Montréal Exchange

Alain Miquelon
President and Chief Executive Officer
Group Head of Derivatives
Montréal Exchange
Tour de la Bourse
P.O. Box 61
800 Victoria Square
Montréal (Québec) H4Z 1A9
T (514) 871-3525
F (514) 871-3563
Alain.Miquelon@m-x.ca

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SUBMITTED ELECTRONICALLY

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
Fax: (416) 593-2318
e-mail: jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : (514) 864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

Re: Canadian Securities Administrators ("CSA") Consultation Paper 91-404 on Derivatives: Segregation and Portability in OTC Derivatives Clearing, CSA Derivatives Committee February 10, 2012 (the "**Committee**")

Dear Mr. Stevenson and Me Beaudoin:

TMX Group Inc. ("TMX Group") appreciates the opportunity to comment on the CSA Consultation Paper 91-404 on Derivatives: Segregation and Portability in OTC Derivatives Clearing (the "**Consultation Paper**"). The Consultation Paper invited market participants to provide input on Committee proposals regarding segregation and portability mechanisms at CCPs, with a view towards improving the protection of customer positions and collateral and potentially improving a CCP's resilience to a clearing member default. The form and the implementation of segregation and portability mechanisms will have a significant impact on the central clearing of OTC derivatives, and the TMX Group commends the Committee and the CSA for addressing the regulatory objectives, key issues and challenges associated with this significant reform.

The implementation of segregation and portability mechanisms will have a significant impact on Canadian derivatives market participants and intermediaries, as well as on TMX Group subsidiaries, and our domestic and foreign market participants. Although many of our comments are addressed in broad terms, we would be pleased for an opportunity to expand on our comments, either in writing or in person

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, Montreal Exchange, NGX, Boston Options Exchange (BOX), Shorcan, Equicom and other TMX Group companies provide trading markets, clearing facilities, data products and other services to the global financial community. TMX Group is headquartered in Toronto with offices in Montreal, Calgary, Vancouver, Houston, London New York and Beijing.

CCP Clearing of OTC Derivatives

TMX Group wishes to commend the CSA for the important body of work that has been undertaken further to Canada's G20 commitments on OTC market reform. The global alignment vis-à-vis policies specifically related to strengthening the OTC derivatives markets, including those related to the central counterparty clearing of OTC markets, will result in a reduction of systemic risk, will improve the efficiency and promote the integrity of the capital markets on a go-forward basis.

The increasing role of CCPs in OTC derivatives transactions is one of the cornerstones of financial market reforms. In an effort to strengthen financial market infrastructures (FMIs) the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) have published the Principles for Financial Market Infrastructures (PFMI). The PFMI were drafted with a purpose of developing a common principles-based framework for CCPs active across many markets and jurisdictions, subject to the interpretation of national regulatory authorities. As the CSA Consultation Paper appropriately articulates, achieving the necessary levels of Segregation and Portability arrangements to protect customer positions and assets is a function of both the segregation model implemented by the CCP and of the relevant insolvency regime in which the CCP operates. Canadian CCPs are subject to the highest standards in regulatory oversight both at the provincial and federal levels and we believe that an equivalent level of regulatory oversight should be applicable to foreign CCPs wishing to offer services to Canadian market participants. There may be circumstances where a foreign CCP, operating under its national regulatory regime, seeks to provide services to the Canadian OTC derivatives market claiming an equivalency protection of customer assets. While equivalency with respect to segregation and portability is a necessary condition of approval, it is not sufficient. TMX Group strongly recommends that any foreign CCP seeking to offer services to the Canadian OTC market must comply with all Canadian regulatory requirements for the clearing and settlement of OTC derivatives. This will ensure that the high standards of regulation and oversight that are applied by the Canadian regulators, not only for Segregation and Portability, but for all PFMI core principles, are applied uniformly across all CCPs active in the Canadian markets.

