

# MAPLE GROUP ACQUISITION CORPORATION

October 3, 2011

## BY EMAIL AND COURIER

Ontario Securities Commission  
Suite 1903  
20 Queen Street West  
Toronto, ON M5H 3S8

Attention: Ms. Susan Greenglass, Director, Market Regulation

Dear Ms. Greenglass:

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

Maple Group Acquisition Corporation ("**we**" or "**Maple**") has commenced a two-step integrated transaction to acquire 100% of the outstanding shares of TMX Group Inc. ("**TMX Group**") (the "**Maple Acquisition**"). Maple has also proposed that, concurrently or following the acquisition of TMX Group, Maple will acquire Alpha Trading Systems Limited Partnership and Alpha Trading Systems Inc. (collectively, together with any successors thereto, "**Alpha**") and The Canadian Depository for Securities Limited ("**CDS Ltd.**") and, indirectly, CDS Clearing and Depository Services Inc. ("**CDS Clearing**" and, collectively, "**CDS**") (collectively, the "**Alpha and CDS Acquisitions**" and, together with the Maple Acquisition, the "**Transactions**").

By way of background to our application, Maple and the proposed Transactions arose from a unique opportunity and a common vision shared across a diverse collection of capital markets participants to improve on Canada's capital markets infrastructure to better serve the needs of all participants in the capital markets. In bringing forward our proposal, Maple is backed by a cross-section of Canadian capital markets leaders consisting of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (collectively, the "**Investors**"). The Investors are significant direct and indirect users of Canada's capital markets infrastructure generally and the facilities of TMX Group, CDS and Alpha specifically.

The proposed Transactions are a unique opportunity to create an integrated exchange and clearing group which Maple believes is the best structure for Canada's capital markets given their relatively small size, the close proximity of the U.S. capital markets, and the increasingly global nature of the exchange and trading business. The benefits of

successfully implementing the Maple vision will accrue not only to the Investors but to all participants in the capital markets. In this regard, we believe that the interests of the Investors in the most efficient operation of Canada's capital markets infrastructure, as the most significant users thereof, combined with the proposed governance structure intended to address any potential conflicts of interest, are consistent with the public interest and the interests of all users, and therefore we respectfully submit that the Transactions should be approved.

The exchange business is currently in a state of flux. The proposed acquisition of TMX Group by London Stock Exchange Group plc ("LSE") served as a catalyst for the Investors to examine alternatives that could lead to a better exchange model for Canada's capital markets. We believe that the existing Canadian model of a stand-alone, listings-focused exchange can be improved, and that recent developments in the exchange industry present an opportunity for growth. Our vision is to build on TMX Group's many strengths to create an integrated exchange and clearing group that will be well positioned to pursue growth opportunities through innovative new product development, expanded distribution and international acquisitions or joint ventures. A more efficient and stable integrated exchange and clearing group will serve the public interest, and will increase the global competitiveness of Canadian capital markets and market participants. Indeed, TMX Group has previously attempted to acquire CDS and TMX Group's Chief Executive Officer has publicly stated that he supports the integration of CDS into TMX Group.<sup>1</sup> In addition, the ownership of Canadian Derivatives Clearing Corporation ("CDCC") by Montreal Exchange Inc. ("MX") is an example, albeit on a smaller scale, of the benefits that can be achieved from vertical integration. Streamlined trading, clearing and settlement on a common technology platform results in cost savings that benefit all users, and the integration of risk management systems facilitates the oversight of risk exposures for the benefit of users and regulators.

We propose to implement Maple's vision through the integration of CDS and Alpha into TMX Group's operations. To be successful in this vision, Maple must respect and serve the core elements of Canada's vibrant capital markets, by responding to and serving the interests of users, including listed issuers, both large and small, and public investors, ensuring fair practices free from real or perceived conflicts of interest, and respecting appropriate risk management practices. The integrated operations will also need to generate efficiencies, enhance speed of execution, maintain low costs and foster easy access. We understand that fees must continue to be fair and reasonable; open access must be maintained in both trading and clearing; and decisions within the organizations must be taken on a reasonable basis and in the interests of fostering confidence in the capital markets. Simply put, if Maple fails to sustain fair practices and produce these efficiencies, our vision will not be fulfilled.

We believe that the existing regulatory framework has served TMX Group, its subsidiaries and Canada's capital markets well, and that maintaining this framework is important to the

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<sup>1</sup> We note that on September 2, 2011, LSE issued a press release confirming press speculation that LSE is in discussions to acquire LCH.Clearnet Group Limited, Europe's last independent clearing house.

continued growth and stability of Canada's capital markets. Our proposal respects the existing regulatory framework, and the changes proposed below with respect to applicable recognition orders will reinforce that framework and the oversight of the Ontario Securities Commission (the "**Commission**") and its fellow securities regulatory authorities.

We and our thirteen Investors share an interest with all other users of Canada's capital markets infrastructure: building a more dynamic, sustainable and globally attractive marketplace.

This application has been divided into seven parts:

1. Applications
2. Maple's Vision and Key Benefits
3. Acquisition of TMX Group
4. Acquisition of CDS
5. Acquisition of Alpha
6. Share Ownership
7. Undertakings in Other Jurisdictions and Confirmation of Exemption Orders

## **1. Applications**

The Maple Acquisition is a two step integrated transaction. The first step is a take-over bid to acquire a minimum of 70% and a maximum of 80% of TMX Group shares for \$50.00 in cash per share (the "**Offer**"). The second step is a plan of arrangement that provides TMX Group shareholders (other than Maple) with between 41.7% and 27.8% of the Maple shares (where between 70% and 80% of TMX Group shares are acquired under the Offer) in exchange for their remaining TMX Group shares (the "**Subsequent Arrangement**"). Upon completion of the Subsequent Arrangement, TMX Group will be a wholly-owned subsidiary of Maple.

In connection with the Maple Acquisition, Maple hereby makes application to the Commission for orders, in each case conditional upon the take-up of TMX Group shares under the Offer:

- (a) recognizing Maple, as the proposed holding company parent of TMX Group and TSX Inc. ("**TSX**"), as an exchange, for the purpose of applying to Maple a limitation restricting beneficial ownership of more than ten percent of the voting securities of Maple except with the prior approval of the Commission;
- (b) approving the beneficial ownership by Maple of more than ten percent of the voting securities of each of TMX Group and TSX;
- (c) amending and restating the recognition order of TMX Group and TSX to reflect changes as proposed herein; and

- (d) approving the Investors and Maple acting jointly or in concert as beneficial owners of voting securities of TMX Group in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions.

Provided that Maple is recognized by the Commission as an exchange, Maple also hereby makes application to the Commission for orders:

- (a) approving the beneficial ownership by the Investors individually, as applicable, of more than ten percent of the voting securities of Maple for the transitional period between take-up under the Offer and completion of the Subsequent Arrangement; and
- (b) approving the Investors acting jointly or in concert as beneficial owners of the voting securities of Maple in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions.

In connection with the direct or indirect acquisition by Maple of CDS, Maple hereby makes application to the Commission for an order, conditional upon the acquisition of CDS, amending and restating the recognition order of CDS to reflect the changes as proposed herein.

We are also making applications to the Autorité des marchés financiers (the "**Autorité**"), the Alberta Securities Commission (the "**ASC**") and the British Columbia Securities Commission ("**BCSC**") with respect to recognition orders in those jurisdictions. As described more fully in part 7 "*Undertakings in Other Jurisdictions and Confirmation of Exemption Orders*" below, we hereby seek such amendments to the exemption orders previously granted by the Commission in respect of such recognition orders to reflect any changes therein as a result of such applications.

## **2. Maple's Vision and Key Benefits**

Our vision is to create an integrated group that provides trading, clearing, settlement and depository services for a broad array of financial instruments traded in Canada. The Maple Acquisition and the concurrent or subsequent Alpha and CDS Acquisitions represent a unique opportunity to capitalize on TMX Group's strengths to build this more efficient integrated exchange and clearing group – and by doing so to secure and enhance the future growth and ongoing integrity of the Canadian capital markets. The resulting integrated exchange and clearing group will: (i) make Canada's capital markets infrastructure more stable and robust; (ii) be better positioned to pursue growth opportunities through innovative new product development and expanded distribution; (iii) increase the global competitiveness of Canada's capital markets and market participants; and (iv) be in a stronger position to pursue international acquisitions and joint ventures.

The proposed integrated exchange and clearing group has proven itself in other jurisdictions as a stable and robust system, in particular during the market crisis of 2008. It is important to note, however, that this opportunity is uniquely available to Maple by virtue of the significant ownership interests of certain of the Investors and their affiliates in Alpha

and CDS and a common desire by the Investors to make TMX Group a more efficient and dynamic entity.

The Maple Acquisition will also ensure that the business of TMX Group will continue to be responsive to the distinctive needs of capital market participants in Canada, with a particular ongoing commitment to maintain the unique characteristics of Canada's venture, resource and derivatives markets, as well as to maintain its position as the leading global exchange for resource companies. Our business model is aimed at building on TMX Group's position as the marketplace where global mining, oil & gas, and public venture companies list and trade. Additionally, we will remain focused on supporting the unique needs of small- and medium-sized enterprises, which represent the backbone of the Canadian economy, as well as Canada's derivative and energy markets.

TMX Group already competes globally from a position of strength and, as described below, the completion of the Transactions would enhance that position.

#### *Key Benefits*

##### Enhanced system integrity and a simplified Canadian-controlled solution for derivatives clearing

The creation of an integrated exchange and clearing group should provide for greater control by Canadian regulators over systemic risk and the solutions specific to the Canadian context that are in keeping with the rapidly evolving international regulatory environment. Our vision is to provide improved and easier management of systemic risk by providing more transparency for operators and regulators end-to-end across the trading chain thereby permitting better counterparty risk management. Risk may be more effectively identified and managed within an integrated organization for clearing and settlement that is local and transparent.

We believe market participants will, over time, benefit from having a central counterparty able to provide clearing of Canadian dollar-denominated fixed-income repurchase agreements (or repos), MX listed and over-the-counter fixed-income and equity derivatives and through net margin determination, whereby the central counterparty calculates the net capital required by each market participant for all of its outstanding trading positions across all asset classes. Following the acquisition of CDS, the integrated technology infrastructure that we expect will ultimately result from the integration of CDS' and CDCC's technology platforms will streamline market participants' risk management technology requirements for Canadian dollar denominated products.

We believe that the vertically integrated model will be an improvement over the status quo from the perspective of both provincial and federal regulators. Closer integration between the trading, clearing and settlement of equities through the common ownership of TMX Group and CDS will improve information flow and reporting capabilities, which will benefit market participants and regulators.

We intend to integrate the information flow and risk management systems of CDS and CDCC. This will allow market participants who trade both equities and derivatives to net

their aggregate positions and better understand changing exposures, positions and margin requirements. Currently, a brokerage house that trades both equities and derivatives cannot see its net position on one computer screen. We intend to change that. Streamlining this information flow and providing for cross margining across different asset classes will benefit both market participants and regulators.

In response to the global financial crisis, leaders from the G20 countries agreed to improve the functioning, transparency and regulatory oversight of the over-the-counter derivatives market. As part of the response, the G20 countries have committed to move clearing of standardized derivatives to a central counterparty clearing system. Additional incentives to move to a central counterparty clearing system exist in the form of significantly greater capital requirements with respect to non-centrally cleared over-the-counter derivatives under the Basel III regulatory standard on bank capital adequacy and liquidity, which are scheduled to be implemented in January 2013. Canadian financial institutions are developing a solution for the Canadian dollar-denominated fixed-income repo market in conjunction with CDS and CDCC. The integration of CDS and CDCC would facilitate this initiative as all the required functionalities (clearing, settlement and the central counterparty) would be found under one umbrella. Although the focus is currently on the fixed-income repo market, the integrated platform could also be used for central counterparty clearing of other products, such as over-the-counter derivatives on fixed-income and equity securities, thereby reinforcing Canada's response to the G20 commitment. If successfully implemented, volume brought by these additional products would add scale which will benefit industry participants through reduced costs, improved capital management and the potential for cross-margining across asset classes, a key to maintaining liquidity in the capital markets given heightened collateral requirements under Basel III. The capital efficiency achieved by more accurately reflecting an enterprise's economic risk profile is significant. As an example, in connection with cross-margining interest rate futures cleared by New York Portfolio Clearing with broker dealer repos cleared by Fixed Income Clearing Corporation in the United States, NYPC is targeting 15-30% improvement in capital efficiencies for its customers.<sup>2</sup>

The benefits of an integrated exchange and clearing group as proposed by Maple would become more important to capital market users as global regulatory constraints relating to clearing and reporting of over-the-counter derivatives evolve. In this context, an integrated CDS and CDCC platform could provide the functionalities and business solutions required by market participants to comply with new over-the-counter clearing standards. Such functionalities will include risk management tools which will provide a global view of all positions held at CDS and CDCC at any point in time to support enhanced risk management at the user level. Moreover, the creation of a Canadian based publicly traded integrated exchange and clearing group facilitates greater control by Canadian financial regulators, institutions and market participants over the solutions specific to the Canadian context and in keeping with a rapidly evolving regulatory environment.

