



ITG Canada Corp.
The Exchange Tower, 130 King Street West, Suite 1040, Toronto, Ontario M5X 1B1
Tel. 416.874.0900 www.itg.com

Secretary of the Commission,
Ontario Securities Commission,
20 Queen Street West,
Toronto, On.,
M5H3S8
JStevenson@osc.gov.on.ca
Via email

ITG Canada thanks the OSC for the opportunity to comment on the proposed Maple Group bid for the TMX Group. It is refreshing to have public consultation on such weighty matters that are not ordinarily the purview of non shareholders of a Public company. However, in this case, it is important that the views of all key stakeholders be considered since the implications of Maple's ownership of the TSX, TSX Venture, Alpha, CDS, CDCC, ME, NGX, Shorcan, CanDeal, and other affiliates would be a dominant controlling interest. This new structure would result in a majority or complete ownership of trading, settlement and clearing of equity, options, futures and fixed income securities in Canada.

We believe that it is appropriate for the commission to consider the requested approvals contained in the Maple Bid all at the same time as the deal is conditional on all requests being approved, and those requested are interconnected in many ways. It is important for anyone reviewing this deal to consider the totality of the structure of the proposed end entity and the sum of what the Maple group will control.

The comments and viewpoints expressed in this response are intended to reflect upon the impact of the Maple Bid on the integrity of Canada's capital markets. Our intention is not to push for either the approval or rejection of the proposed deal, but rather to highlight the issues that we believe warrant the most attention and offer up the greatest potential for negative consequences – unintended or otherwise.

Rather than answer the 42 posed questions, we have chosen to address the key broad issues raised, and in doing so hope to address the true intent of the questions that were put forth.

Board of Directors

The questions raised by the OSC are worthy of consideration since the Maple bid has the potential to change the landscape of capital markets, trading and settlement in Canada. To summarize the OSC questions on the Maple Board, the overarching question is this: How truly independent will Maple make the Directors on their Board? The details of defining independence, director term limits, weighting stakeholder vs. shareholder interests, etc. all flow from this one question. Interestingly, the very players behind Maple posed those same questions and even provided some answers when the then competitor Alpha started to grow its trading market share and apply for Exchange Status.

In the spirit of what Kevan Cowan, President of TSX Equities, wrote in his letter¹ of May 30, 2011, to the OSC regarding Alpha's bid to become an exchange, the Maple Board should similarly meet a 50% independence test. And the definition of independence should extend beyond the "material relationship" test found in Section 1.4 of National Instrument 52-110². In fact, a truly independent director would own less than 1% of Maple and/or its affiliates and not have a say in management of the company; such a passive, de minimis investment holding should not pose conflicts of interest. Such a test would dampen any threat of an owner's conflict of interest outweighing the needs of stakeholders such as issuers, investors, dealers, etc. These participants are critical to capital formation, and would otherwise not have a seat at one of the most critical tables for Capital Markets in Canada. Along those lines, founding non-dealer shareholders, unless they own less than 1% and are not part of management, would also be excluded from the definition of independent director. Listed Issuers, including Board Directors and management from said issuers, should however be included in the definition of an Independent Director, providing they own less than 1% of Maple. In fact, issuers are a critical element to capital formation, so arguably they should have a seat at the Board reserved to ensure overall issuer interests and concerns are both voiced and reflected. It should be noted that there should be a Conflict of Interest policy for all members, including issuers, to ensure that no personal competing agenda hijacks the interests of issuers in general.

Along these lines, it does not seem appropriate for any of the Investors to have a prescriptive right to nominate Directors, for this would, by definition, taint the then so-called "Independence" of said nominees. The fear is that those who might technically fit the definition of independence would be deemed too friendly to be impartial to the very Board members who nominated them. Historically, nominees from outside the closed circle of the existing Board did not find success unless it was driven by a powerful shareholder with an agenda and a

¹ http://www.osc.gov.on.ca/documents/en/Marketplaces/alpha_com_20110530_cowank.pdf

² http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20101210_52-110_unofficial-consolidated.htm

meaningful ownership stake. However, in this case, industry participants who are not Maple owners have significant associations and a depth of talented individuals who would provide sound strategic leadership, and would know what is in the best interests of Canadian Capital Markets.

