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BY EMAIL ONLY

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Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention to:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

RE: Proposed National Instrument 91-102 *Prohibition of Binary Options* and Related Proposed Companion Policy

Bourse de Montréal Inc. (the "Bourse") and the Canadian Derivatives Clearing Corporation ("CDCC") appreciate the opportunity to comment on National Instrument 91-102 *Prohibition of Binary Options* and its Proposed Companion Policy 91-102 *Prohibition of Binary Options* (collectively, the "Proposed Instrument") proposed by the securities regulatory authorities in all Canadian jurisdictions other than British Columbia (collectively, the "Participating Jurisdictions"). The Bourse and CDCC fully support the

Participating Jurisdictions' policy objectives of protecting Canadian investors and generally strengthening the integrity of, and public confidence in, the financial sector. We respectfully submit that these policy objectives can be met by narrowing the scope of the proposed prohibition such that the offering of products that are traded on a recognized exchange or cleared by a recognized clearing house, would not be prohibited. Our rationale is provided below.

The Bourse and CDCC

The Bourse is a derivatives exchange recognized by the Autorité des marchés financiers ("AMF") and exempted from recognition by the Ontario Securities Commission (the "OSC") and CDCC is a clearing house recognized by the AMF, the OSC and the British Columbia Securities Commission (collectively and respectively for each of the Bourse and CDCC, the "Regulating Commissions"). The Bourse and CDCC are part of the TMX Group organization, the key subsidiaries of which operate cash and derivative markets for multiple asset classes including equities, fixed income and energy. The Bourse, CDCC, Toronto Stock Exchange, TSX Venture Exchange, Alpha Exchange, The Canadian Depository for Securities, Natural Gas Exchange, Boston Options Exchange, Shorcan, Shorcan Energy Brokers and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community.

Policy Objective and Scope of the Proposed Instrument

The Participating Jurisdictions' stated concern that forms the basis for the Proposed Instrument is that products commonly referred to as binary options are being offered illegally to retail customers in Canada via unauthorized on-line trading platforms. Through the Proposed Instrument, Participating Jurisdictions aim at protecting "would-be investors from becoming victims of binary options fraud and from becoming victims of an illegal promotion of an extremely high risk product, by raising awareness among investors that these products are illegal and by disrupting the advertising and facilitation of these products." To this end, the Proposed Instrument would explicitly prohibit advertising, offering, selling or otherwise trading a binary option to an individual.

The Bourse and CDCC support the Participating Jurisdictions' efforts to protect investors by ensuring that products cannot be sold to investors through unauthorized mechanisms. However, as currently drafted, the Proposed Instrument is so broad in scope that it may have the effect of prohibiting the offering to an individual of an instrument otherwise duly listed or cleared by the Bourse or CDCC. It is unclear what the justification might be for this type of products to warrant an across-the-board prohibition rather than falling under the detailed regulatory oversight regimes applicable in each Participating Jurisdiction that has proven effective with respect to other types of instruments. Any financial product, and not only binary options, that is offered illegally to Canadian investors poses a threat to investors' protection.

The respective Regulating Commissions have direct oversight over the Bourse and CDCC. All products that trade on the Bourse must be submitted to the Regulating Commissions as part of the self-certification process established under the Quebec *Derivatives Act* and its regulation and in accordance with the Exemption Order issued on July 27, 2012 by the OSC. Thus, in the event that a binary option or similar

derivative were to be offered for trading on the Bourse, the Regulating Commissions would be in a position to review such product as well as the proposed exchange rules related to such product. As with any other exchange-traded derivatives, the offer of such an instrument to an individual in Canada would be permitted only in accordance with applicable legislation, including dealer registration requirements, of the Participating Jurisdictions. Thus, the relevant Participating Jurisdiction would have complete oversight with respect to the offering of binary options or similar derivatives that are traded on the Bourse.