In addition, the Maple ownership proposal for CDCC may accommodate the range of options currently being considered by the Canadian Securities Administrators Derivatives

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<sup>2</sup> New York Portfolio Clearing (2011) "Frequently Asked Questions" [www.nypclear.com/FAQs](http://www.nypclear.com/FAQs).

Committee discussed in CSA Consultation Paper 91-402 *Derivatives: Trade Repositories*. The Derivatives Committee stated that there may be concerns with not having a central collector and aggregator of Canadian derivatives data in Canada. A central derivatives repository based and managed in Canada could permit more effective regulatory oversight than would be the case if the repository were not based and managed in Canada. The role played by CDCC today and its future direction may represent an important response to the current and emerging issues in both the exchange traded and over-the-counter derivatives markets. Maple's proposal for the development of CDCC may assist in addressing Canadian concerns for Canadian dollar denominated products in the derivatives marketplace.

Given the size and scale of Canada's capital markets, the formation of a Canadian based integrated exchange and clearing group could be one means by which to achieve the regulatory and commercial goals associated with the over-the-counter derivatives market in Canada for Canadian dollar denominated products and enhancing ongoing innovation as that market, and the global regulatory environment, continues to evolve.

#### Retention of regulatory oversight over a critical element of Canada's capital markets and economy

The Canadian regulatory framework has been fundamental to TMX Group's success, particularly with respect to small- and medium-sized businesses, enabling it to be locally responsive through, among other things, listing standards which foster regional growth. Under the Maple Acquisition, we propose that Maple and TMX Group will be recognized and regulated by the Autorité and OSC. In addition, TSX will continue to be subject to full oversight of the Commission, TSX Venture Exchange Inc. ("**TSX Venture**") will continue to be subject to full oversight by the ASC and BCSC, Natural Gas Exchange Inc. ("**NGX**") will continue to be subject to full oversight by the ASC, CDS will continue to be subject to full oversight by the Commission and the Autorité, and CDCC and MX will continue to be subject to full oversight by the Autorité, in each case as they are today. This general Canadian regulatory overlay applicable to the operations of TMX Group covers all aspects of operations, from fees to access, and we believe that maintaining this overlay is important to the continued growth of Canadian businesses and the continued growth and stability of Canada's capital markets.

#### Ten percent share ownership restriction

Under the current regulatory framework, no person or company or combination of persons or companies acting jointly or in concert may, without the prior approval of the Commission, beneficially own or exercise control or direction over more than 10% of the voting securities of TMX Group (the "**Share Ownership Restriction**").<sup>3</sup> The Commission has described the purpose of the 10% ownership restriction as being:

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<sup>3</sup> Pursuant to section 21.11 of the Securities Act (Ontario) (the "**Act**"), Ontario regulation 261/02 made thereunder, the order of the Commission made thereunder on September 3, 2002 and section 7 of the recognition order of TMX Group and TSX, there are restrictions attached to the shares of TMX Group and TSX. In addition, these restrictions have been incorporated into the articles of

"To prevent any one shareholder or group of shareholders from exercising substantial influence over the Toronto Stock Exchange without prior approval of the Commission."<sup>4</sup>

Similarly, the TSX has characterized the purpose of the restriction as follows:

"As the Toronto Stock Exchange is the primary stock exchange in Canada for senior issuers, and TSX Venture Exchange is the primary stock exchange for junior issuers, TSX Inc. believes that it is in the public interest that it not become controlled by any one person, domestic or foreign."<sup>5</sup>

We believe that the 10% ownership restriction is important to ensuring that TMX Group and its operating exchanges may continue to operate in a manner consistent with the public interest, free from undue influence from a single entity or group of joint actors and, accordingly, we propose that the Share Ownership Restriction be extended to apply to the voting securities of Maple.

Upon completion of the Transactions, the Investors will no longer be acting jointly or in concert with respect to Maple, TMX Group or TSX. None of the Investors is or will be an affiliate or associate of another Investor or Maple, TMX Group or TSX. In addition, following completion of the Transactions, the Investors will have no agreements, commitments or understandings with respect to the acquisition of securities of Maple, TMX Group or TSX or the voting of any such securities. In particular, while certain provisions of the acquisition governance agreement entered into by the Investors in connection with the Transactions (as amended and restated on June 10, 2011, and as further amended on June 22, 2011, the "**Acquisition Governance Agreement**") will survive the completion of the Transactions, none of these provisions relates to the acquisition or voting of securities of Maple, TMX Group or TSX. Rather, the provisions of the Acquisition Governance Agreement that will survive completion of the Transactions are limited to non-competition obligations (as described further under part 5 of this application), hold periods on resales of Maple shares and orderly resale obligations. The Investors have no shareholders' agreement and, while certain Investors (or an affiliate thereof which will own Maple shares) will enter into separate nomination agreements with Maple that will entitle each of them to individually nominate one director to the board of Maple, this nomination right is an individual right of each such Investor (or such affiliate) and there is no obligation, agreement, commitment or understanding that any other Investors will vote their Maple shares in favour of such nominee. In the event of some extraordinary transaction or other matter that requires a vote of shareholders, there is no agreement, commitment or understanding among the Investors as to how they must vote. The Investors are a diverse group, and each will be free to decide on all matters relating to Maple according to its own views and interests.

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TMX Group. Pursuant to a letter of undertaking dated April 9, 2008 from TMX Group to the Autorité, these restrictions were extended for the benefit of the Autorité.

<sup>4</sup> (2011) 34 OSCB 5716.

<sup>5</sup> (2002) 25 OSCB 6132.

In addition, although the Investors have co-operated in the preparation of a high-level business plan for Maple, which describes the proposed corporate governance structures and some broad strategic objectives, much more detailed budgets and strategic and operational business plans will be prepared post-closing by the management of TMX Group, CDCC, CDS and Alpha, under the supervision of the board of directors of each company. The Investors are content that these matters will be dealt with in the ordinary course by management and by the applicable board of directors. In such circumstances, Maple submits that the Investors will not be acting "jointly or in concert" following the completion of the Transactions even with an expansive definition of that term.

#### Preservation of TMX Group's existing governance structure

Following completion of the Maple Acquisition, the governance structure of the board of directors of Maple (the "**Maple Board**") and its committees will represent a fair balance between the diverse interests of capital market participants across Canada and those of its shareholders. The composition of the Maple Board will continue to comply with the requirements of the existing recognition orders and undertakings of TMX Group and its subsidiaries on a consolidated basis. At least half of the Maple Board will be independent, at least 25% of the directors will be residents of Québec at the time of their election or appointment, and at least 25% of the directors will have expertise in, or be associated with, the Canadian public venture market. In addition, we propose that at least 25% of the directors will have expertise in derivatives and that at least one director will be chosen from Canada's independent investment dealer community. Maple's strategic vision and direction will be set under the direction of a Canadian-based board of directors.

The Maple Board will be replicated at each of TMX Group, MX, TSX and TSX Venture to ensure consistency of governance at each of these exchanges.

#### Support for continued growth in Canada

Maple will invest in the continued growth of TMX Group's derivatives trading and clearing business and will fulfill the undertakings given by TMX Group to the Autorité in 2008, including the commitment to keep TMX Group's derivatives trading and clearing business in Montréal. Under Maple, MX will continue as the exclusive business unit responsible for exchange traded derivatives and related products. In addition, a key business priority for Maple is the development of new over-the-counter derivatives products and if Maple establishes an exchange or clearing agency for trading or clearing derivatives that are presently over-the-counter derivatives, that exchange or clearing agency will be based in Montréal. MX, and any such future business unit responsible for the creation and implementation of Maple's strategic plan with respect to derivatives and derivatives related products, along with annual operating plans and budgets for that business unit, and the mind and management thereof, will remain headquartered in Montréal. MX will continue to export its expertise in the trading and clearing of derivatives, and such international activity will be directed from Montréal. The most senior executive officer with direct responsibility for the derivatives business unit, and the executives responsible for managing the development and execution of the policy and direction for that business unit sufficient to permit such senior executive to execute his or her responsibilities, will be located in Montréal.

Maple is committed to continuing to foster the growth and development of TSX Venture and to responding to the unique needs of small and medium-sized enterprises. We believe that small and medium-sized enterprises foster job growth and regional development and represent a key component of the Canadian economy. Under Maple, TSX Venture will continue to provide meaningful access to capital for small- and medium-sized enterprises in a manner that is locally responsive to regional capital markets' needs through operational centers of excellence in Calgary and Vancouver. Small and medium-sized enterprises will also remain important to the dynamic of the Canadian exchange structure as the graduation of issuers from TSX Venture to TSX provides a steady source of new listings for TSX.

The head office of TMX Group and associated finance and technology jobs will remain in Canada, and the key policies and business strategies will continue to be set in the office of the Chief Executive Officer of Maple for the benefit of TMX Group and Canadian capital markets. The Maple Acquisition will preserve substantially all of TMX Group's senior management under the direction of its current Chief Executive Officer, as well as high-tech, finance and other capital market jobs ancillary to the presence of a leading exchange based in Canada.

#### An integrated platform providing additional growth opportunities

Under Maple, TMX Group will benefit from additional growth opportunities associated with providing the clearing and settlement of fixed income repos and, in the longer term, over-the-counter equity and fixed income derivatives. In addition, we anticipate that revenue synergies will be achieved through the enhanced positioning of the combined TMX Group and CDS for the clearing of listed and over-the-counter products, as well as through the development of innovative products utilizing the integrated platform. Under Maple, we envision growing CDS and CDCC substantially by migrating the bilateral over-the-counter derivatives market into CDCC and CDS over time. The result is the transition of a large part of the capital markets from an unregulated over-the-counter environment into entities regulated by the Commission and the Autorité. Under Maple, the role of CDS and CDCC will be expanded and the regulatory supervision of the Commission and the Autorité will be enhanced.

#### Support for high quality jobs in Canada which are dependent on the businesses of TMX Group's exchanges

The exchanges operated by TSX and TSX Venture are the top exchanges for public metals and mining and oil and gas companies to list their stocks and raise capital. Capital raising activities support high quality professional jobs including financial, legal and accounting professionals and related jobs. The Maple Acquisition will better enable Canada to retain its concentration of world class talent and remain the number one choice for resource listings globally.

#### A more diversified, efficient and integrated exchange and clearing group

CDS' clearing, settlement and custodial business will add stability and diversification to TMX Group's businesses. In addition, we believe that the creation of a vertically integrated trading and clearing exchange for equities, bonds, energy products and derivatives in both exchange traded and over-the-counter markets, a proven and highly

valued business model which currently exists at Deutsche Börse, BM&F Bovespa and the Australian Securities Exchange, would dramatically broaden TMX Group's business activities, generate substantial growth opportunities, and create significant synergies (including cost rationalization) for the benefit of TMX Group, its shareholders and Canada's standing as a global financial centre of excellence.<sup>6</sup>

#### Meaningful cost synergies

We are confident that the combination of TMX Group with Alpha and CDS will result in meaningful cost synergies. While Maple has not been able to perform a detailed estimate of likely synergies because it has not had access to customary due diligence, we believe these synergies will be substantial and result from, among other things: (a) the closer integration between CDS' equities clearing, settlement and depository operations and the cash equities operations of TMX Group; (b) the closer integration between the clearing operations of CDS and CDCC; and (c) the integration of CDS' and CDCC's information technology platforms, initially using straight through processing. Additional information about the types of synergies likely to be realized are addressed in more detail below.

#### *Guiding Principles*

Our commitment to a successful and competitive integrated exchange and clearing group will be guided by four key principles.

#### Improved risk management

Prudent risk management will be our top priority to ensure that systemic risk is well managed. We will improve on existing tools and establish new tools for ourselves, for market participants, and for regulators to enhance risk management and to minimize risks to Canada's capital markets. Our vision for an integrated exchange and clearing group will lead to an end-to-end view over the trading value chain which can be used to closely monitor risk throughout the system and establish early warning triggers to quickly identify risks and prevent their escalation.

We commit to a constant dialogue with our regulators to ensure full transparency regarding risk management practices, and to provide data streams to regulators to permit direct insight into, and monitoring of, systemic risk. We believe this level of transparency will represent a material benefit to the stability of Canada's capital markets and a significant step forward in the protection of the public interest.