Further, the Independent Directors should have a seat on the critical special committees, such as audit and compensation, to ensure that balance is brought to bear upon both strategic direction, and internal controls.

Consequently, the “non-owner users”, such as average investors, issuers, dealers without a financial ownership stake, either directly or indirectly, should have a strong voice on any such quasi-oligopolistic entity that would effectively control the wealth creation and capital formation for all of Canada. The rationale goes beyond just protecting Canada’s assets, but also speaks to building Canada’s trustworthy reputation as a world class hub for foreign investments.

To do so, the new Maple Board would ideally be composed of strong strategic shareholders to help advance Canadian Capital markets innovations both internally and abroad, solid representation for global risk and audit committees, as well as representation by important players who are not shareholders, but are critical to upholding the rights of investors, dealers, issuers, and other participants who play a valuable role in creating wealth and forming capital; all of which are vital to the engine of growth within Canada.

Lastly, on the topic of Board Governance and composition, the board should have staggered term limits to eliminate the mechanism of slate elections, and to let each Director stand on his or her own merits. Canada has increasingly become proactive in the world of corporate governance, moving away from a limited circle of friends on Bay Street. It would be admirable for the Maple Board to have a composition which truly represents all the interests and needs of investors and issuers. Since Maple will apply corporate governance standards over its thousands of public companies and public investors, it will be critical that they lead with appropriate representation in terms of geography, language, specialties and ownership, and also champion female and ethnic representation on the board. There is an increasing amount of academic research, dialogues and literature showing that diversity on Boards³ is not just a social good, but actually strengthens the Board by challenging assumptions and leading towards innovative thinking.

³ Catalyst Report: The Bottom Line: Corporate Performance and Women’s Representation on Boards (2004–2008), Nancy M. Carter, Ph.D., and Harvey M. Wagner, Ph.D., March 2011

Maple may have been borne out of a desire to keep ownership within Canada. However, the question to be asked is whether such inward-looking Patriotism would help or hinder Canada's ability to compete effectively in the highly competitive global marketplace. . The justifiable fear is that the group may wrap itself too tightly in the Canadian flag, and not open itself up to the needs of non-owners. To that point, another topic not addressed here, is what would the Board look like should Maple expand and acquire or merge with other marketplaces? Or what if another foreign entity makes an extremely enticing financial offer? Should there be a predetermined formula or mechanism?

Ownership

Having considered the Board of Directors, we now turn our attention to the ownership group and the potential issues related to more concentrated ownership of the exchange. It has often been stated that the Canadian market is one of the most concentrated markets in the world in terms of dealer flows. This concentration has actually increased in recent years, with the top 10 dealers (including our firm, ITG Canada) accounting for almost 75% of the value traded in TSX listed stocks this year, up from roughly 60% in 2008. With this increased concentration, comes an increased need to ensure that these large dominant brokers are not able to act in a manner that limits competition and further concentrates flow. Any such limitation of competitive forces is likely to negatively impact retail investors.

The concern around dealer ownership of marketplaces is perhaps best summed up by Thomas Kloet - TMX CEO and proposed Maple Group CEO - in a speech he gave to the Canada Club of Toronto on December 7, 2009. During that speech⁴ Mr. Kloet said:

"The premise behind the demutualization journey I mentioned earlier was straightforward: to provide the capital markets with an independent exchange, free from the potential conflicts of interest that arose from dealers and brokerages owning the exchange.

If we learned nothing else from the recent financial crisis, it is that public exchanges, with transparent rules, an investor protection role and absolute neutrality, provide a superior model.

Today, however, we risk stepping away from this model. Back to the days when trading venues and exchanges were owned by select participants with conflicted interests and an ability to work in concert.

⁴ http://www.tmx.com/en/pdf/CanadianClub_Dec7-2009_TomKloet.pdf

Left unchecked, the current trend may restrict the needed development of our markets, and reinforce a perception by global investors that our markets are effectively closed to new participants. Exactly what we can't have if our capital markets are to compete for critical international investment; if they are going to continue to be the engines of economic prosperity".

