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**VIA EMAIL**

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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comments – Proposed Amendments to National Instrument 23-101 *Trading Rules***

TMX Group Limited (“**TMX Group**” or “**we**”) welcomes the opportunity to comment on behalf of its subsidiaries TSX Inc. (“**TSX**”); TSX Venture Exchange Inc. (“**TSXV**”); and Alpha Exchange Inc. (“**TSX Alpha**”), on the request for comments published by the Canadian Securities Administrators (“**CSA**”) on June 12, 2015 titled “CSA Notice and Request for Comment – Proposed Amendments to the Companion Policy to National Instrument 23-101 *Trading Rules*: Application of the Order Protection Rule to Marketplaces Imposing Systematic Order Processing Delays” (the “**Request for Comments**”).

For purposes of this letter, all capitalized terms have the same meaning as defined in the Request for Comments, unless otherwise defined in this letter. For ease of reference, where applicable, our comments are organized under the main headings used in the Request for Comments. We have also provided answers to the specific questions asked by the CSA in the Request for Comments below where the italicised paragraphs correspond to the questions asked in the Request for Comments.

## **I. Background**

TMX Group is supportive of the CSA's efforts to clarify the application of OPR in the context of marketplace order processing delays on liquidity taking orders. We believe the proposed guidance will assist marketplaces and their participants in better understanding their respective obligations. We are also supportive of the CSA's intention to implement the amendments to the locked and crossed markets provisions included in the 2014 Proposal.

We are of the view that where deliberate and involuntary order processing delays are systematically built into the functionality of a marketplace, it is not reasonable to require marketplace participants to route orders to that marketplace for OPR compliance given that the delay in execution could impact execution quality and fill rates. We also believe that it should be the choice of a dealer and/or its client to determine whether to route orders to such marketplaces and that this approach is consistent with the policy underpinnings of the OPR framework.

We note that while the proposed amendments to Part 1.1 of the 23-101CP provides further guidance on the application of OPR, we view the CSA proposal as merely formalizing concepts previously publicly addressed and commented on through the 2014 Proposal, as well through the TSX Alpha proposal<sup>1</sup> and Aequitas recognition application<sup>2</sup>.

In particular, the public comments received in response to the TSX Alpha proposal indicated a high degree of support for the view that OPR should not apply to a speed bump market given the potential added complexities for order handling and routing, as well as other issues that might arise from the application of a delay in the processing of received liquidity taking orders.

On that basis, we are expecting that this comment process may only serve to consolidate and reiterate previously submitted comments, as opposed to raising new issues for consideration by the CSA. We also question the relevance of Questions 2 and 3 given that one visible speed bump market is in operation today (Aequitas NEO) and another (TSX Alpha) has been approved and will be implemented as an unprotected visible speed bump market prior to the finalization of the proposed guidance – the market will have already made changes to practices consistent with the proposed guidance by the time the CSA will have fully considered the responses to this Request for Comments and decided upon the matter. Notwithstanding the above, we have provided some commentary on each of those questions below.

## **II. Responses to Specific Questions**

*Question 1: What are your views on whether OPR should apply to marketplaces that impose an order processing delay? If OPR should apply to marketplaces that impose an order processing delay, should it apply to some or all of them? What factors should be considered in determining whether OPR should apply to marketplaces that impose an order processing delay?*

As indicated in our public response to the comments received from the TSX Alpha proposal, we are supportive of an approach under which OPR does not apply to markets that are applying a deliberate and involuntary speed bump to liquidity taking orders, regardless of whether the

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<sup>1</sup> Alpha Exchange Inc. - Notice of Proposed Rule Amendments and Request for Comments, dated November 6, 2014.

<sup>2</sup> Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as An Exchange - Notice and Request for Comments, dated June 27, 2014.

speed bump is applied to all or a portion of liquidity taking orders. Any complexities and issues that might arise from such a delay on accessing liquidity arise through the application of the delay itself, and are not dependent on the type or category of order (or participant in the case of the Aequitas NEO book) to which that delay is applied.

The CSA has noted that: “OPR is intended to apply where a marketplace offers immediate and automatic execution against displayed volume”, and that “as it relates to the application of OPR, it is [the CSA’s] expectation that execution against displayed orders would be immediate, subject to natural market or network latencies such as those that occur due to differences in technology or geographical location of marketplace systems”.