#### A customer-centric business model

We will apply equitable pricing for our products and services – there will be unit pricing at CDS Clearing for clearing, depository and settlement services such that all participants will pay the same price for the same service, there will be no discrimination in trading pricing between inter-listed and non-inter-listed securities, and so long as Alpha continues to operate as an alternative trading system (an "ATS") Alpha data will continue to be

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<sup>6</sup> Set out at Appendix A to this application are overviews of integrated exchanges and clearing groups which currently exist at Deutsche Börse, BM&F Bovespa and the Australian Securities Exchange.

available on an unbundled basis separate and apart from TMX data. Importantly, our fees will continue to be subject to regulatory review.

We will maintain fair and equitable access to our products and services. Following the acquisition of Alpha, we expect that Alpha and/or TMX Select will continue to operate as ATSS. Moreover, at CDS and CDCC we will build upon the existing advisory committees comprised of market participants to provide direct access for market participants and ensure responsiveness to their needs for new and improved products and services.

#### Independent, effective governance

We are committed to maintaining the highest standards of corporate governance and ensuring that the boards of Maple and its applicable subsidiaries cause exchange and clearing functions to be carried out in a manner consistent with the public interest. The composition of the boards of Maple and its operating exchanges will ensure fair, meaningful and diverse representation, including appropriate representation of independent directors and a proper balance among the interests of the different persons and companies using TMX Group's services and facilities. In particular, we believe that balancing independent directors with knowledgeable directors who understand the industry and have an interest in the successful and efficient operation of the business, and the evolution thereof to address the needs of the Canadian capital markets, is important to ensuring best operating practices for a recognized exchange. Our proposed governance structure accomplishes this goal while maintaining appropriate checks against any one shareholder or group of shareholders exercising undue influence.

The boards of CDS and CDCC will have a number of overlapping directors and will operate separately from the board of Maple. Our proposed governance arrangements will ensure fair and meaningful representation on those boards, including appropriate representation by directors who are persons independent of Maple with relevant subject matter expertise. In addition, we propose to build upon existing market participant advisory committees (by establishing or maintaining committees with respect to each of the equity, fixed income, and derivatives industries as well as a strategic development committee and a risk advisory committee) so that market participants will have a direct voice in making recommendations relating to the products and services of CDS and CDCC to ensure that they are responsive to the market's needs.

#### A commitment to market innovation and competition

We will maintain an open architecture for clearing infrastructure to allow competing exchanges and ATSS to connect thereto. In addition, we will establish board committees at CDS and CDCC that are responsible for identifying and resolving conflicts of interest and responsible for ensuring fair and equitable resource allocation to product development with competing exchanges and ATSS.

#### *A More Robust and Stable Model*

In summary, we believe that a vertically integrated exchange and clearing group will be more robust and stable than the status quo in Canada for a number of reasons:

- (a) Revenue Diversification. The volatility of earnings for integrated exchanges is typically lower than for non-vertically integrated exchanges, in particular during crisis periods, because of the broader diversification of revenues into clearing, settlement and custodial services.
- (b) Improved Risk Management. The vertical integration will improve risk management as risk will be better monitored and managed when contained in a single integrated structure. An integrated model would permit regulators and participants to have a broader view into the risk profile of participants through a single entry-point and better reporting of risk positions. The resulting enhanced understanding of risk profile will inherently lead to greater stability by enabling regulators to intervene earlier in risk situations to prevent broader contamination. In addition, the integration of CDS and CDCC would facilitate the consolidation of risk positions to increase transparency, and to provide more effective collateral management opportunities through cross-margining across multiple asset classes.
- (c) Product Development. An integrated CDS/CDCC will provide the best opportunity for clearing OTC derivatives in Canada. It will also create additional opportunities for product innovation and strategic development, for example in respect of collateral management products and high end custody services.
- (d) Increased Scale. The vertical integration will result in increased scale of operations. This will enable cost savings from duplicated overhead costs. It will also reduce the risks that a significant portion of the clearing and settlement functions, particularly in respect of the clearing of OTC derivatives, would be conducted outside of Canada. Similarly, increased scale will reduce the likelihood of an acquisition of Maple by a foreign acquiror which, in turn, will enhance regulatory oversight and reduce the risks of a loss or diminution of regulatory jurisdiction by Canadian regulators.
- (e) Straight-Through Processing. Vertical integration allows easier straight through processing which will assist in reducing inter-operational errors and complexities.

We do not believe that any additional concentration that arises as a result of the proposed Transactions is detrimental to the stability and robustness of the market infrastructures in Canada. For example, risk in the clearing functions of CDS and CDCC will continue to be ring fenced from Maple's other operations to avoid any spill-over of risk.

We expect that efficiencies will be achieved for the benefit of shareholders, the brokerage community and public investors in two broad categories by virtue of the proposed Transactions. Just as there are synergies from operating derivatives trading and clearing together through MX and CDCC, we believe there are synergies to linking within the same

organization both the trading and clearing of cash settled equities by better integrating TSX and TSX Venture with CDS. Closer integration of computer systems, for example, will materially improve information flow and reporting capabilities to everyone's benefit.

We also expect that improvements can be achieved through the integration of CDCC and CDS. While the clearing of cash settled equities is fundamentally different from clearing derivatives contracts, there is complementary expertise within these organizations with respect to risk management systems, technology solutions, capital deployment and product development that, when combined, will make the aggregate organization stronger than CDS and CDCC operating independently.

Indeed, one of the most important benefits of a single integrated exchange and clearing group is that it will permit more efficient and effective development of needed products and services in Canada's capital markets infrastructure by eliminating impediments to cooperation among key components of such infrastructure which currently exist as a result of the separate ownership and management of TMX Group and its subsidiaries (including CDCC) on the one hand and CDS on the other. The improved cooperation and alignment of interests that can be expected to result from common ownership may be expected to reduce product development time and costs by housing the required expertise under the same management and ownership umbrella.

### **3. Acquisition of TMX Group**

Maple was formed on April 28, 2011 and has not carried on any material business prior to the date hereof other than in connection with matters related to the proposed Transactions. As a result of the Maple Acquisition, Maple will become a reporting issuer in jurisdictions across Canada. Upon completion of the Maple Acquisition, Maple will be the holding company parent for TMX Group and its exchanges and related businesses. Maple will not carry on any active business operations; the business activities of TMX Group will continue to be carried on by TMX Group and through TMX Group's subsidiaries. Maple will be the continuing public company and TMX Group will cease to be a reporting issuer. Maple's corporate office will be located with the corporate office of TMX Group.

Consistent with the Commission's previous analysis and conclusions with respect to the public interest, we believe that the holding company parent for TMX Group and its exchanges and related businesses should be recognized by the Commission as an exchange and regulated in a manner consistent with the historical regulation of TMX Group for the purpose of applying the limitation restricting beneficial ownership of more than ten percent of the voting securities of Maple except with the prior approval of the Commission.

#### *Corporate Governance*

Maple is committed to maintaining the highest standards of corporate governance and ensuring that the Maple Board causes exchange functions to be carried out in a manner consistent with the public interest. As such, Maple will adopt for itself TMX Group's governance framework, including substantively identical board and committee mandates. Maple's governance arrangements will ensure fair, meaningful and diverse representation on the Maple Board and its committees, including appropriate representation of

independent directors and a proper balance among the interests of the different persons and companies using TMX Group's services and facilities.

#### Composition of Board of Directors

The Commission and other Canadian securities regulatory authorities have recognized the need for a strong and effective governance structure for stock exchanges that operate in Canada and, through recognition orders and undertakings, have previously mandated an effective governance structure for TMX Group and its operating exchanges. The boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be comprised of the same individuals to ensure consistency of governance at each of the exchanges. As such, the Maple Board will respect the recognition orders of TMX Group, TSX, TSX Venture and MX on a consolidated basis, including:

- (a) at least 50% of the directors will be "independent" within the meaning of s. 1.4 of NI 52-110 and the currently existing independence standards adopted by the board of directors of TMX Group;
- (b) at least 25% of the directors will be residents of Québec at the time of their election or appointment; and
- (c) at least 25% of the directors will be persons that have expertise in or are associated with the Canadian public venture capital markets.

In addition, in our application to the Autorité we will propose that at least 25% of the directors of MX will be persons that have expertise in derivatives. This pool of directors would be expected to include directors with expertise in derivatives trading, derivatives clearing, and risk management. We believe that this commitment will provide the derivatives business with significant representation while permitting Maple to ensure that its board of directors is as strong and knowledgeable as it can be, in each of the areas it requires expertise, in order to make necessary strategic decisions and guide the company accordingly. By virtue of the mirror board concept, these persons would also be directors of Maple, TMX Group, TSX and TSX Venture.

Finally, we will commit that at least one member of the Maple Board will be chosen from Canada's independent investment dealer community (i.e., participants who are not affiliated with Canadian Schedule I banks) and that the chair of the Maple Board will be an independent director.

The existing requirements have proven effective at ensuring a strong and independent board at TMX Group with diverse representation. We believe, however, that the presence of a minority of directors drawn from both participants affiliated with Canadian Schedule I banks (pursuant to the nomination agreements described below) and the independent investment dealer community (pursuant to the new commitment), each of whom will be knowledgeable of the industry and have an interest in the successful and efficient operation of TMX Group's businesses and the evolution thereof, will serve to enhance the ability of the Maple Board as a whole to provide effective oversight of the operations of TMX Group, ensure that business and regulatory decisions are in keeping with the public

interest, and are not unduly influenced by any one segment of capital markets participants. The nominees of the participants affiliated with Canadian Schedule I banks on the Maple Board will be a minority of the Maple Board and will be balanced by the "buy side" nominees and other directors. The board composition as a whole will ensure a diversity of voices across the capital markets spectrum.

The Maple Board will adopt the standards of TMX Group with respect to the selection of directors and will take reasonable steps to ensure that each director of Maple, TMX Group, TSX, TSX Venture and MX is a fit and proper person and that the past conduct of each director affords reasonable grounds for belief that the director will perform his or her duties with integrity.

Initially, the boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be comprised of 15 directors selected as follows: 4 nominees of pension fund Investors (Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board), 4 nominees of the bank-owned dealer Investors, 4 additional independent individuals (potentially including representatives from the current board of directors of TMX Group), one representative of Canada's independent investment dealer community, the Chief Executive Officer and the independent Chair. Individuals are being selected for these boards who have the appropriate skill sets and stature within the community and to ensure the boards meet all existing regulatory requirements (including requirements for Québec residents, derivatives expertise and public venture experience). Maple believes the boards will appropriately balance the interests of the users of the exchanges, including the bank-owned dealers, and other owners that are entirely at arm's length from the exchanges.

In selecting these individuals, Maple will adopt and comply with TMX Group's existing specialized definition of "independence". Under this existing standard, executives of dealer Investors, who are "participating organizations", will not be considered independent directors. Under this standard, the initial boards of directors of Maple, TMX Group, TSX, TSX Venture and MX will have eight independent directors: three of the four pension fund nominees (AIMCO's nominee, George Gosbee will not be considered independent as he is President and Chief Executive Officer of a "participating organization"), four additional independent directors (potentially including independent directors from the current board of directors of TMX Group) and the independent chair. Maple is presently undertaking a process to identify an independent chair and that person will not be a nominee of an Investor nor will he or she be an existing director of TMX Group.

As described in part 4 "*Acquisition of CDS*" below, CDS and CDCC will have separate governance procedures.

#### Board Committees

The Maple Board will establish committees of the board with mandates substantively identical to the Finance and Audit Committee, Governance Committee, Human Resources Committee and Public Venture Finance Committee presently in place at TMX Group. In brief:

- **Finance and Audit Committee** – This committee will be comprised of at least four directors, all of whom will be independent. It will be charged with, among other things, assisting the board in fulfilling its oversight responsibilities regarding (a) the integrity of the corporation's financial statements, (b) the internal control systems of the corporation, (c) the external audit process, (d) the internal audit and assurance process, (e) business planning, (f) investment opportunities and the raising of funds by the corporation, (g) the administration, financial reporting and investment activities of the corporation's pension plan(s), and (h) the corporation's compliance with legal and regulatory requirements. This wholly independent committee will also be charged with assisting the board in fulfilling its risk management responsibilities, including reviewing and assessing Maple's risk management policies and procedures with regard to the identification of principal risks and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Each of the Finance and Audit Committees at Maple, TMX Group, TSX, TSX Venture and MX will be comprised of the same individuals and, as such, will be well positioned to best understand such risks and any interrelationship thereof.
- **Governance Committee** – This committee will be comprised of at least five directors, all of whom will be independent. It will be charged with providing the Maple Board with recommendations relating to corporate governance in general, including, without limitation: (a) all matters relating to the stewardship role of the board in respect of the management of the corporation, (b) board size and composition, including the candidate selection process and the orientation of new members, (c) board compensation, and (d) such procedures as may be necessary to allow the board to function independently of management and non-independent directors. This committee will design and oversee compliance with policies associated with an efficient system of corporate governance, including policies relating to conflicts of interest.
- **Human Resources Committee** – This committee will be comprised of at least four directors, all of whom will be non-management. It will be established to take steps on behalf of the Maple Board as are necessary regarding: (a) appointing and compensating executive officers and approving succession plans for the Chief Executive Officer and other executive officers, (b) approving and reporting to the board in respect of human resources policies for executive officers, and (c) overseeing the administration of compensation and benefits plans.
- **Public Venture Market Committee** – This committee will be comprised of at least four directors, all of whom will be non-management. It will be established to advise and make recommendations to the board with respect to all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the corporation and/or TSX Venture in relation thereto.