While Mr. Kloet's comments were clearly directed at a competitor, he does raise several interesting points. One of the most compelling concerns is that the group of dealers involved in Maple may choose to "work in concert".

This concern becomes all too real when one reads the Maple Group's June 13, 2011 Offer to Purchase and Circular Soliciting Proxies which outlines the method in which the Maple Group clearly indicate that the dealers within the group will, as a collective, stop preferencing the Alpha market if they are unable to consummate a deal for Alpha, for commercial reasons.

As stated in the document on Page 11:

*"Alpha Group/CDSL Transactions" means, collectively, the Alpha Transaction and the CDSL Transaction, and if, and only if, the Alpha Transaction cannot occur for any reason other than the failure to obtain approval from the Commissioner for the Alpha Transaction, **the Dealer Investors and Desjardins agreeing to not preference trading on the facilities of Alpha Group** with respect to their trading volumes in securities listed or traded on such facilities, but subject, to the extent applicable, to the "best execution" and "best price" rules and other securities regulatory requirements, including order protection rules and client instructions regarding execution of trading orders;"⁵*

Based upon the public documents, it seems apparent that the dealers involved in the proposed Maple bid have already started to work together, if not in concert, then at least in a small ensemble, the likely result of which will be less trading opportunity for the TMX's largest domestic competitor in the equity trading space. The fact that the dealers involved in the bid currently control ~45% of value traded on TSX listed issues - and the two remaining Canadian banks controlling an additional ~18% of the value traded have been invited to join the group – has demonstrated that the ownership group can have tremendous sway over the potential success of any competitors and suggests a need to address their ability to work in concert going forward. In order to better understand the sway this group can exercise, one need only look at the success Alpha Trading systems has had relative to that of other alternative systems despite arguably higher pricing and less advanced technology. And again, the rapid success of Alpha

⁵ <http://www.abetterexchange.com/Investor-Information/>

IntraSpread, relative to that of other dark pools, which have similar models and greater price improvement opportunities, demonstrates the impact that dealer ownership can have on a marketplace. The commission must consider the potential other lit marketplaces would have for success when facing off against a Maple group with its significant order flow and all the benefits of the incumbent exchange. When considering this issue, we remind the commission the Maple ownership group will be unable to invest in any competing Canadian marketplaces for a period of 5 years. Without the support of this controlling group, competing marketplaces, both present and future would be hard-pressed to survive, let alone thrive; particularly if the regulators eventually address the very real street concerns around monopolistic pricing of market data fees by the various marketplaces to captive consumers.

Further reason to be concerned about the proposed ownership group is raised in the TMX Group's comment letter to the OSC regarding Alpha's application for Exchange status - May 30th 2011, signed by Kevan Cowan - the TMX stated "*Alpha group should be required to have a minimum of 50% independent representation on the Alpha Exchange Board of Directors*". Mr. Cowan then goes on to propose a cap on ownership levels for any independent directors, arguing that any entity that is a customer of TMX and owns more than a minimal share of the company "*could use its ownership to influence decision-making*". We would submit that, if an exchange executive with Mr. Cowan's experience believes that any firm with a stake greater than 5% has the ability to influence marketplace decision-making, then the commission should carefully consider the remedies to ensure that those stakeholders do not influence the market in a manner that is detrimental to other participants or the marketplace as a whole. In fact, we would go further and suggest that 1% ownership could be sufficient to disqualify one's impartiality, seeing the magnitude of the overall opportunity dwarfs that of Alpha ATS alone.

Mr. Cowan made a similar point in a TMX Blog post - dated April 22, 2010 - entitled "It Matters". In that post Mr. Cowan stated:

"Today, the Canadian marketplace learned that an Alternative Trading System (ATS), owned by a handful of Canada's financial institutions and securities firms, is applying for exchange status. They're currently executing trades on Canadian securities and now they're asking for permission to list securities as well.

Listings is an important business for an exchange but it also comes with great responsibility: a responsibility to set listing standards and to ensure listed issuers are compliant with important regulatory and disclosure requirements. These efforts are critical to a quality market where investors can be confident that the securities they buy and sell have been held to a certain standard of compliance and disclosure.

