



TEACHERS'[™]
PENSION PLAN • RÉGIME DE RETRAITE
DES ENSEIGNANTES ET DES ENSEIGNANTS

5650 Yonge Street
Toronto, Ontario M2M 4H5

416 228.5900 or
1 877 812.7989

fax: 416 730.5349

www.otpp.com

November 7, 2011

Ontario Securities Commission
20 Queen Street West
Toronto, ON M5H 3S8

Attention: Secretary of the Commission

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Attention: Me Anne-Marie Beaudoin, Corporate Secretary

Dear Sirs/Mesdames:

Re: Maple Group Offer for TMX Group

We have reviewed the Notice and Request for Comment published by the Ontario Securities Commission and the Notice of Public Consultation published by the Autorité des marchés financiers (the "Notices"), each dated October 7, 2011. As one of the founding members of Maple Group we were involved in the preparation of Maple's applications to the OSC and AMF which led to your respective Notices, and we endorse those applications and the statements they make with respect to Maple's plans.

We would like in this letter to focus on one particular question raised in each of your Notices. That is, whether persons nominated by individual non-bank owned investors in Maple Group to the Board of Directors of the post-acquisition Maple should be considered "independent" directors on the Board. We are concerned that the basis from which the OSC and AMF raises this question may have a broad impact on the manner in which large institutional organizations such as Teachers' invest in public companies. With respect to Maple specifically, we believe very strongly that our nominee will be independent and that the existing independence rules and ownership restrictions are sufficient to ensure that no shareholder can exercise disproportionate influence or control over Maple.

Maple has committed in its application that at least half of the Maple directors will be independent. In making that commitment Maple assessed independence in a manner consistent with the existing standards governing the TMX Board: the definitions of independence in Multilateral Instrument 52-110 – Audit Committees and the existing by-laws of TMX Group. Under these existing governance standards, members of management of TMX Group or of a "participating organization" (such as an investment dealer) are not, and would not be, independent.

A novel exclusion from "independence"

The Notice from the OSC posits an expanded exclusion from "independence" based on the shares held by a director's nominating shareholder. The Notice from the AMF similarly questions whether a director should be excluded from the definition of independence on the basis that his or her nominating shareholder was a founding Maple investor. The OSC suggests a justification for this novel approach tied to concern for the public interest mandate of the TMX. The OSC Notice states under the heading "Independent Directors" as follows:

Achieving the appropriate definition of "independence" for directors is important in light of the exchange's different stakeholders, its decision-making processes, and its regulatory responsibilities. In addition to the required independence standards that apply to directors of a public company, we have historically focused on the need for an exchange's board to have an appropriate degree of independence from the dealers who use its facilities, since the exchange has regulatory responsibilities over those dealers... ***[W]here an exchange has one or more large shareholders or where a group of shareholders may act jointly or in concert, the independence standards need to reflect an appropriate degree of independence from those shareholders who, together, could be in a position to exercise disproportionate influence or control over the exchange's decision-making and operations.***

[T]he need to ensure there is sufficient consideration of the public interest must be balanced with the need to ensure it is possible to find and appoint a sufficient number of [directors] that have the knowledge and expertise to make effective decisions. [emphasis added]

The OSC's question focuses on whether a large shareholder, or a group of shareholders acting jointly or in concert, lack independence because together they could be in a position to exercise disproportionate influence or control over the exchange's decision-making and operations. The OSC Notice emphasizes the ability of significant shareholders to act "together" and specifically points to the "common vision and strategy" proposed by the Maple investors. Similarly, the AMF raises a public interest concern in question 17 of its Notice when asking whether a single, more restrictive definition of independent director is required.

As discussed in further detail below, we submit that the existing 10% ownership restriction over TMX shares, which Maple proposes to adopt, sufficiently addresses any concern that one or more shareholders acting together could exercise disproportionate influence or control over Maple.

Potential impact on institutional investors generally

We believe that adopting an independence exclusion based primarily on a significant (but less than 10%) shareholding, justified by the public interest mandate of an issuer, could have broad repercussions for large institutional investors. We are not aware of any precedent in Canada or elsewhere for considering the nominee of a shareholder with 6.9% to 8.6% of the equity of a public company to lack independence merely by virtue of that shareholding. The idea that a director lacks

independence merely because he or she was nominated by a large shareholder of the company is a concept that would materially and adversely impact the ability of institutional investors to invest in, and be meaningfully involved with, the oversight of portfolio companies.