#### Selection of Future Directors

The Governance Committee of the Maple Board, comprised of at least five directors, all of whom will be independent, will be charged with nominating directors. The Governance

Committee will review on an ongoing basis the composition of the Maple Board, including the current strengths, skills and experiences on the Maple Board and its strategic direction. The Governance Committee will be charged with identifying any gaps in the Maple Board's composition and seeking to fill those gaps. Qualities such as integrity, good character and high regard in his or her community or professional field will always be basic criteria for Maple Board members. The Governance Committee will also consider independence, professional or board expertise, and experience in a number of areas including capital markets, venture exchange markets, derivatives, energy, clearing, technology, public companies, sales and marketing, corporate governance, human resources, settlement, broker/dealers and international dealings. As well, representation from geographic regions relevant to Maple's strategic priorities and Québec residency requirements will be taken into consideration. The objective will be to ensure the Maple Board's composition provides the appropriate mix of skills and experience to guide the strategies and business operations of Maple and TMX Group's exchanges. The Governance Committee will be authorized to retain outside consultants to assist in conducting searches for appropriate nominees. In addition, the Governance Committee will be charged with maintaining a list of potential director candidates for its consideration, to be reviewed annually. Independent directors may also be proposed by Investors as their nominees pursuant to the nomination agreements described below. Nominees brought forward pursuant to the nomination agreements will be subject to the approval of the Governance Committee.

#### Nomination Agreements

Prior to the initial take-up of TMX Group shares under the Offer, Maple will enter into separate nomination agreements with each of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (or, in each case, an affiliate thereof) pursuant to which each such Investor (or its applicable affiliate(s)) will have the right to nominate one director for election to the Maple Board. Each Investor will ensure that its nominee has the appropriate skills to serve on the Maple Board and has the full support of the nominating Investor. The persons nominated to the board of Maple pursuant to the nomination agreements will be subject to, and will be expected to comply with, their fiduciary duties owed to Maple and must act in the best interests of Maple regardless of any personal affiliations with the nominating Investor or any other corporations.

Following completion of the Maple Acquisition, to ensure compliance with applicable recognition orders and to permit the Maple Board to be satisfied that any nominee proposed pursuant to a nomination agreement is a fit and proper person, such nominee will be subject to the approval of the Governance Committee of the Maple Board, acting reasonably in the discharge of its mandate. The Governance Committee will have the power to reject a proposed nominee, in which case the Investor would be required to propose an alternate nominee.

The nomination agreement will terminate in respect of an Investor (or its applicable affiliate(s)) at the earlier of (i) the sixth anniversary of the completion of the Maple

Acquisition and (ii) such time as such Investor (or such affiliate(s)) ceases to own that number of common shares of Maple (or any successor entity resulting from the combination of Maple and TMX Group) equal to 5% of the total issued and outstanding common shares of Maple as at the date of, and after giving effect to, the acquisition of 100% of the shares of TMX Group. The nomination agreement will be personal to such Investor (or its applicable affiliate(s)) and non-transferable (other than to affiliates). Maple (and any successor entity) will take into account the rights of the Investors (or their applicable affiliate(s)) party to the nomination agreements in connection with ensuring its compliance with applicable recognition orders.

The nomination agreements are not among the Investors as there is no connection between an Investor's individual nomination right and any other individual Investor. There is no agreement, commitment or understanding among the Investors to vote in favour of any other Investor's nominee and the election of each such nominee will remain subject to consideration and approval by Maple's shareholders at any meetings at which directors of Maple are to be elected.

#### Public Interest and Duties to Maple

As described above, the composition of the Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will include independent directors comprising at least half of the board and will reflect a balance among the interests of the different persons and companies using TMX Group's services and facilities. The Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will benefit from the inclusion of individuals who have an interest in the successful and efficient operation of TMX Group's businesses and its evolution. We believe that the composition of the Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will enhance the ability of Maple and its subsidiaries to carry out their exchange functions in a manner consistent with the public interest while inherently addressing any perception of potential conflicts of interest by balancing the participation of nominees drawn from a cross section of users of TMX Group's services with highly respected and skilled independent directors.

With respect to directors individually, Maple will adopt a board code of conduct substantially identical to TMX Group's. Each director of Maple, including the directors nominated pursuant to the nomination agreements, will be expected to:

- (a) act honestly and in good faith with a view to the best interests of the corporation;
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (c) exercise his or her director's powers for the purpose for which they were intended;
- (d) ensure that the director's personal interest and his or her duty to the corporation are not brought into conflict;

- (e) ensure that the director does not obtain or receive, directly or indirectly, a personal profit, gain or benefit as a result of his or her relationship with the corporation; and
- (f) exercise his or her director's powers having regard to the public interest mandate of a recognized exchange.

The board code of conduct will also address situations where a director of Maple (and/or its applicable subsidiaries) may find himself or herself with a potential conflict of interest. Each director will be expected to furnish annual declarations of interest and the corporate secretary will have the responsibility for monitoring conflicts. In addition, each director will be expected to self-identify conflicts of interest or potential conflicts of interest which he or she may have from time to time. The Governance Committee will at the request of a director or the corporate secretary, and may on its own initiative, consider whether a director is in a material conflict of interest. In circumstances where a director has a material conflict of interest that director will not participate in the decision taken by the board or committee with respect thereto.

The possibility of perceived conflicts of interest is also mitigated through the composition and mandate of Maple's board committees. For example, the Finance and Audit Committee will be comprised entirely of independent directors and will be charged with overseeing risk management and Maple's annual business plan as well as ensuring compliance with all applicable legal and regulatory requirements (including the requirements of the recognition orders applicable to Maple and its subsidiaries). In addition, the Governance Committee will be comprised entirely of independent directors and will be charged with overseeing procedures to allow the board to function independently of management and non-independent directors, including policies relating to conflicts of interest.

Maple believes that the proposed ownership structure for Maple does not increase the risks of real or perceived conflicts of interest at the operating exchanges. Following the acquisition of TMX Group by Maple, the four bank-owned dealers that are Investors will have nomination rights with respect to only four out of 15 directors on the Maple Board. These directors will have no participation at the management level of an exchange. To the extent the Maple Board has to consider an issue that raises a conflict for a nominee, that nominee would abstain from the vote, all in the normal fashion and based on established conflict of interest standards and procedures. The Maple Board will be made up of experienced directors and the Governance Committee has a mandate to monitor conflicts, all of which Maple believes will be sufficient to address any real or perceived conflict.

#### Responsive Governance for all Stakeholders

Maple intends to maintain a director qualification policy which will provide that, in an uncontested election<sup>7</sup> of directors at its annual shareholders' meeting, any nominee, including those put forward pursuant to a nomination agreement, who receives a greater

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<sup>7</sup> An "uncontested election" means the number of nominees for election at the annual meeting is the same as the number of directors to be elected to the Maple Board.

number of votes "withheld" than votes "for" will tender his or her resignation to the Maple Board promptly following such annual meeting. The Governance Committee would be expected to recommend that the Maple Board accept the resignation, except in extenuating circumstances. The Maple Board will make its decision and announce it in a press release within 90 days following the election, including the reasons for rejecting the resignation, if applicable. The Maple Board may fill a vacancy created by such a resignation. Where the resigning director was the nominee of an Investor, that Investor will be entitled to nominate a new individual to serve subject to the approval of such individual by the Governance Committee as more fully described above.

The proposed governance arrangements for Maple and its operating exchanges will ensure fair, meaningful and diverse representation, including appropriate representation of independent directors and a proper balance among the interests of different persons and companies using TMX Group's services and facilities, including with respect to TSX, TSX Venture and MX. In addition, the exchanges operated by Maple will take into the account the interests of their participants (including participants who are not shareholders) in the same manner as they do today. For example, the exchanges today obtain input from participants through committees that seek full and open debate on policy issues in an open consultation process encompassing a diversity of opinions. These committees are comprised of knowledgeable individuals representing various industry groups and regions, as applicable. These committees will be maintained.

#### Initial Board and Management

It is our intention that, upon take-up under the Offer, the Maple Board (and subsequently the boards of TMX Group, TSX, TSX Venture and MX) will be comprised of the following individuals, each of whom has agreed to serve as a director, together with the Chief Executive Officer of TMX Group and additional independent directors which may include certain members of TMX Group board of directors (if such TMX Group directors agree to serve):

- Luc Bertrand, Vice Chair of National Bank Financial Group;
- Marie Giguère, Executive Vice-President, Legal Affairs and Secretariat of Caisse de dépôt et placement du Québec;
- George Gosbee, Chairman, President and Chief Executive Office of AltaCorp Capital Inc.;
- Sarabjit (Sabi) Marwah, Vice-Chairman and Chief Operating Officer of The Bank of Nova Scotia;
- Frank McKenna, Deputy Chair of TD Bank Group;
- Jim Prentice, Senior Executive Vice-President and Vice Chairman of Canadian Imperial Bank of Commerce;
- William Royan, head of Relationship Investing at Ontario Teachers' Pension Plan Board;

- Kevin Sullivan, Deputy Chairman of GMP Capital Inc.; and
- Eric M. Wetlaufer, Senior Vice-President, Public Market Investments at Canada Pension Plan Investment Board.

We note that six of these nine initial directors, Messrs Gosbee, Marwah, McKenna, Prentice, Sullivan and Wetlaufer, have had no direct involvement in the development of the proposed Transactions. Maple is also presently undertaking the process of identifying an individual to serve as an independent chair. The chair will not be any of the foregoing individuals nor will he or she be an existing director of TMX Group. Of the 15 initial directors, only three will have participated in the development of the proposed Transactions.

It is our intention that the existing senior management of TMX Group, including its Chief Executive Officer, will become the senior management of Maple following take-up under the Offer.

#### *TSX Fees and Access*

We intend to maintain a competitive fee structure for TSX, and our fees will not discriminate against any particular user or category of users. To provide added assurance of competitive trading fees, trading fees will not discriminate as between inter-listed and non-inter-listed securities. We commit that all fees that are imposed by TSX on its participating organizations will be equitably allocated, will not have the effect of creating barriers to access and will be balanced with the criteria that TSX shall have sufficient revenues to satisfy its responsibilities. We note that competitive market forces, as described in part 5 "*Acquisition of Alpha Group – Vigorous Ongoing Competition*" below, and regulations such as the "order protection" and "best execution" rules will continue to operate as a constraint on trading fees. Moreover, a number of Investors in Maple are significant consumers of the services of TSX and uncompetitive fees would have adverse cost implications for their businesses. We believe this consideration aligns such Investors with market forces and will further sensitize TSX to the needs and concerns of its participants with respect to fees. Under our proposal, the process for setting fees will remain fair and appropriate, consistent with the current practice of TSX. The Finance and Audit Committee, comprised entirely of independent directors, will be responsible for making recommendations to the board with respect to fees and ensuring that they do not create barriers to access. In addition, fees will continue to be subject to regulatory oversight as we are not proposing any change to the Commission's ongoing public interest oversight with respect to fees.

Maple also intends to maintain a competitive structure for setting listing, data and other fees. Fees will be set in a manner that is consistent with the present process for setting fees at TSX. With respect to data fees, Maple is aware that industry participants, in particular the Investment Industry Association of Canada ("**IIAC**"), have expressed concerns with respect to the overall level of data fees. Maple understands that the overall data fees paid by market participants are impacted by the market structure mandated by the current regulatory environment, including order protection and best execution rules which effectively require market participants to obtain data from multiple trading venues,

including TMX Group exchanges and ATSS. As a result, Maple's view is that the issue of data fees needs to be examined in the context of the overall market structure, and is not an issue that is specific to the proposed Transactions. Following the completion of the Transactions, Maple is prepared to work cooperatively with industry participants and the securities commissions to identify solutions that will result in fair and equitable data fees. At a minimum, Maple will make data services available on a non-discriminatory (as between market participants) and unbundled basis (i.e., the total price for bundled packages will not be less than the individual components purchased separately).