*The possibility of an exchange with this level of responsibility, owned by a small number of industry players, presents potential conflicts that could threaten the reputation of Canada's public equity markets."*⁶

His concerns around the Alpha Exchange application would appear to exist with the Maple proposal as well. As Mr. Cowan was slated to be the Global Head of Listings in a combined LSE / TMX entity, we believe that he is knowledgeable on this issue and give great weight to his concern around the threat to the reputation of Canada's public equity markets.

Further, the commission may wish to give serious consideration to enterprise agreements – i.e., giving selected market participants preferential pricing - on both trading and market data fees to create an unlevel playing field that allows the dealers within the Maple group to compete with pricing advantages over the non Maple dealers. A dominant marketplace controlling trading, settling, clearing of all securities should not be able to offer preferential treatment to certain clients, no matter its guise. If the deal is approved, we suggest that the commission place strict limits on such enterprise deals and ensure that all pricing – on all products and services - is completely transparent to the entire marketplace.

The Maple Group is appealing to the historical, traditional view of exchanges, which were run as public utilities for the benefit of investors and operated as “clubs” where ownership was held by the members of the club. However, that paradigm of an exchange changed forever when exchanges de-mutualized and became marketplaces which operated as “for-profit” entities. By definition, as a for-profit entity, this new breed of exchange will act in the interests of its owners, not the public and it will seek to maximize profits, curtailed or restrained only by strong regulation.

ALPHA

There are many market participants who have suggested that the Maple Bid will result in a consolidated, less fragmented market structure and that a return to fewer markets will be of great benefit to investors and market quality in general. If one considers market structure prior to the advent of the multiple market environment, it is true that all senior equities traded on the TSX and that the market was less fragmented in terms of market venues. We are sensitive to this sentiment, particularly if new entrants offer no innovation and when, under our regulatory framework, participants are forced to connect to all markets.

⁶ <http://exchange.tmx.com/>

However, it is important to note that, under the proposed Maple Bid, the transaction does not, in fact, consolidate the combined marketplaces of the two entities. The Maple group have clearly stated their desire to continue operation of all of their equity venues - TSX, TSX Venture, Select and Alpha and Alpha IntraSpread, and will continue to charge separately for TSX and Alpha market data. The result will be that the new “consolidated” exchange will operate several separate trading books which trade the same issues, (TSX, TSX Select, Alpha and Alpha IntraSpread) and will have approximately 85% share of trading volumes in Canada.

Further, there was one major difference in the old, less fragmented model. The old monopoly Exchange operated as a mutualised model, owned by dealers and run as a not-for-profit entity. The new structure, under the Maple bid, will see a “consolidated” marketplace which dominates Canadian markets AND is run by some of the largest financial institutions in this country as a for-profit entity. By definition, the guiding principle of owners of a business is to maximize profits for shareholders. This is in direct conflict with operating the marketplace in the best interest of the investors, issuers and other interested participants. This proposed model has significant drawbacks in terms of the fairness to all stakeholders and its impact on the integrity of the markets.

As Tom Kloet himself said in a speech to the Canadian Club in Dec. 2009, **“The premise behind the demutualization journey.....was straightforward: to provide the capital markets with an independent exchange, free from the potential conflicts of interest that arose from dealers and brokerages owning the exchange”.**⁷

The intent of demutualization of exchanges and the establishment of a framework to allow for competing marketplaces was specifically to break down the monopoly position that had developed under the old exchange ownership structure where the owners of the marketplace controlled how markets operated. If this was true in an era when the exchanges were run as not-for-profit entities, one must be concerned about the potential for anti-competitive behaviors when the exchange is run as a for profit entity by a small group of participants with potentially conflicted interests.

If one thinks that this is not the case, one only has to observe the behaviour of the Alpha marketplace over the past few years. In 2010, Alpha and some of its backers launched a program known as the “Momentum Initiative” which chose to route orders to Alpha prior to market opening instead of to the TSX, regardless of whether the client received the best price

⁷ http://www.tmx.com/en/pdf/CanadianClub_Dec7-2009_TomKloet.pdf

available by trading on Alpha instead of the TSX at opening. This initiative drew the attention of the enforcement division of IIROC.⁸ In their review, regulators highlighted the potential for conflict of interest when the brokerages that dominated the retail flow of stock trading in Canada, made decisions preferencing the marketplace that they owned ahead of the primary market. This plan was not even supported by some of Alpha's owners who chose to drop out of the momentum initiative.

