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BY E-MAIL

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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

RE: CSA Staff Notice 91-304 *Proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* – Comments

Dear Sirs/Mesdames:

TMX Group Limited ("TMX Group") welcomes the opportunity to comment on CSA Staff Notice 91-304 *Proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Proposed Rule"). TMX Group is supportive of the overall approach taken by the Canadian Securities Administrators OTC Derivatives Committee (the "Committee") and has set out a number of comments, below. In particular, TMX Group believes that the Committee should apply an approach to the Proposed Rule which is both consistent with foreign jurisdictions and which will be applied consistently across provincial jurisdictions. This approach is necessary to (i) ensure a global and national level playing field for entities based in different jurisdictions; and (ii) reduce the potential for regulatory arbitrage which could drive business out of Canada if the regulatory burden were significantly higher in this country than in others.

TMX Group

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes, including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, TMX Select, Alpha Exchange, The Canadian Depository for Securities Limited, Montréal Exchange, Canadian Derivatives Clearing Corporation ("CDCC"), Natural Gas Exchange, Boston Options Exchange, Shorcan, Shorcan Energy Brokers, Equicom and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products, and other services to the global financial community. TMX Group is headquartered in Toronto and operates offices across Canada (Montréal, Calgary and Vancouver), in key U.S. markets (New York, Houston, Boston and Chicago) as well as in London, Beijing and Sydney.

General Comments

TMX Group supports a domestic approach to the introduction of customer protection regimes that is consistent with international regulation. This is particularly important for both domestic and international clients to ensure the appropriate levels of protection are afforded to clients on a comparable basis across jurisdictions. In addition, TMX Group would support customer protection regimes which provide for minimal impact to the legal, technological and operational infrastructures of all entities involved in the CCP value chain. In order to achieve the stated goals above, we respectfully submit the following comments for your consideration:

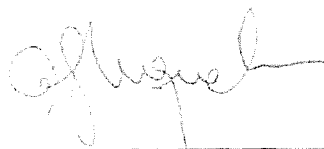
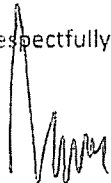
- (1) It is unclear from the Proposed Rule, which customer protection mechanism the Committee is proposing to implement in Canada. In order to remain consistent with other jurisdictions, TMX Group would recommend that we reference the Legal Segregated Operationally Commingled ("LSOC") model which has been adopted in other jurisdictions. A clear reference to this customer protection mechanism would contribute to greater transparency and increased understanding of the various components of the Proposed Model Rule. Furthermore, a clear reference to this customer protection mechanism would clearly delineate the various roles, responsibilities and obligations of the various stakeholders in the clearing process.
- (2) In the event that the Committee is proposing to implement the LSOC framework in Canada, we would submit the following points that require clarification:
 - (a) In the definition of *customer collateral*, there is a reference to *variation margin* but no clear indication as to which entity (derivatives clearing agency, clearing intermediary or clearing member) has the obligation to segregate this *variation margin* for the individual customer. Under an LSOC framework the derivatives clearing agency is typically unable to segregate this amount once it has been paid out to the clearing member. Given the disclosure requirements that are levied on all stakeholders, customers require greater clarity on the segregation obligations as they pertain to variation margin.
 - (b) In the definition of *permitted depository* under category (e), there is the option of holding collateral at a permitted depository recognized under the Act or exempt from recognition under the applicable Securities Act. In the event that there are foreign permitted depositories included in this category, TMX Group seeks clarity as to the specific protections

that will be afforded to customers to ensure that collateral realization would not be subject to any stays by a foreign court.

- (c) In Part 2 Treatment of Customer Collateral, there is proposed language that suggests that a derivatives clearing agency, clearing member and clearing intermediary *may* commingle the collateral from or on behalf of multiple customers. However, in Section 4 Holding of Customer Collateral, there is a requirement for individual customer accounts, together with associated identities, to be held at a permitted depository. Under an LSOC framework, these two statements are contradictory in nature.
- (d) In Part 5 Transfer of Positions, there is a requirement on the derivatives clearing agency such that the "derivatives clearing agency *must* facilitate the transfer of customer positions and customer collateral..." TMX Group is of the view that this language is particularly onerous and places an unjust obligation on the derivatives clearing agency given the set of conditions that must be met prior to the transfer actually occurring. Specifically:
 - (i) Condition (b) requires that the customer is not currently in "default". Under an LSOC framework, the derivatives clearing agency is not in a position to ascertain whether or not the customer is in default. We would recommend that this condition be re-drafted to reflect the solvency status of the account (*i.e.* whether or not the collateral value is sufficient to cover the initial margin obligations).
 - (ii) Condition (e) requires that the receiving clearing member has consented to the transfer. This would require greater clarity as it is unclear whether or not the Proposed Rule envisions *ex ante* arrangements between the customer and the receiving clearing member or whether or not the receiving clearing member would be providing consent only further to a default event of the transferring clearing member.

TMX Group appreciates the opportunity to provide comments with respect to the Proposed Rule and looks forward to further dialogue on customer clearing and protection of customer collateral and positions as well as Canadian derivatives reform generally. We hope that you will consider our concerns and suggestions and would be happy to discuss these at greater length with the Committee. Please feel free to contact Steve Lappin at steve.lappin@ngx.com, George Kormas at gkormas@cdcc.ca or David Stanton at dstanton@cds.ca if you have any questions regarding our comments.

Respectfully submitted,



Jim Costerbaan President and CEO, Natural Gas Exchange Inc.	Alain Miquelon Managing Director, CDCC Group Head of Derivatives Markets, TMX Group	Jean Desgagne President and CEO, The Canadian Depository for Securities Limited
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