Similarly, we do not propose any changes to the recognition order of TSX with respect to access. Maple's intention is to maintain an open platform which will continue to permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy TSX's criteria to access the trading facilities of TSX. Maple has no intention to make any changes to such criteria. Decisions regarding access will be made in accordance with the current practices and policies in place at TSX with a view to promoting access in accordance with its recognition order. Consistent with TSX's existing recognition order, any future changes to the written standards for access will be assessed against the requirement that they not unreasonably prohibit or limit access by a person or company to the services of TSX. TSX will continue to maintain written records of each grant or denial of access and the reasons for such grant or denial of such access. These records will remain open for review by the Commission.

Additional information with respect to fees in respect of CDS and Alpha is set out in part 4 "*Acquisition of CDS*" and part 5 "*Acquisition of Alpha*" below.

#### *Non-Competition Agreement*

Consistent with standard commercial practice, the participation by each of the Investors in the Maple Acquisition was conditional upon such Investor (or its parent entity) agreeing to enter into a limited non-competition agreement with Maple and the other Investors (or their parent entities) upon the closing of the Maple Acquisition. A description of such agreement is included in part 5 of this application under "*Non-Competition Agreement*".

#### *Self-Listing Conditions*

Maple contemplates listing its shares on TSX. In 2002, to address issues that could arise due to the listing of TMX Group on TSX, TSX established a reporting structure whereby it notified the Commission of conflicts of interest or potential conflicts of interest. This structure is set out in section 22 and Appendix I of the TMX Group/TSX recognition order.

We submit that it would be appropriate for the Commission to apply the continued listing arrangements set out in section 3 of Appendix I of the TSX recognition order to the continued listing of the Maple shares following the Maple Acquisition. These arrangements will enable Commission staff and Maple to address any conflict of interest arising as a result of Maple's listing on the TSX.

*Share Ownership*

Upon completion of the Maple Acquisition, we expect that the shares of Maple will be owned as set out in the following table. Consistent with the existing Share Ownership Restrictions applicable to TMX Group, Maple's shares will be widely held with no one shareholder holding more than 10% of the outstanding shares.

<u>Shareholder</u>	Percentage of Maple shares upon completion of the <u>Subsequent Arrangement</u>	
	If 70% of TMX shares are acquired in the Offer <sup>(1)</sup>	If 80% of TMX shares are acquired in the Offer <sup>(2)</sup>
Alberta Investment Management Corporation	7.1%	8.7%
Caisse de dépôt et placement du Québec	6.9%	8.6%
Canada Pension Plan Investment Board	7.2%	8.8%
CIBC World Markets Inc.	5.5%	6.7%
Desjardins Financial Corporation	2.8%	3.4%
Dundee Capital Markets Inc.	0.5%	0.7%
Fonds de solidarité des travailleurs du Québec (F.T.Q.)	2.7%	3.3%
GMP Capital Inc.	0.5%	0.7%
The Manufacturers Life Insurance Company	2.8%	3.4%
National Bank Financial Inc.	6.1%	7.1%
Ontario Teachers' Pension Plan Board	6.9%	8.6%
Scotia Capital Inc.	6.2%	7.2%
TD Securities Inc.	5.4%	6.7%
Other former TMX Group shareholders	39.2%	26.1%
Total	100%	100%

## Notes:

- (1) Assumes Investors receive 70% cash and 30% Maple shares for TMX shares currently held by certain Investors.
- (2) Assumes Investors receive 80% cash and 20% Maple shares for TMX shares currently held by certain Investors.

Maple and its Investors support the rationale for the Share Ownership Restriction – that no one shareholder or group of shareholders acting jointly or in concert should exercise substantial influence over an operating exchange without prior approval of the Commission. To that end, other than in connection with facilitating the Alpha and CDS

Acquisitions, after completion of the Maple Acquisition there will be no agreements, commitments or understandings between the Investors with respect to the voting of Maple's shares and each Investor will deal with its interest in Maple in accordance with its own self-interest, objectives and concerns.<sup>8</sup>

Moreover, we believe it appropriate that the Share Ownership Restrictions be applied to Maple as part of its recognition as an exchange. Where the Share Ownership Restrictions are applied to Maple, Maple would amend its articles to provide for the Share Ownership Restrictions within its articles and to add comprehensive enforcement mechanisms, substantively identical to the existing enforcement mechanisms set out in TMX Group's articles, that would be applicable in the event of a contravention of the Share Ownership Restrictions.<sup>9</sup>

#### *Other Obligations*

Consistent with Maple's respect for the existing regulatory framework in respect of TMX Group and TSX, to ensure continuity of the existing recognition order, Maple agrees to adhere to substantially the same terms and conditions currently applicable to TMX Group in all other aspects of its recognition order.

#### *Amended and Restated Recognition Order*

On September 3, 2002, the Commission issued an amended and restated recognition order in respect of the TSX and also granted TMX Group recognition as a stock exchange pursuant to section 21 of the Act, as amended and restated on August 12, 2005 and as amended December 16, 2005, August 10, 2006 and June 1, 2008. We respectfully request that the Commission amend the existing recognition order of TMX Group to recognize Maple as an exchange, to implement the Share Ownership Restrictions and the governance and other obligations described herein, and to otherwise update the representations

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<sup>8</sup> We note that each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc., has agreed that for a period of five years following completion of the Maple Acquisition, it will continue to own at least the lesser of: (a) during the first year of such period, 6.25%, and thereafter, 5.625%, of the total issued and outstanding Maple shares as at the date of, and after giving effect to, the completion of the Maple Acquisition; and (b) such percentage of the total issued and outstanding Maple shares acquired by it as a result of its subscription for Maple shares pursuant to its equity commitment letter, as at the date of, and after giving effect to, the completion of the Maple Acquisition. The remaining shareholders of Maple will be free to dispose of their shares as they see fit.

<sup>9</sup> Schedule B to TMX Group's articles provides for comprehensive enforcement mechanisms that are applicable in the event of a contravention of the Share Ownership Restrictions. After a determination of contravention by TMX Group directors, some of the enforcement mechanisms are that no person may vote the voting shares of the contravening persons or companies, dividends on the voting shares are limited or prohibited and TMX Group is required to send a notice requiring the sale of voting shares held in contravention. In the event that such a required sale is not made, the further enforcement mechanisms then applicable include the prohibition of the exercise of any right or privilege attached to the voting shares and the right of TMX Group to sell or redeem voting shares held in contravention and to remit the net proceeds to the holder. In addition to the enforcement mechanisms in TMX Group's articles, there are sanctions and remedies for the offence of a contravention of section 21.11 of the Act, including fines, imprisonment and remedial orders of the Commission and the courts.

supporting such order, all in the form to be agreed between Maple and the Commission. In that regard, Maple proposes that the recognition of Maple and the amendments to the recognition orders of TMX Group and TSX would become effective contemporaneously with the take-up by Maple of the voting securities of TMX Group under the Offer.

#### **4. Acquisition of CDS**

Contemporaneous with or following completion of the Maple Acquisition, Maple intends to acquire CDS. Maple intends to form a committee of directors who are independent of Maple shareholders with an interest in CDS to oversee the process of evaluating and consummating the acquisition of CDS, including ensuring that the consideration to be offered is fair, from a financial point of view, to shareholders of Maple (excluding Investors with an interest in CDS).

Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of CDS and to support such transaction. Maple understands that, in circumstances where Maple controls TMX Group, with the support or abstention of any one of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), The Bank of Montreal or Royal Bank of Canada (as direct or indirect shareholders of CDS), the Investors or their affiliates would be able to cause the completion of the acquisition of CDS.

Affiliates of each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. currently directly and indirectly hold shares of CDS and would be expected to receive its proportion of any consideration payable therefor in connection with an acquisition of CDS concurrently with or following the successful completion of the Maple Acquisition.

#### *Integration Objectives*

Our objective is to more closely align the products and services offered by TMX Group, in particular by its indirect subsidiary CDCC, and those offered by CDS to create an efficient trading and clearing platform for all asset classes, whether exchange traded or over-the-counter. We believe that this alignment, combined with external market forces and the common ownership of CDS and CDCC, will enable more efficient and effective new product development for clearing and settlement, increase the ease of access and use for clients, enable the creation of innovative new risk management tools and facilitate improved collateral management, including cross-margining across asset classes.

As described in greater detail above in part 2, "*Maple's Vision and Key Benefits*", by aligning the operations of CDS and CDCC under Maple, the combined enterprise will be better able to grow and develop new solutions for the Canadian capital markets and will be able to develop products and solutions that CDS and CDCC would individually be unable to develop independently. Furthermore, it is our intention to open a dialogue with regulators with a view to establishing trade repository services under the combined enterprise. This alignment, and the provision of trade repository services, will bring distinct benefits for regulators through the provision of data streams providing meaningful

insight across the trading chain and enhancing transparency on systemic risk to enable such regulators to more effectively discharge their systemic risk mandates.

Under our proposal, the clearing infrastructure of CDS and CDCC would be integrated. To maintain separation of financial risk, under the legal structure we expect that the clearing operations of each of CDS and CDCC would remain housed in separate legal entities, with material overlap in personnel, resources and board membership. To further isolate risk, the depository and settlement functions of CDS would be housed in a separate subsidiary of TMX Group. Initially, technology would be integrated by means of straight-through processing between the technology platforms of CDS and CDCC with the goal of moving to one common platform over time. That integration is a long term project, requiring careful planning, which will be commenced by appropriate experts within the applicable organizations following the completion of the Transactions. The common information technology infrastructure would remain open to other ATs and exchanges operating in Canada in order to continue to foster innovation of new products and an ongoing competitive trading environment.

The services, policies and procedures (such as the margin requirements, the applicable membership requirements, etc.) of CDCC and CDS will continue to be maintained in the ordinary course consistent with current practice. Following the completion of the acquisition of CDS, management and the boards of CDS and CDCC will develop a reorganization plan to accomplish the integration of the clearing infrastructure of CDS and CDCC and the separation of the settlement and depository functions into a separate legal entity. Among other things, this reorganization plan will address the ownership of each such legal entity within the Maple group of companies, which has not been determined at this time.<sup>10</sup> The reorganization plan will be presented to applicable regulators for their approval prior to the implementation thereof and will include proposed amendments to applicable recognition orders and undertakings, if required.

CDS will remain headquartered in Toronto and CDCC will remain headquartered in Montréal. Consistent with existing regulatory requirements, the most senior officer of CDCC would be a resident of Québec at the time of his or her appointment and for the duration of his or her term of office and will work in Montréal.

### *Corporate Governance*

We are proposing a governance structure that we believe will ensure that the best interests of CDS and CDCC are met, taking into consideration input from members, market participants and regulators and with due consideration of the public interest. Under our proposal, the boards of directors of CDS and CDCC (the "**Clearing Boards**") will include a number of directors who will be common to each board and also a number of directors unique to each board taking into account the specific technical and other expertise required in respect of each clearing operation. Maple's proposed governance arrangements will

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<sup>10</sup> For example, CDCC is presently a wholly-owned subsidiary of MX. As part of the reorganization, CDCC may remain a wholly-owned subsidiary of MX, it may become a direct wholly-owned subsidiary of TMX Group, or it may become a wholly-owned subsidiary of another subsidiary of TMX Group.

ensure fair and meaningful representation on the Clearing Boards and their committees, including appropriate representation by directors who are persons independent of Maple. It is also our desire to ensure continuity on the Clearing Boards through the inclusion of existing CDS and CDCC directors, respectively (if they agree to serve).

Maple believes that adopting overlapping boards at CDS and CDCC will facilitate consistent governance and direction at CDS and CDCC and enhance Maple's ability to efficiently integrate their clearing infrastructure.

Maple will annually make a regularly scheduled meeting of the Clearing Boards open to observers from the Bank of Canada, the Commission and the Autorité, as applicable, and will furnish each such regulator with copies of all board and committee minutes to ensure transparency for regulators.

### Composition of the Clearing Boards

We believe it is critically important that the Clearing Boards include directors with technical expertise, industry experience and an interest in the successful and efficient operation of the business and the evolution thereof. The board of directors of each of CDS and CDCC will be comprised of 11 directors, including 5 directors appointed by Maple, 5 independent directors<sup>11</sup> and the Chief Executive Officer of CDS and CDCC, respectively.

Under Maple ownership, CDS and CDCC will each take reasonable steps to ensure that each director of CDS and CDCC, respectively, is a fit and proper person and that the past conduct of each director affords reasonable grounds for belief that the director will perform his or her duties with integrity. The selection criteria for persons to serve as directors will focus on identifying knowledgeable persons who understand the industry and, wherever appropriate, have an interest in the successful and efficient operation of the business and to ensure that the risks to the clearing and settlement system are properly managed.