A further example of Alpha's behaviour being driven by conflicted interests was the intended launch of the Alpha uCross facility which drew significant industry backlash when announced. Alpha's uCross initiative was designed to allow dealers to internalize orders and then print them as matched trades on Alpha. The owners of Alpha characterized uCross as a "technology solution" rather than a marketplace, and therefore it would not fall under the ATS Marketplace rules for trading. Critics of uCross were adamant that the uCross facility was a thinly veiled attempt on the part of Alpha to allow its owners to trade off-market and avoid all of the order protection guarantees for clients and all of the uniform trading rules of the regulated markets. The uCross facility was subsequently withdrawn by Alpha.

If this new consolidated exchange is controlled by the owners of the Maple Group, it will provide the Maple owners an opportunity to design a business model, and to craft marketplace rules which are in the interests of the owners and not in the interests of the public. Consider the example of "broker preferencing" which was implemented by the TSX to appeal to the large dealers. This feature is used in both the TSX and Alpha (as well as PURE, and MATCH Now) and allows orders from the same participant (i.e., dealer) to match with orders ahead of other orders posted at the same price, despite time priority, in the central limit order book. This rule systematically disadvantages clients of a small dealer versus clients of a large dealer, creating an unlevel playing field.

As described previously in the paper, the structure of the newly formed Board of the TMX will consist of 50% owner representation and 50% independent directors; this has been described as ensuring a "*fair balance between the diverse interest of capital markets participants and those of its shareholders*"⁹. However, having independent directors does not necessarily ensure independence of thought and interests. If the independent directors are chosen by the owners of Maple – and are chosen because they are "friendly" to the interest of the owners, they they will not balance the conflicts of interests of the owners. Further, even if half the owners are truly independent, they must be individuals who are extremely well versed in market structure and current regulation. The matters and decisions put before the directors of the Board of this

⁸ "Banks face probe for directing stock trades", Boyd Erman, Globe and Mail, *Thursday, September 02, 2010*

⁹ Proposed Acquisition of TMX Group, Alpha and CDS by Maple Group Acquisition Corporation

new entity will be complex and will need to be assessed and queried by independents that have sufficient knowledge of the industry to challenge the positions taken by the owners.

CDS/CDCC

On the CDS front, we believe it is useful to start by considering the opinions expressed by the 1974 Review Committee on CDS, who stated that *"if any one element of the financial community were in full ownership and control of the Depository the other groups would have concern about its financial integrity and responsibility, fear and losing control over the manner and methods of achieving objectives and misgivings that important parts of their business may be taken over on a rate-cutting competitive basis by the Depository"*.

More recently Ruben Lee wrote the following in his 2010 report "The Governance of Financial Market Infrastructure" (pg 159):

Any single entity or group of agents which has control over a market infrastructure institution with a dominant position may exploit this control to its advantage. A for-profit firm is likely to have a direct incentive to undertake such anti-competitive activity, given that its owners will benefit from any monopolistic profits obtained. Standard corporate governance mechanisms will not stop this happening. On the contrary, such mechanisms are designed precisely to ensure the promotion of shareholder interests, and shareholders will benefit from any monopolistic profits obtained. The nonprofit cooperative governance model has a key potential advantage over the other models in the context of a market infrastructure institution with market power: it may restrict such an institution from acting anti-competitively.