Following a principles-based approach to the application of OPR outlined in the CSA’s proposed guidance, we do not think that the duration of the order processing delay should be considered in determining whether OPR applies. The TSX Alpha proposal, as published, referenced a randomized delay of 5-25 milliseconds. This was subsequently revised and the proposal was approved with a randomized order processing delay of 1-3 milliseconds. However the decision by the OSC that TSX Alpha only be approved as an unprotected market (despite a revised speedbump duration that falls within normal network latencies for many participants) implies that it is the deliberate act of imposing an involuntary order processing delay on liquidity taking orders, and not the length of the delay, that qualifies a market as not providing “immediate and automatic execution” under OPR principles.

*Question 2: In an environment where not all displayed orders on visible marketplaces are protected under OPR because marketplaces impose an order processing delay, what are your views with respect to the outcomes for protected and unprotected visible marketplaces and for trading on those marketplaces? In responding, please consider the impacts on: (a) various market participants including retail and institutional investors, and liquidity providers; (b) liquidity on both protected and unprotected visible marketplaces; (c) price discovery; (d) complexities and changes you anticipate from participating in both protected and unprotected visible marketplaces, including costs and effort; and (e) the provision and use of consolidated data.*

We believe the question of added complexities was inherently covered in the 2014 Proposal as well as the Aequitas exchange recognition application and public comment process. Some commenters, including TMX Group<sup>3</sup>, identified complexities that would arise and have to be managed. We do not believe that the types of complexities identified have changed and note that these complexities would have had to have been considered by the OSC when the determination was made to approve the new TSX Alpha trading model on an unprotected basis.

In our view, the added complexities referred to in the preceding paragraph arise whether implementing the proposed guidance or the market threshold approach to OPR contemplated in the 2014 Proposal. They are a natural consequence of solving for the issues raised in the 2014 Proposal, and those that have driven the recent market innovations involving visible speed bump markets, and are therefore necessary to realize the benefits for industry and investors that each seek to achieve.

Specifically as it relates to the implementation of the proposed 23-101CP amendments, we suggest that one of the benefits of proceeding with these amendments (and assuming they are

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<sup>3</sup> Notice and Request for Comments on Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as an Exchange – TMX Group Response, dated August 26, 2014.

then applied to Alpha and Aequitas NEO Book) will be that the industry will be better prepared to move towards the implementation of the OPR market threshold approach contemplated in the 2014 Proposal, removing a barrier that has likely affected the finalization of that proposal. We continue to be supportive of the OPR market threshold proposal as it would provide participants additional flexibility to manage costs associated with accessing unprotected markets while maintaining much of the intended benefits of OPR for investors. Proceeding with the proposed 23-101CP amendments, and subsequent implementation of the OPR market threshold would also have a positive effect on competition in that it will create greater incentives for new and existing marketplaces to ensure that their offerings create or add value for industry stakeholders, investors, and the Canadian capital markets.

*Question 3: A key objective of OPR is to recognize and support the role of retail participation in the market. If the Proposed Amendments are finalized, what changes if any, do you expect will be required for dealers handling retail order flow? What changes if any, do you expect in terms of outcomes for retail clients?*

For retail-sized orders that can be readily executed against the available posted liquidity at the NBBO on protected visible markets like the TSX and TSXV, the question of unprotected speed bump markets assumes less importance. For larger retail-sized orders, the unprotected status of visible speed bump markets will afford dealers increased flexibility to determine whether, how, and when to access such markets in the context of their best execution obligations and the potential impact on client orders.

Some unprotected visible markets, like TSX Alpha, will be offering unique value propositions for larger sized active client flow and should be given consideration by dealers in the context of their best execution obligations – we believe this will lead to reduced costs for dealers and, more importantly, better outcomes for clients.

*Question 4: Are there implications that have not been addressed above that should be considered? How do you suggest they be addressed?*

We believe the matters outlined in the Request for Comments to which this question relates have already been considered and publicly commented on through the 2014 Proposal. We are supportive of the approach proposed with respect to each of the areas outlined in the Request for Comments.

Thank you for the opportunity to comment on the Request for Comments. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

*Signed ("Deana Djurdjevic")*

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