The Clearing Boards will be comprised of persons with relevant subject matter expertise and industry experience, including persons with expertise in derivatives clearing at CDCC (including risk management and the technology requirements related to derivatives clearing) and equities clearing at CDS (including risk management and the technology requirements related to equities clearing). We commit that at least 25% of the directors of CDCC will be persons that have expertise in derivatives clearing. In addition, at least 25% of the directors of CDCC will be residents of Québec at the time of their election or appointment.

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<sup>11</sup> For purposes of the CDS and CDCC boards, a director will be "independent" if the director is not: (a) an associate, partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple; or (b) an officer or employee of Maple or its affiliates or an associate of such officer or employee. In addition, at least two of the independent directors will not be an associate, partner, director, officer or employee of a participant of CDS or member of CDCC or their affiliates or an associate of such director, partner, officer or employee. The threshold of 5% above may be adjusted if other persons become additional investors in Maple.

We commit that at least 4 of the 11 directors of each of CDS and CDCC will be representatives of users of the clearing services of CDS and CDCC, respectively. We will also invite IIAC and IIROC to propose to the Governance Committees of each of CDS and CDCC a list of potential independent director candidates to serve on the CDS and CDCC boards, and those Governance Committees will, subject to being satisfied that the applicable nominee is a fit and proper person, select at least one of the proposed candidates to act as a director of CDS and CDCC, respectively. These industry directors would also serve on the risk management committees of CDS and CDCC, respectively, to ensure user input into any risk management decisions, including collateral requirements. We believe that this structure, together with the use of Market Participant Advisory Committees as described below, will ensure user representation in the governance and operations of CDS and CDCC, and properly balance the need to ensure that an appropriate level of expertise is provided by industry participants while also ensuring a diversity of views from independent directors who are not associated with Maple, CDS or CDCC.

#### Board Committees

The Clearing Boards will each establish three committees, all chaired by independent directors, to assist the Clearing Boards in the discharge of their respective duties. In brief:

- **Risk Management Committee** – This committee will be comprised of at least four directors. It will be charged with, among other things, assisting the board in fulfilling its risk management responsibilities, including reviewing and assessing CDS' or CDCC's (as applicable) risk management policies and procedures and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Members of the committee will be required to possess experience or expertise in one or more of the following areas: internal risk controls, risk assessments and reporting, legal matters, government and public policy, accounting, risk management and corporate governance.
- **Finance and Audit Committee** – This committee will be comprised of at least four directors, all of whom will be independent. It will be charged with, among other things, monitoring the financial performance of CDS or CDCC (as applicable), providing financial management and direction to the business and affairs of CDS or CDCC (as applicable) and advising the board on the equitableness of its pricing and fees.
- **Governance Committee** – This committee will be comprised of at least four directors, at least a majority of whom will be independent. It will be charged with assisting the board on matters related to corporate governance, including, without limitation: (a) the candidate selection process for the identification of independent directors and the orientation of new members; (b) oversight of policies and procedures for the identification and resolution of conflicts of interest; (c) the operation of the Market Participant Advisory Committees (as described below); and (d) ensuring fair and equitable resources are dedicated to development projects for competitive ATSS and exchanges.

In connection with the process for the acquisition of CDS, Maple anticipates working with CDS and CDCC to develop formal mandates for the Clearing Boards and committees.

Such formal mandates will be submitted to the Commission for approval prior to the implementation thereof.

#### Selection of Future Independent Directors

The Governance Committee of each of CDS and CDCC will be charged with nominating independent directors. Each Governance Committee will review on an ongoing basis the composition of the applicable board, including the current strengths, skills and experiences on the board and its strategic direction. Each Governance Committee will be charged with identifying any gaps in its board's composition and seeking to fill those gaps. Qualities such as integrity, good character and high regard in his or her community or professional field will always be basic criteria for board members. Each Governance Committee will also consider independence, professional or board expertise, and other relevant expertise and experience. The objective will be to ensure that the board's composition provides an appropriate mix of skills and experience to guide the strategies and business operations of CDS and CDCC, as applicable. As previously discussed, we will also invite IIAC and IIROC to propose to the Governance Committees lists of potential independent director candidates, and each of the Governance Committees will, subject to being satisfied that such nominee is a fit and proper person, select at least one of the proposed candidates to act as a director.

#### Public Interest and Duties to CDS and CDCC

The Clearing Boards will be specifically focussed on discharging their duties having due regard to the public interest. We intend to adopt a board code of conduct which establishes similar expectations for directors appointed to the Clearing Boards as are described in part 3 "*Acquisition of TMX Group – Public Interest and Duties to Maple*" above. The code of conduct will also include conflict of interest disclosure provisions.

On a more general basis, Maple will ensure that CDS and CDCC and their respective subsidiaries are appropriately partitioned from Maple and its other subsidiaries to avoid situations of real, potential or apparent conflicts of interest that may arise, and to ensure that confidential information currently or potentially held by CDS or CDCC concerning their functions, activities and files remain confidential and are not communicated, disclosed or exchanged inappropriately to Maple or its applicable subsidiaries or to third parties.

Further, Maple will ensure that it and CDS and CDCC strive to minimize any risk of conflict of interest between risk management functions and other operations of CDS and CDCC, respectively. The clearing operations of each of CDS and CDCC are presently part of larger organizations with existing risk management policies intended to address the risk of conflict of interest between risk management functions and other operations (in the case of CDS, the depository and other operations, and in the case of CDCC, the exchange and other operations). We do not believe that the completion of the Transactions would require that any new mechanisms be introduced in this regard. These organizations presently assess the adequacy of their risk management policies and procedures at least annually and each organization benefits from the advice and guidance of a market participant risk

advisory committee. We propose that these prudent risk management practices would continue to be adhered to consistent with past practice and that amendments and improvements to risk management policies and practices would be implemented where necessary or desirable.

We do not believe that the business model of the organization (i.e., cost recovery or for-profit) inherently leads to any difference in risk profile. CDCC has for several years operated on a for-profit basis under TMX Group's ownership, with an internal risk management committee of the CDCC board that is advised by a market participant risk advisory committee. Following the completion of the Transactions, CDCC would continue to do so utilizing the same policies and procedures as it does today. Similarly at CDS, CDS will continue with a risk management committee of the CDS board that is advised by a market participant risk advisory committee following its acquisition. Maple expects that CDS will successfully make the transition to a for-profit model just as CDCC did and without impairment of risk management policies and procedures. All decisions with respect to risk management regarding clearing services will continue to be made by the CDS and CDCC boards, respectively, taking into account the advice of the market participant risk advisory committees.

#### Advisory Committees

CDS and CDCC presently utilize market participant advisory committees to obtain participant input into their clearing operations. Maple believes that the existing process is effective at obtaining this input. CDS for example highlights at page 36 of its 2010 Annual Report that:

"CDS has developed processes that provide for extensive consultation and input from all stakeholder groups. Membership on these committees extends to a wide range of stakeholders and ensures that there is extensive understanding and input regarding CDS policies and operations."

We propose to enhance the committee mechanism by formally enshrining it in CDS' recognition order and mandating annual reporting obligations to the Commission with respect to the recommendations made by such committees. In such annual report to the Commission, CDS would be required to explain any rejection of a recommendation or any partial or modified implementation of a recommendation of such committees with respect to its clearing operations. Each market participant advisory committee would be provided a copy of CDS's report and such market participant advisory committee would be required to advise the Commission if it accepts CDS's report or, where it disagrees with such report, provide reasons for such disagreement. A similar mechanism is proposed for CDCC. In this manner the board would be obligated to proactively consider the issues and suggestions raised by the market participant advisory committees, the Commission would be made aware of such issues and suggestions, and the Commission would be made aware of the dispositions thereof.

Accordingly, we intend to establish external Market Participant Advisory Committees with the participation of industry executives to advise on, among other things, matters of service development in order to (a) ensure that systems development initiatives are prioritized based on industry consensus, (b) arrange for provision of industry data related to services, such as operating volumes, (c) facilitate the provision of expert industry resources for projects and arrange for agreed upon resources to be made available, and (d) assist management in improving industry understanding of functions and benefits for CDS and CDCC services. We currently anticipate that the Market Participant Advisory Committees will include a strategic development committee, a risk advisory committee and specific committees for each of the derivatives, equities and fixed income industries.

The CDS and CDCC Governance Committees would be charged with responsibility for overseeing their respective Market Participant Advisory Committee process to ensure it is properly implemented and that adequate resources in the form of logistical support are furnished to the committees. To facilitate this mandate, the Governance Committees would be expected to meet at least annually with the chairs of their respective Market Participant Advisory Committees to, among other things, obtain feedback on the committee process with a view to optimizing such process.

Participation on the Market Participant Advisory Committees would be open to all interested parties within the industry, including members of IIROC and IIAC. We also propose that the Bank of Canada, the Commission and the Autorité would be entitled to participate on all Market Participant Advisory Committees.

### Management

We expect that the senior executive position for CDS and CDCC will be maintained, but that certain management and other functions will be reviewed as part of the integration analysis to achieve an efficient organizational structure. The specific details of such integration will be determined by CDS and CDCC senior management, under the supervision of the CDS and CDCC boards, following the completion of the Transactions.

### *CDS Fees*

Under Maple ownership, CDS Clearing will offer a for-profit customer-centric proposition which balances cost and service. We intend to operate an equitable pricing structure – there will be unit pricing for clearing, depository and settlement services such that all participants will pay the same price for the same services. We commit that all fees imposed by CDS Clearing for clearing, depository and settlement services will be equitably allocated in relation to product types and volumes, will not have the effect of unreasonably creating barriers to access such services and will be balanced with the criterion that CDS Clearing has sufficient revenues to satisfy its responsibilities, including to its shareholder. In addition, the process for setting fees will remain fair, appropriate and transparent. CDS Clearing will have a practice of benchmarking its fees for its various products against relevant domestic and international counterparts and CDS' Finance and Audit Committee, comprised entirely of independent directors, will be responsible for advising the CDS board with respect to the equitableness of its fees, taking into account

the interests of market participants, including as articulated by the Market Participant Advisory Committees. In addition, we commit that the fees, costs and expenses borne by participants in the clearing, depository and settlement services will not reflect any cost or expense incurred by CDS Clearing in connection with any activity that is not related to such services.

#### *Access*

Maple understands that ensuring fair access to CDS is essential to an efficient marketplace and does not intend to make any changes in this regard.

CDS presently maintains an open architecture and permits all market participants that satisfy applicable criteria to access its clearing services, no matter the Canadian trading venue where the trade is executed. Maple does not propose any changes to the recognition order of CDS with respect to access, and intends to maintain CDS's open architecture following the completion of the Transactions with a view to continuing to fulfil CDS's public interest mandate. In addition, Maple has no intentions to make any changes to such access criteria or eligibility requirements. Under Maple ownership, CDS will provide any person or company reasonable access to the clearing, settlement and depository services of CDS where that person or company satisfies the applicable participation standards. CDS will continue to maintain written records of each such grant or denial or limitation of access and the reasons for such grant or denial or limitation of such access. These records will remain open for review by the Commission.

#### *Competition*

CDS does not provide any services provided by TMX Group, Alpha or any of their respective subsidiaries (including CDCC). Accordingly, an acquisition of CDS by Maple following the Maple Acquisition will not reduce competition in any market for clearing, settling, custody or any other services provided by CDS. DTCC in the United States will remain CDS Clearing's closest competitor.

We recognize that CDS will become 100% controlled by TMX Group pursuant to the proposed Transactions and that Canadian-based competitors of TMX Group in the provision of equities trading platforms in Canada will continue to use CDS Clearing for clearing services. However, as the principal Canadian clearing system for equities trading (in which TMX Group and affiliates of major bank-owned investment dealers already have a significant interest), CDS is already subject to extensive regulatory oversight designed to ensure access to its clearing system on non-discriminatory terms and conditions.<sup>12</sup> In

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<sup>12</sup> For example, section 13 of the Ontario Securities Commission's recognition order of CDS Clearing requires CDS Clearing to equitably allocate its fees for settlement and requires that such fees not have the effect of unreasonably creating barriers to access to such settlement services. Section 13 also requires such fees to be fair, appropriate and transparent. In addition, pursuant to section 20.3 of the recognition order, CDS Clearing rules may not permit unreasonable discrimination among participants. More generally, the Commission has the authority under section 21.2(3) of the Ontario Securities Act to make decisions in the public interest with respect to any by-law, rule, regulation, policy, procedure, interpretation, or practice of CDS Clearing and the manner in which CDS Clearing carries on business.

addition to that continued regulatory oversight, the above-noted substantial independent director representation on the CDS board and its committees, partitioning of CDS from Maple and its other subsidiaries, Market Participant Advisory Committees (to which operators of competing Canadian-based ATSS will be invited to join), and the unit pricing model under which all participants will pay the same price for the same clearing, settlement and depository services, will further assist in addressing any such concerns about TMX Group controlling the clearing system in Canada.