As we indicated in our comment letter on CSA Consultation Paper 91-401 on Over-the-Counter ("OTC") Derivatives Regulation in Canada, the TMX Group recognizes that segregation is a necessary component of a sound risk management process. We also summarized the benefits to customers of the segregation of their positions and their collateral. However, as discussed below in the section on Futures clearing, we recognize that complete legal segregation ("CLS") is not the appropriate model for all markets. It is important to reemphasize that one of the key benefits of centralized clearing is in achieving economies of scale by focussing activities through a single counterparty.

In the discussion of Full Physical Segregation versus CLS, the CSA's legal analysis indicates that the co-existence of multiple segregation models under a unique CCP would not be effective under Canadian law as customers selecting higher levels of segregation would not necessarily receive greater protection in an insolvency proceeding of their clearing member. In order to achieve the most efficient solution for Canadian markets, the TMX Group recommends that Canadian rules facilitate the centralization of clearing and settlement services for multiple markets within a single CCP. In order to achieve this goal, Canadian bankruptcy and insolvency laws must evolve to allow that CLS for OTC derivatives and the omnibus model for futures contracts can co-exist within a single CCP without diminishing the protection afforded to segregated accounts. The alternative, the development of silo CCP structures, would reduce the efficiency of the CCP model and ultimately increase costs for market participants.

Futures Clearing

While the CSA has requested comments on the segregation and portability of customer assets and positions as relates to the central counterparty clearing of OTC derivatives, we believe that it is important to acknowledge that in other jurisdictions there is currently a policy discussion with respect to the application of CLS to futures clearing.

TMX Group recognizes that CLS may be an appropriate model for the clearing of OTC derivatives that are currently traded bilaterally and not cleared, given that customers can currently negotiate for various levels of segregation. The TMX Group understands the reasoning of the CSA in recommending CLS for the clearing of these markets. However, in the event that the CSA considers the application of the CLS model to futures we strongly recommend a rigorous cost/benefit analysis and an additional market consultation. While the requirement of complete legal segregation in order to minimize fellow customer risk may be judged appropriate for the migration to clearing houses of markets where customers are not generally exposed to fellow customer risk and can negotiate for various levels of segregation, the same is not necessarily true for futures markets.

The futures, or omnibus, clearing model has proved effective and efficient over the course of many years and through many periods of instability, including the financial market turmoil of 2008. The applicability of CLS to futures is being debated vigorously in the U.S. and has been the subject of a U.S. CFTC Public Roundtable (February 29-March 1 2012). Several important issues have been raised with respect to the advisability of applying this model to futures markets, and we find it helpful to summarize them below.

First, CLS for futures may not increase the amount of protection available to customers under the current futures model. CLS can result in moral hazard - segregating individual customer accounts will eliminate an important source of market discipline, being the need for customers to carefully select their clearing firms, favouring those Futures Commission Merchants (FCMs) with robust capital and risk management processes. And despite the CLS requirement of intraday customer position and collateral reports by the FCM to the CCP, this process may well break down when needed most – when the FCM is under severe stress.

Second, the application of the CLS model to futures clearing may significantly increase costs of clearing. To the extent that CCPs cannot rely on non-defaulting customer collateral in the default waterfall, they will have to increase customer margin and/or contributions to the guaranty fund. In addition, the operational costs to FCMs of legal segregation will not be insignificant, and must be considered.

Given the uncertainty with respect to both the benefit of CLS for futures markets, and the unknown costs to FCMs, customers and CCPs, we believe that any consideration of CLS for futures would merit an independent consultation process and a thorough cost/benefit analysis.

CONCLUSION

TMX is supportive of the general direction in which the CSA proposals have been framed. We applaud the commitment by the CSA to implement reforms intended to ensure the protection of customer positions and collateral and the orderly management of defaults. We believe that OTC markets will benefit from appropriate and sensible regulatory reform, and we are ready and willing to participate in the development and implementation of these reforms in order to improve market integrity and systemic stability.

Please feel free to contact me (514) 871-3525 with any questions regarding our comments.

Respectfully submitted;

Alain Miquelon