Under applicable legislation or recognition and exemption orders, before the Bourse is permitted to list a new product, it is required to submit detailed information about such product to the Regulating Commissions. If any of the Regulating Commissions determines that the proposed product is not compliant with relevant legislation, then such Regulating Commission has the option of preventing its launch or requesting amendments to it. Similarly, if CDCC was to act as clearing house for an over-the-counter or exchange-traded binary options or for similar derivatives, it would be permitted to do so only after the proper amendment of its rules, which would have to be reviewed by the Regulating Commissions. Accordingly, if the Bourse had to list binary options, or if CDCC was to clear binary options traded on or off the Bourse, they would do so within the existing regulatory oversight framework. In such a case, the individual to whom an exchange-traded instrument would be offered would benefit from the advantages and protections of trading on an exchange duly recognized in Canada and through a dealer duly registered in Canada. As a consequence, we believe that the Proposed Instrument should be limited to avoid prohibiting the offer by a registered dealer of an instrument traded on a recognized exchange, such as the Bourse, or cleared by a recognized clearing house, such as CDCC.

For the sake of greater clarity and legal certainty, and given the current regulatory oversight framework applicable to the Bourse and CDCC, we believe that the Proposed Instrument should expressly exclude from its application the offer of instruments that are listed on an exchange recognized in Canada or that are cleared centrally by a clearing house recognized in Canada, rather than relying on the ability of certain regulators to grant an exemption from the application of the Proposed Instrument as provided for under Section 5 thereof. It is also important to note that one objective of the Proposed Instrument as stated by the Participating Jurisdiction is to “reduce investor confusion about this form of product by making it clear that binary options are prohibited for individuals.” We believe that a clearly spelled-out exemption in the Proposed Instrument for binary options traded on a recognized exchange or cleared by a recognized clearing house, and offered by a duly registered dealer, would reduce investor confusion more effectively than an ad-hoc approach to exemptions as contemplated by the Proposed Instrument.

Definition of Binary Options

The proposed definition of binary option could potentially be over inclusive. For example, the Bourse currently offers “weekly options”, which have a life cycle of less than 30 days, and which are used by individual investors. We trust that the Proposed Instrument does not aim at prohibiting the offering of the Bourse’s weekly options to individuals, but the proposed definition could potentially be read as including those weekly options and further confuse investors. We reiterate that a clear exemption built into the Proposed Instrument for products traded on a recognized exchanged and/or cleared by a recognized clearing house would alleviate such confusion.

Foreign Precedents

In the United States, regulators have not imposed a complete ban on binary options. In fact, the U.S. Commodity Futures Trading Commission ("CFTC") allows certain designated entities to offer binary options and similar products. For example, the Nadex (North American Derivatives Exchange) can legally offer binary options. Nadex is designated by the CFTC as a Designated Contract Market and a Derivatives Clearing Organization. According to these designations and under the supervision of the CFTC, Nadex is authorized to offer binary options. Nadex's binary options products are traded on seven global indices, ten currency pairs, seven commodities, and three events (rates, unemployment and economic data on job creation). Similarly, the Chicago Board Options Exchange (CBOE) offers binary options on the S&P 500 (BSZ) and VIX (BVZ) indices.

It is also worth noting that the CFTC is actively listing foreign entities that illegally solicit U.S. residents to trade binary options as well as entities that are operating illegally without being registered on its Registration Deficient (RED) List, available at www.SmartCheck.gov/REDList. Such a list helps protect U.S. residents by clearly identifying entities that are acting illegally in the binary options market. Other U.S. regulators and self-regulatory organizations, like the Securities Exchange Commission and the Financial Industry Regulatory Authority (FINRA), also provide information and issue cautionary notices around binary options.

We agree with the approach, taken by U.S. regulators, that does not systematically prohibit all binary options, but rather allows such products to be offered by regulated entities under the supervision of a regulator while actively taking steps to inform U.S. residents and protect them from illegal offerings of binary options and other financial products. We respectfully submit that the Participating Jurisdictions should consider adopting a similar approach. To the extent that these products are deemed appropriate for listing or clearing through the current oversight regime, such products could be traded on a recognized exchange such as the Bourse, cleared by a recognized clearing house such as CDCC and offered to individual investors through registered dealers.

The Bourse and CDCC appreciate the opportunity to provide comments with respect to the Proposed Instrument. We hope that you will consider our suggestions and we would be happy to discuss these at greater length. Please contact the undersigned with any questions you may have.

Yours truly,

(s) Sabia Chicoine

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