The proposed acquisition of CDS also will reduce the percentage ownership of CDS by affiliates of the bank-owned investment dealers. Individually, affiliates of Schedule I Canadian banks currently own on average about an 11% interest in CDS, with one bank affiliate owning over 20% of CDS. As a group, such bank affiliates currently own over two-thirds of CDS. Following the proposed transactions, no Schedule I bank-owned dealer or its affiliates will own more than 7.5% of the combined TMX Group/CDS, and the Investors who are such bank affiliates will own less than 28%. Indeed, the above-noted Share Ownership Restrictions will ensure that no one exercises control or direction of more than 10% of CDS's controlling parent company following completion of the proposed transactions.

#### *Amended and Restated Recognition Order*

On October 17, 2006, the Commission issued an amended and restated recognition order in respect of CDS, as amended on August 9, 2007. We respectfully request that the Commission amend and restate the recognition order to reflect a "for profit" business model, to implement obligations described herein and to reflect the Market Participant Advisory Committees, all in the form to be agreed between Maple and the Commission.<sup>13</sup> Maple proposes that the amendments to the recognition orders of CDS and CDS Clearing would become effective only upon the direct or indirect acquisition by Maple of a majority of the outstanding voting shares of CDS Ltd.

To ensure continuity of the existing recognition order in respect of CDS, Maple proposes that the recognition order will also require Maple to do everything within its control to cause CDS Ltd. (and CDS Clearing) to satisfy their obligations pursuant to the recognition order and to perform the obligations set out in sections 4.0 (Risk Controls), 5.0 (Allocation of Costs), 6.0 (Allocation of Resources), and 9.0 (Information Sharing).

### **5. Acquisition of Alpha Group**

Contemporaneous with or following completion of the Maple Acquisition, Maple intends to acquire Alpha. Maple intends to form a committee of directors who are independent of Investors with an interest in Alpha to oversee the process of evaluating and consummating the acquisition of Alpha, including ensuring that the consideration to be offered is fair, from a financial point of view, to shareholders of Maple (excluding Investors with an interest in Alpha).

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<sup>13</sup> Maple has also proposed to the Autorité parallel changes to the Autorité's recognition order applicable to CDS.

Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of Alpha and to support such transaction. Maple understands that the Investors who hold (or whose affiliates hold) ownership interests in Alpha would be able to cause the acquisition of Alpha to be completed.

Each of CIBC World Markets Inc., CPP Investment Board Private Holdings Inc. (an affiliate of Canada Pension Plan Investment Board), Desjardins Securities Inc. (an affiliate of Desjardins Financial Corporation), National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. owns securities of Alpha and would be expected to receive its proportion of any consideration payable in connection with the acquisition of Alpha concurrently or following the successful completion of the Maple Acquisition.

### *Integration Objectives*

We envision maintaining multiple equities trading platforms within Maple for providing complementary services and to cater to the differing needs of some market participants. Users are not homogenous and we believe that the ability to potentially offer multiple trading venues serving different constituencies may represent an opportunity to increase Maple's trading volumes. We intend to consult with market participants prior to making any decision with respect to the best course of action for the platforms and services of Alpha and TMX Select, TMX Group's new ATS, recognizing that it may not be necessary to meet the needs of market participants for TMX Group to operate multiple ATS platforms.

If Maple is successful in acquiring Alpha, the board of directors will consider whether Alpha should withdraw or continue to pursue (i) its proposal to be recognized as an exchange by the Commission and to provide listing services, and (ii) its application for an exemption from the Autorité with respect to (i).

### *Vigorous Ongoing Competition*

We believe the provision of trading services for equities listed on TMX Group's operating exchanges is an area that will continue to be subject to vigorous competition following the combination of Alpha with TMX Group.

Trading of TMX listed equities takes place on several types of platforms:

- (a) "lit platforms", such as the equity exchanges operated by TMX Group, NYSE, and NASDAQ and ATSS such as Alpha, Chi-X Canada, Omega ATS and Pure Trading, as well as U.S.-based ATSS such as BATS and Direct Edge;
- (b) "dark pools", platforms typically used by institutional investors to trade large blocks of equities without providing pre-trade transparency; and
- (c) "over-the-counter", where equities are traded between two parties, away from any structured venue.

Over the six months ended May 31, 2011, the lit platforms represented 87% of the total volume traded globally (taking into account international volumes) for the 248 constituents of the S&P TSX Composite Index.<sup>14</sup> TMX Group, Alpha and many others compete for trading volume in the lit platforms. TMX and Alpha combined represented 51% of the total volume traded globally, and 46% of the total value of those trades, for the constituents of the S&P TSX Composite Index in the 6-month period ended May 31, 2011. (Alpha itself represented 12% by volume and 9% by value.)

### Market Shares

In some industries, especially those characterized by significant excess capacity, for the purposes of assessing likely competitive impact, it is most appropriate and meaningful to measure competitors' market shares based on capacity.<sup>15</sup> In equities trading, each trading system has not only significant, but effectively unlimited, capacity. Accordingly, in the context of equities trading, the above-noted combined TMX/Alpha shares overstate the competitive influence of a combined TMX/Alpha. We also note that equities trading volumes are able to easily shift among trading platforms given the abundance of available capacity, low switching costs and technological features inherent to the equities trading business. A more meaningful factor is the existence and ready availability of three other lit ATSS in Canada, several U.S.-based exchanges and lit ATSS, "dark" trading platforms in Canada and the U.S., and the ability to quickly and easily establish additional ATSS to which users could rapidly divert sufficient trading volume to make unprofitable any attempt by a combined TMX/Alpha to raise trading fees above competitive levels, or otherwise engage in anti-competitive conduct.<sup>16</sup>

In any event, market share is only one factor in the analysis of competitive effects. For example, market share is not determinative of the Competition Bureau's analysis of a merger, and section 92 of the Competition Act expressly states that the Bureau's analysis cannot be based only on market shares. Other important factors that the Bureau takes into account include whether barriers to entry and expansion are low (which they are here), the ability of customers to easily switch suppliers (which is costless in this case), and the disruptive role of innovation (which also operates here).

Even if we consider only the lit trading platforms, following the integration of TMX and Alpha, vigorous and effective competition for equities trading of TMX-listed securities will continue to be provided by:

- (a) other Canadian-based ATSS, each of which has a sophisticated trading platform, effectively limitless capacity, and the ability to draw bids and

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<sup>14</sup> All statistical data in this section is derived from Fidessa Fragmentation Index and the TSX eReview and is for the six months ended May 31, 2011.

<sup>15</sup> See, for example, the Commissioner of Competition's *Merger Enforcement Guidelines*, at para 4.7: "Where firms producing homogenous products have excess capacity, market shares based on capacity may best reflect a firm's relative market position and competitive influence in the market."

<sup>16</sup> A recent example of rapid entry by an established foreign ATS into Canada is SIGMA X, which is owned by Goldman Sachs. Goldman Sachs intends to support its ATS with its own clients' trading volumes. See below for additional information about SIGMA X.

trades to its platform with advantageous pricing of trading fees and other features;

- (b) U.S. exchanges and ATSS, such as NYSE, NASDAQ, BATS and Direct Edge, on which a large volume of inter-listed TMX securities already trade;
- (c) the threat of entry by new Canadian-based ATSS with similar capabilities to Alpha, particularly given the ease of entry, including from a technological and regulatory perspective – for example, all Canadian dealers are required by law (under the order protection rule) to have direct or indirect access to each new ATS and trade on any ATS which offers the best price; and
- (d) the threat of regulatory intervention by provincial securities regulatory authorities in response to any conduct deemed not to be in the public interest (anti-competitive conduct is unlikely to be considered to be in the public interest).

#### Canadian-Based ATSS

Chi-X Canada, Pure Trading and Omega ATS are Canadian-based lit ATSS that compete for trading volume, have effectively unlimited capacity to handle increased volumes of trades, and have been increasing their share of overall trading of TMX-listed equities. Each of these ATSS offers equities trading services, possesses significant excess trading capacity, and exerts a comparable competitive constraint upon TMX Group and Alpha.

In considering the competitive impact and potential impact of these ATSS, it is useful to keep in mind that Alpha itself is a relatively small business that has been in operation for only about three years. Alpha has benefited from varying degrees of support from its current owners, but as smaller percentage shareholders in a combined TMX/Alpha those owners may have less incentive to trade on TMX than they currently have to trade on Alpha. Accordingly, Chi-X, Pure and Omega will be even better positioned to attract greater trading volumes following a TMX/Alpha combination, and to represent an even greater competitive discipline on trading fee pricing by TMX.

Traders can and do switch between trading platforms without incurring any cost. Rapid switching of platforms used by dealers in favour of the best price or advantageous fee opportunities takes place all the time – for example, Chi-X recently opened its platform to trading for TSX-V stocks, offering attractive fee levels to "active side" traders, and within two weeks captured more than 4% by volume and 9% by value of all trading of TSX-V equities in Canada.

#### U.S. Trading Platforms

As noted above, competition is not limited to Canadian-based ATSS. U.S. exchanges and ATSS offer additional trading platforms for Canadian-based securities also listed in the U.S. For example, although inter-listed Canadian-based securities account for only 8% of the securities listed on the TSX, these inter-listed Canadian-based securities account for 25% of the total volume and 54% of the total value of trading on the TSX over the same

six month period. Indeed, 38% of the total volume and 40% of the total value for these inter-listed securities traded on U.S. platforms, compared to 37% and 38% collectively on TSX and Alpha.<sup>17</sup> The U.S. platforms directly constrain pricing for equities trading in Canada. If such Canadian pricing were ever to exceed competitive levels, migration of the trading volume for inter-listed Canadian equities (and associated revenues) to trading platforms in the United States would accelerate to a point that would make such an attempted uncompetitive price increase unprofitable.

As noted above, we commit that TMX equity trading fees will not discriminate as between inter-listed and non-inter-listed securities. This commitment will provide added assurance of the ongoing competitive constraint on all TSX listed equities created by the option to trade in the U.S. In the absence of discrimination in trading fees for listed and non-interlisted equities, the risk of losing substantial inter-listed trading volume in the event of an attempted uncompetitive price increase will keep the trading fees for all TSX listed equities competitive.

#### Ease of Entry

As noted above, the threat of new entry will be an additional competitive constraint on a combined TMX/Alpha. In this regard, it should be kept in mind that Canadian equities trading regulations support the establishment of new entrant ATSS. For example, Canadian dealers are obligated to maintain direct or indirect access to all ATSS and must observe the order protection and "best execution" rules, which require that trades be routed to such an ATS when it presents the most attractive opportunity for a particular trade. Technology requirements are also modest and an ATS can be profitable even with relatively small volumes traded on its system. If the combined TMX/Alpha entity attempted to significantly raise trading fees following the proposed Transactions, it would face a real risk of inducing other foreign ATSS to enter Canada.

Established U.S. ATSS, for example, have the management, reputation and advanced technology necessary to quickly establish a material presence in Canada. They also maintain relationships with high frequency traders, who are already familiar with the technologies these ATSS operate. In late August, Goldman Sachs announced that it would expand its dark pool ATS, SIGMA X, into Canada for trading in TSX listed stocks.<sup>18</sup> Goldman Sachs indicated that its ATS would make use of Goldman Sachs' electronic trading technology and be supported with its own and its clients' liquidity. Analysts reported that, "*Goldman is betting on demand from its own clients, a pricing model that it believes will be cheaper, and the fact that it is adding other technology to its Canadian*

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<sup>17</sup> See Maple's Offer to Purchase and Circular dated June 13, 2011 at page 48.

<sup>18</sup> "Goldman Sachs Launches Sigma X<sup>TM</sup> Canada", Goldman Sachs Electronic Trading press release, August 18, 2011, available online: <http://gset.gs.com/cgi-bin/upload.dll/file.pdf?z03860f0azffdd0179528d4cde88555e6bdd4ffdad>.

*offering, including a locally-placed smart order router that will be faster and attract clients."*<sup>19</sup>

The leading U.S. ATSS, which account for approximately 10% each of trading in lit U.S. equity markets, are BATS and Direct Edge. BATS has publicly commented about its desire to enter Canada. Operation of a Canadian-based ATS would make either of these firms an even stronger competitive threat to a combined TMX/Alpha.