Institutional investors such as Teachers' are often involved as investors with board nominees in companies that have a mandate that extends beyond strictly maximizing profits. Virtually any regulated entity could be characterized as conducting a business that engages public interest concerns; one need only think of the banking sector, healthcare sector, toll road operators, telecommunications companies, utility providers, news organizations, airports, and any number of other companies which provide services to the public. While each of these regulated sectors may have specific share ownership restrictions and conflict of interest provisions applicable to directors, we are not aware of any that are subject to a general independence exclusion based on a nominating shareholder holding less than 10% of the outstanding shares. While the Notices are specific to the Maple transaction, the suggested basis for this novel independence exclusion could be applied to any of these types of companies. To find that the independence of board members is compromised merely because of nominating investors' shareholdings would needlessly inhibit the positive and constructive role that is commonly played by institutional investors in such companies.

With respect to exchange operators specifically, the requirements for directors at each of the New York Stock Exchange, the London Stock Exchange, the NASDAQ and the Deutsche Bourse do not have a rule prohibiting too many "large" shareholders from being represented on the Board.

The Maple investors will not be "acting jointly or in concert"

Following closing of the acquisition by Maple of TMX Group, Alpha and CDS, Teachers' will not be acting jointly or in concert with any of the other investors in Maple. The definition in Section 91 of the *Securities Act* (Ontario) describes people as acting "jointly or in concert" where they are acquiring securities together or where they intend to jointly exercise voting rights attaching to securities. There is no such agreement, arrangement or understanding here. Consistent with its fiduciary obligations, Teachers' intends to vote its shares in the best interest of the pension plan and, by extension, the approximately 300,000 active and retired teachers in Ontario. We have no agreements and there are no veto rights over material transactions at Maple or over any strategic or other initiatives at Maple or any of its subsidiaries.

We understand that each director of Maple, including the nominees of each pension fund investor, will have a fiduciary obligation to Maple, which includes an obligation to consider the interests of the shareholders of Maple as well as the public interest given the mandate of the TMX. We note that the existing senior management of the TMX will continue as senior management of Maple and will be charged with implementing the high level business plan articulated by the Maple Group.

It is a standard practice among institutional investors to obtain a director nomination right in connection with a substantial direct investment in an issuer; in this instance, Teachers' will be investing approximately \$250 million in Maple. If the OSC or AMF were to conclude that the nominees of the pension funds that have invested in Maple lack independence, the result would be that the size of the Maple Board would have to be significantly increased so as to accommodate the need to have at least 50% "independent" directors. Consistent with our corporate governance guidelines that we apply to all of our investments, we believe that a board with more than 16 members is generally too large. A board that is too large can be cumbersome and less effective, and can be overwhelmed by problems of poor communication and decision-making. Large groups are not particularly good at taking responsibility and making timely informed decisions. The Maple investors have given careful consideration to the make-up of the Board of Directors of Maple. The

proposed Board is well balanced between bank-owned dealers, pension funds, independent dealers and other independent directors. The Chair will be entirely independent. This Board is well equipped to consider and act in the best interests of Maple, its shareholders, the public and other stakeholders. Increasing the size of the Board further would hinder the Board's ability to effectively govern in accordance with its mandate.

We are expecting that no party alone, or in concert with others, will be allowed to own over 10% of Maple. As we stated above, we submit that rule is sufficient to ensure the diversification of ownership and control that we agree is appropriate for an Exchange.

In closing, we note that the four pension funds with nomination rights will each initially own between 6.9% and 8.8% of the outstanding equity of Maple. Each of these four investors will, for a six year period, have the right to nominate one of 15 directors, which is approximately 6.67% of the directors. To us, that seems fair.

Thank you for the opportunity to comment on your Notices.

Yours very truly,

Ontario Teachers' Pension Plan Board

Per:

A handwritten signature in black ink, appearing to read 'G. Harnish', with a long horizontal line extending to the right.

Gregory Harnish
Legal Counsel, Investments

cc: Wayne Kozun, Senior Vice-President, Public Equities, *Ontario Teachers' Pension Plan Board*

William T. Royan, Vice-President, Relationship Investments, *Ontario Teachers' Pension Plan Board*