The central attribute of a mutual or cooperative securities exchange is that the users of its services are also its owners. Exchange's customers can therefore control the prices the exchange sets, and ensure that even if it operates effectively as a monopoly, by dint of being the dominant provider of execution facilities, the exchange does not charge anticompetitive prices. An analogous argument can be used for CCPs and CSDs. User control over a market infrastructure institution with market power will allow the users to determine which activities the institution undertakes, to their advantage.²³ A range of factors may, however, lessen the potential advantage of the cooperative governance model for a market infrastructure institution with market power over the alternatives. Three are noted here. The first is if a market infrastructure institution has different groups of users, but is controlled by only one group of users. The controlling group may then seek to exploit the dominant position of the market infrastructure institution to its advantage. It may, for example, seek to reduce the fees that it pays at the expense of other users. If the market infrastructure institution offers a range of services, only some of which are provided monopolistically, the controlling group of users may seek to use profits obtained from the services provided monopolistically to subsidize the other services which the market infrastructure institution offers. The second set of circumstances in which

adoption of the cooperative governance model by a market infrastructure institution may not be efficient if market developments mean that new users could access the institution with overall beneficial economic implications, but to the detriment of the incumbent members of the institution. The incumbent user group may then seek to exploit its monopoly position to restrict the access of new users. This has occurred both when national users of a stock exchange, CCP, or CSD have sought to restrict remote membership by foreign institutions, and when financial intermediaries have sought to restrict direct access by investors to an exchange which the intermediaries owned.

The relative advantage of the cooperative governance model for a market infrastructure institution with market power will also be diminished if there is a regulatory framework that can constrain the institution from acting anti-competitively. Typically this would require a national competition authority that is both legally competent, and has the resources and expertise necessary, to monitor the institution's behaviour, and if necessary impose behavioural or structural remedies to ensure that it does not act anti-competitively. In such circumstances, there would be no need for the internal governance of a market infrastructure to stop it behaving anti-competitively – external regulation would achieve the same effect.

There has been particular controversy about whether exchange ownership of clearing and settlement institutions is optimal. Several key benefits have been identified in separating ownership of the trading, clearing, and settlement functions. A central argument is that such separation may stop an exchange foreclosing competition from other trading systems if it owns a clearing or settlement institution with market power. Trading systems will be able to compete with each other, without such competition being distorted either by inappropriate cross-subsidies coming from the provision of clearing or settlement services, or by any restrictions on access to a CCP or CSD which an exchange owning it may impose. In order for netting to be viable it is necessary that positions can be off-set against each other in a clearing-house, or be fungible with each other. Without such fungibility, no netting is possible. The extent to which market participants will be able to net any positions they take on different trading systems is therefore dependent on whether these trading systems have access to the relevant CCP. If, for example, one exchange owns the CCP on which most clearing is done, and restricts access to this CCP by another competing exchange, market participants will not be able to net any trades they execute on the second exchange through the first exchange's CCP. The ability of the second exchange to compete with the first exchange will therefore be reduced. Separation of trading, clearing, and settlement services may also allow for different horizontal models at different levels of the industry. For example, while it may be most efficient to centralise clearing services across markets in a single CCP, it may in contrast be more efficient to have competition between multiple trading systems. In addition, integration of ownership may lead to opaque pricing for clearing and settlement services, if the costs of trading, clearing, and settlement are not clearly distinguished.¹⁰

¹⁰ <http://www.oxfordfinancegroup.com/media/10347/gfmi%20ofg.pdf>

Several of these points are echoed by Jos Schmitt – CEO of Alpha Trading Systems – in his March 2011 Inside Alpha Newsletter, concerning the potential negative impact of monopolistic behaviour, when he points out:

“When pressured by competition – and this is the case in the securities trading space - the TMX started adjusting its fees, invested in new trading technologies and started developing new services and products; industry stakeholders now benefit from a lower cost of trading, more liquid markets and we even start to see for the first time since the late nineties, Canadian market share in inter-listed securities recovering

Where competition is emerging – and this is the case in the market data space - the TMX tries, by all means, to maintain its fees at a very high level regardless of the true economic value of the service (as translated by a declining market share) and to lock in clients with long term deals; and

Where competition is not yet present – and this is the case in the listing as well as the derivatives trading and clearing space – the TMX applies and maintains exceptionally high fees (the cost of trading derivatives in Canada is an order of magnitude higher than in the U.S.).”

