreign;
- b) exchanges;
- c) self-regulatory organizations;
- d) clearing agencies;
- e) financial intelligence or law enforcement agencies or authorities; and
- f) investor protection or compensation funds, whether domestic or foreign.

This assistance includes the collection and sharing of information and other forms of assistance for the purpose of market surveillance, investigations, enforcement litigation, investor protection and compensation and for any other regulatory purpose and is subject to applicable laws related to information sharing and protection of personal information.

12. Other

Constituting documents, by-laws and operating rules of the entity should allow that the power to make decisions relating to the supervision of its activities in Québec will be exercised mainly by persons residing in Québec.

SCHEDULE 8

EXCHANGE AUTHORIZATION CRITERIA

1. Share ownership

- a. Provisions pertaining to ownership restriction or the transfer of the voting shares of the exchange.

2. Governance

- a. fair and meaningful representation on the board of directors and its committees;
- b. appropriate representation by independent directors on the board of directors and its committees;
- c. provisions with respect to quorum;
- d. appropriate qualifications, remuneration and limitation of liability for directors and officers;
- e. appropriate conflict of interest provisions for directors, officers and employees.

3. Fair and equitable access

- a. rule governing access to the facilities are fair, transparent and reasonable;
- b. equality in access to services offered.

4. Fees

- a. fair, transparent and equitable process for setting fees;
- b. fees not to constitute a barrier to access;
- c. fees balanced to ensure the exchange has sufficient revenues to satisfy its responsibilities.

5. Regulation

- a. power to set rules and ensure their fair and effective enforcement;
- b. rules governing the activity of participants in the exchange;
- c. rules to prevent fraudulent acts and practices;
- d. rules prohibiting unreasonable discrimination among issuers or participants;

EXCHANGE AUTHORIZATION CRITERIA

- e. rule transparency;
- f. accessibility of public to current rules.

6. Ability to satisfy regulatory activities and functions

- a. provision enabling the performance of regulatory functions, including the establishment, oversight and application of the rules applicable to approved participants.

7. Fairness of procedures

- a. fairness and reasonableness of requirements governing access to the exchange, the setting of limitations or conditions, and refusal of access.

8. Disciplinary measures

- a. appropriate disciplinary measures with respect to approved exchange participants.

9. Insider trading and disciplinary proceedings

- a. drafting and implementation of rules and policies to oversee insider trading and co-ordinate cease trade orders;
- b. development, implementation and operation of insider trading oversight systems;
- c. development and implementation of agreements with all markets where the underlying securities are traded.

10. Market operations

- a. rules governing market operations;
- b. rules ensuring market integrity and effectiveness;
- c. rules promoting fair and equitable business principles;
- d. transparency of trading information;
- e. agreement with a regulatory services provider for market surveillance or member supervision, where applicable;
- f. agreement with a market operator, where applicable.

EXCHANGE AUTHORIZATION CRITERIA

11. Financial viability

- a. sufficient financial resources to ensure daily monitoring of operations and the financial viability of the exchange.

12. Systems and technology

- a. systems and technology for adequate performance of exchanges activities;
- b. a process ensuring the integrity and reliability of systems in place.

13. Clearing and settlement

- a. existence of clearing agreements with an authorized clearing agency;
- b. adequate oversight of the clearing agency;
- c. clearing of all transactions by the authorized clearing agency;
- d. restrictions on foreign members respecting legislation that are not anti-competitive and do not create obstacles to access.

14. Information sharing

- a. capacity and willingness to co-operate, in particular by sharing information, with the *Autorité des marchés financiers*, other exchanges, regulatory authorities and SROs responsible for the supervision or regulation of securities.

SCHEDULE 9

CLEARING AGENCY RECOGNITION CRITERIA

1. Governance

The governance structure provides for fair and meaningful representation on its board, including appropriate representation of persons who are independent of the clearing agency.

2. Fees

Fees are equitably allocated and do not have the effect of unreasonably creating barriers to access. The fee setting process is fair, appropriate and transparent.

3. Access

Reasonable access is provided to persons that satisfy eligibility requirements.

4. Rules and rulemaking

Rules and the process for adopting rules are transparent. Rules are not unreasonably discriminate among clearing members. Rules are set out with appropriate sanctions in the event of non-compliance by participants.

5. Due process

Participants affected by decisions have an opportunity to be heard and have a means to appeal decisions. Records of decisions are maintained.

6. Risk management

Procedures for risk management are clearly defined and specify the respective responsibilities of the clearing agency and its participants.

7. Systems and technology

Systems supporting clearing functions are supported by business continuity and disaster recovery plans that are tested periodically, and applicable internal controls. Capacity of the systems are also estimated and stress tested.

8. Financial viability and reporting

Sufficient financial resources are maintained to ensure proper performance of services.

9. Operational reliability

Procedures and processes that ensure the provision of accurate and reliable services are adopted.

**CLEARING AGENCY
RECOGNITION CRITERIA**

10. Protection of assets

Account maintenance and safekeeping procedures are employed to protect participants' assets.

11. Outsourcing

In any material outsourcing of its clearing services with parties other than affiliates, the clearing agency follows industry best practices.

12. Information sharing and regulatory cooperation

Information is shared with securities and derivatives regulators, other clearing agencies, exchanges, and SROs, subject to applicable privacy laws or confidentiality provisions.