Mr. Schmitt continues on by noting the importance of the clearing corporation ownership issue by writing:

“The provision of trading, market data distribution and listing services does not fall under this same category of strategic assets as these services are much more easily replaceable and competitive forces can step in or have stepped in to provide these services. We need however to ensure that such competitive forces continue to be enabled and are not restrained by anti-competitive behavior that the TMX has already demonstrated and that will be further amplified in the merged entity.”¹¹

It is clear, after considering Mr. Lee’s evaluation of Global clearing vehicles, and Mr. Schmitt’s more Canadian-focused thoughts, that any integration of equity and fixed income clearing into the existing Exchange vertical will need to be accompanied by such remedies as to ensure:

- 1) Fair treatment of all dealers and marketplaces
- 2) Fair pricing of each service offered, to ensure that excess margins in monopoly offerings don’t cross subsidize ultra competitive pricing in other areas.
- 3) Fair and transparent allocation of costs among asset classes.

¹¹ http://alphatradingsystems.ca/ff/Newsletter/InsideAlpha_Newsletter_March_2011.pdf

- 4) A board of directors for the clearinghouse that is empowered to protect the needs of the market as a whole – including those dealers and exchanges that may compete with the Maple Exchange and its dealer owners. This will entail directors who are not just independent in name, but are truly independent of the exchange and its larger owners. (We note that the proposal would see the board move from 2 TMX representatives to 5 Maple representatives...clearly this is a move towards fewer independent directors at the very time that more independence is likely required).
- 5) Fair treatment of competing marketplaces. It is interesting to note that, over the last half dozen years, as new markets have begun to compete in the Canadian equities space as well as in international derivative markets, not a single new market has sprung up to trade Canadian derivatives. While this can't be fully attributed to the exchange-owned derivative clearing corporation, it does drive home the need for the clearing corporations to work in a manner that is inviting to new marketplaces.
- 6) Profits are derived from achieving efficiencies rather than ratcheting up prices on monopoly products. While we understand the regulators have traditionally been reluctant to regulate fees, we would suggest that uncapped CDS fees within a for profit structure are likely to result in the very same monopolistic fees that many of the Maple dealers are actively fighting on the data side.
- 7) Changes to the technology or capital requirements on participating dealers or markets are carefully considered, and are not an attempt to crowd out the smaller players. This is particularly relevant given the attempt to drastically increase dealer margin requirements in the early part of this century – the impact of which would have been extremely negative on smaller dealers.

While the potential upside of netting and cross asset margining is very real, the ownership of the resulting clearing entity will bestow great competitive power on its owners. This may explain why Tom Kloet was unsuccessful in convincing the dealer community to consolidate clearing within the TMX, despite vigorous efforts over the past several years.

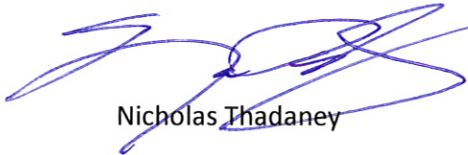
Conclusion

The proposed Maple deal will result in a for-profit entity with great influence in a variety of verticals across the investment spectrum including: equity listing, equity trading, equity clearing, fixed income clearing, derivative trading, derivative clearing, energy trading and financial information dissemination. In allowing a single entity to influence so many verticals, we need to ensure that it is working not just in the interests of its shareholders, but also in the interest of all stakeholders – including dealers, investors and issuers. In order to ensure these stakeholders are treated equitably, they will need to have loud strong voices at the table, and have avenues for appeal where needed. Captive consumers will need to be protected from any

monopolistic pricing practices; competing dealers will need to be assured of fair and level playing fields devoid of enterprise agreements, cross subsidization and favoritism. Competing marketplaces will require fair and level access to clearing operations and the information processor. Only when consumers and competitors are assured of equal access and level playing fields can investors and issuers, be confident that the marketplace will be both efficient and fair.

We thank the regulators for giving us this opportunity to comment on the proposed transaction, and hope that our comments have been found useful. We would welcome the opportunity to discuss these matters further, and to participate in the OSC hearings on this matter.

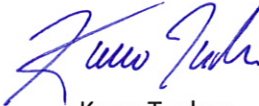
Sincerely,



Nicholas Thadane
CEO ITG Canada



Doug Clark
Managing Director, Research



Kuno Tucker
Chief Compliance Officer