#### User Incentives

Users of TMX and ATSS are sophisticated entities who have a good understanding of the costs of using the various available trading platforms. If a combined TMX/Alpha were to attempt to impose anti-competitive price increases on trading fees, traders (including the minority investors in TMX/Alpha) would have a strong incentive to move a substantial portion of their own trades (subject to the order protection and best execution rules) to other ATSS, U.S. trading platforms or new entrants. Even the investment dealers with share ownership positions in TMX/Alpha (each with less than 7.5%), would benefit by directing their trades to lower priced platforms. While a 7.5% investor in TMX may regain some value from paying a higher trading fee to TMX, any such benefit is clearly outweighed by paying 100% of an uncompetitive fee when that dealer has the option of using other platforms. In this environment, uncompetitive trading fee levels would create a strong incentive for all users to move significant volumes to other existing ATSS and exchanges and would create incentives for rapid establishments of new trading venues such that an attempted TMX/Alpha uncompetitive price increase would be unprofitable and unsustainable.

#### Regulation

Finally, all aspects of the provision of equities trading services, including fees and access, are subject to regulation by provincial securities authorities. Among other things, securities regulatory authorities could regulate equity trading fees if they determine that to be in the public interest. Even absent actual price regulation, the threat of regulatory activity will continue to be a significant discipline on the activities of TMX/Alpha and a further influence to keep its equity trading fees competitive.

#### Efficiencies

The combination of TMX Group and Alpha will create more efficient and diversified trading venues that will allow TMX Group to better serve its customers and thereby better compete with other ATSS and exchanges, including U.S. trading systems with respect to Canadian inter-listed equity securities. The resulting repatriation of trading volume would benefit TMX Group's equity trading platforms, as well as MX's derivatives platform (since derivatives are traded where the underlying security is trading).

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<sup>19</sup> Boyd Erman, "Goldman sees opportunity in tough market for dark trading", The Globe and Mail, August 19, 2011, available online: <http://www.theglobeandmail.com/globe-investor/investment-ideas/streetwise/goldman-sees-opportunity-in-tough-market-for-dark-trading/article2134847/>.

### *Alpha Fees and Access*

We intend to maintain a competitive fee structure for Alpha (including as between inter-listed and non-inter-listed securities, for which there will be no price discrimination). Fees will be set in a manner that is harmonious with the present process for setting fees at TSX. With respect to data fees, Maple will continue to offer Alpha data on a non-discriminatory and unbundled basis – separate and apart from other TMX data.

We also intend to maintain appropriate standards for access to trading on Alpha that do not unreasonably prohibit, condition or limit access by persons or companies to Alpha's services.

### *Non-Competition Agreement*

Consistent with standard commercial practice, the participation by each of the Investors in the Maple Acquisition was conditional upon such Investor (or its parent entity, and each such entity, a "**Parent**") agreeing to enter into a limited non-competition agreement with Maple and the other Investors or their Parents upon the closing of the Maple Acquisition. The Investors or their Parents (other than the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause their subsidiaries not to, engage in any business in Canada that competes with the business of TMX Group, CDS or Alpha, subject to certain exceptions. Further, each Investor or Parent (including the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause its subsidiaries for which it controls decision making authority not to, invest in any person engaged in establishing or operating an alternative trading system or recognized exchange in Canada, or in any person primarily engaged in the settlement and clearing of securities or derivatives trading transactions in Canada, subject to certain exceptions. The non-competition agreement will run for a term of five years from closing of the Maple Acquisition.<sup>20</sup>

The non-competition agreement is directly related to and necessary for the implementation of the Transactions. It limits the ability of the Investors and their affiliates (including those Investors with nominees on the Maple Board<sup>21</sup>) to undermine the significant investments in Maple of each of the Investors through competition with TMX Group in Canada for a limited period of time.

Maple submits that the non-competition agreement will not give rise to the Investors acting jointly or in concert after completion of the Transactions. The non-competition obligations in no way amount to any agreement between any of the Investors with respect to the future direction or development of Maple's business, and the obligations do not commit any of the Investors to take any positive action with respect to Maple's business or the conduct of an Investor's own trading activities. Moreover, the obligations under the non-competition

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<sup>20</sup> A summary of the non-competition agreement is included at page 75 of Maple's Offer to Purchase and Circular dated June 13, 2011.

<sup>21</sup> Although the nomination rights will not expire until after six years, if at any time an Investor competed with TMX Group after the expiry of the non-competition agreement, such Investor's nomination right would expire immediately.

agreement of each Investor or Parent will be independent of and entirely unrelated to (i) the continued ownership or acquisition of securities of Maple by such Investor or Parent during the term of the agreement, or (ii) the voting of any such securities. For instance, a pension fund Investor could sell all of its shares in Maple shortly after closing of the Maple Acquisition, but would continue to be subject to the non-competition obligation for the full five-year term.<sup>22</sup>

*Non-Preferencing Obligations (in the event Alpha is unable to be acquired)*

The Acquisition Governance Agreement contemplates the possibility that Maple might be unable to acquire Alpha even if all necessary regulatory approvals for the acquisition of Alpha are obtained. To account for this contingency, and with the same overall objective of not undermining the significant investments in Maple by each of the Investors, the Maple offer entails certain non-preferencing obligations that would arise in only specified limited circumstances. In particular, in the event that Maple completes the Maple Acquisition and receives approval from the Commissioner of Competition to acquire Alpha, but is unable for any other reason to acquire Alpha (or the ownership interests in Alpha held by CIBC World Markets Inc., Desjardins Securities Inc., National Bank Financial Inc., Scotia Capital Inc., TD Securities Inc. (collectively, the “**Alpha Dealers**”) and CPP Investment Board Private Holdings Inc.), then each Alpha Dealer will agree with Maple that it will not preference trading on the facilities of Alpha with respect to its trading volumes in securities listed or traded on such facilities.<sup>23</sup> However, given that the Alpha Dealers and CPP Investment Board Private Holdings Inc. have committed to sell their ownership interests in Alpha to Maple at a price to be agreed upon or resolved by arbitration, Maple is of the view that it is highly unlikely that this non-preferencing obligation would ever come into effect.

The purpose of this contingent non-preferencing obligation is consistent with the rationale for the non-competition agreement. It provides assurance to the shareholders of Maple (other than the Alpha Dealers) that, in the event that Maple is unable to acquire Alpha (or the ownership interests of the Alpha Dealers and CPP Investment Board Private Holdings Inc.) in the circumstances described above, the Alpha Dealers will not (as a result of their ownership interests in Alpha providing them with an incentive to do so) preference their trades through Alpha to the disadvantage of trading platforms owned by TMX Group.

Each Alpha Dealer's non-preferencing obligation would be subject, of course, to applicable "order protection" and "best execution" rules and all other applicable securities regulatory requirements. Moreover, the obligation would not arise unless the Commissioner of

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<sup>22</sup> The right of Maple to enforce each Investor's or Parent's obligations under the non-competition agreement will continue for the full term of the non-competition agreement. The right of each other party to enforce such obligations under the agreement will terminate on the date on which such party and its subsidiaries no longer owns at least that number of Maple common shares that represented 2% of the total issued and outstanding Maple common shares on the date that the non-competition agreement is entered into.

<sup>23</sup> The value of such non-preferencing obligation would be negotiated between the Alpha Dealers and an independent committee of Maple's directors, provided that if the value could not be agreed upon it would instead be determined by binding arbitration.

Competition had previously approved both the acquisition of Alpha by Maple and the non-preferencing obligation. The non-preferencing obligation would have no additional competitive effects relative to an acquisition of Alpha.

For the same reasons described above in respect of the non-competition agreement, Maple submits that these non-preferencing obligations would not give rise to the Investors acting jointly or in concert after completion of the Transactions. The obligations would in no way amount to any agreement between any of the Investors with respect to the future direction or development of Maple's business, and the obligations would not commit any of the Investors to take any positive action with respect to Maple's business. Subject to the obligation not to preference Alpha, each of the Investors would remain free to conduct its own trading activities independently. Moreover, the obligations would be independent of and entirely unrelated to (i) the continued ownership or acquisition of securities of Maple by any of the Investors, or (ii) the voting of any such securities. The non-preferencing obligation of each Alpha Dealer would survive the sale by such Alpha Dealer of its shares in Maple and would continue to run in perpetuity.

## **6. Share Ownership**

### *Share Ownership of TMX Group*

Maple will acquire beneficial ownership of more than 10% of the TMX shares upon its take-up of TMX shares under the Offer. As TMX Group owns all the issued and outstanding voting shares of the TSX, as a consequence of Maple's take-up of TMX shares, Maple will also be deemed to beneficially own more than 10% of the voting shares of the TSX pursuant to section 1(5) of the Act. In order to acquire this beneficial ownership, Maple requires the Commission's approval.

Following take-up of TMX shares under the Offer, Maple will acquire the TMX shares not deposited under the Offer through the Subsequent Arrangement. In order to do so, Maple and the Investors require the Commission's approval to act jointly or in concert within the meaning of the Share Ownership Restrictions at TMX Group for the purposes of the Subsequent Arrangement.

In addition, each of the Investors has agreed to use commercially reasonable efforts to pursue and effect a transaction or transactions that would result in the acquisition by Maple of Alpha and CDS. For purposes of the Share Ownership Restrictions, it may be argued that as a result of such agreement the Investors would be acting jointly or in concert with respect to such acquisitions. In order to avoid any inadvertent violation of the Share Ownership Restrictions, Maple and the Investors request the Commission's approval to act jointly or in concert within the meaning of the Share Ownership Restrictions at TMX Group for the purposes of effecting the Alpha and CDS Acquisitions.

We request that the Commission make an order under section 21.11(4) of the Act granting approval for (a) Maple to beneficially own or exercise control or direction over more than 10% of the voting shares of each of TMX Group and TSX and (b) Maple and the Investors

to act jointly or in concert as beneficial owners of voting securities of TMX Group for the purposes of (i) the Subsequent Arrangement and (ii) the Alpha and CDS Acquisitions.

### *Share Ownership of Maple*

Following take-up of TMX shares under the Offer, and until the Subsequent Arrangement is completed, four Investors, Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board, will each beneficially own approximately 11.8% of the outstanding voting securities of Maple. As a consequence of the Share Ownership Restrictions being applied to Maple, these four Investors may not beneficially own over 10% of the voting securities of Maple during the transitional period between take-up under the Offer and completion of the Subsequent Arrangement without the prior consent of the Commission.

In addition, each of the Investors has agreed to use commercially reasonable efforts to pursue and effect a transaction or transactions that would result in the acquisition by Maple of Alpha and CDS. For purposes of the Share Ownership Restrictions, it may be argued that as a result of such agreement the Investors would be acting jointly or in concert with respect to such acquisitions. In order to avoid any inadvertent violation of the Share Ownership Restrictions, Maple and the Investors request the Commission's approval to act jointly or in concert within the meaning of the Share Ownership Restrictions at Maple for the purposes of effecting the Alpha and CDS Acquisitions.

We request that the Commission make an order granting approval for (a) Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board to each beneficially own or exercise control or direction over more than 10% of the voting shares of Maple during the transitional period between take-up under the Offer and completion of the Subsequent Arrangement and (b) the Investors to act jointly or in concert as beneficial owners of voting securities of Maple for the purposes of (i) the Subsequent Arrangement and (ii) the Alpha and CDS Acquisitions.

## **7. Undertakings in Other Jurisdictions and Confirmation of Exemption Orders**

### *TSX Venture*

On November 26, 1999, as amended on July 31, 2001, September 3, 2002, and August 12, 2005, and varied on June 1, 2008, TSX Venture was recognized by the ASC as an exchange in Alberta under subsection 52(2) of the *Securities Act* (Alberta) and by the BCSC as an exchange in British Columbia under subsection 24(2) of the *Securities Act* (British Columbia).

In connection with the Maple Acquisition, Maple will be making application to the ASC and BCSC that may impact their recognition orders of TSX Venture. As part of such application, Maple will propose to undertake to the ASC and BCSC that:

- (a) it will do everything within its control to cause TMX Group and TSX to perform their undertakings to the ASC and BCSC with respect to TSX Venture;
- (b) it will do everything within its control to cause TSX Venture to comply with the terms and conditions of its recognition order;
- (c) it will, subject to certain notice obligations, cause TMX Group to allocate sufficient financial and other resources to TSX Venture to ensure that TSX Venture can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order;
- (d) it will cause TMX Group to do everything in its control to cause TSX Venture to carry out its activities as a recognized exchange and to comply with the terms and conditions of its recognition order;
- (e) it will adopt TMX Group's existing undertaking to not cause or permit TSX Venture to cease to operate or suspend, discontinue or wind-up all or a significant portion of TSX Venture's operations, or dispose of all or substantially all of TSX Venture's assets, without six month's prior notice to the ASC and BCSC and complying with such terms and conditions as the ASC and BCSC may impose;
- (f) it will adopt TMX Group's existing undertaking to not complete or authorize a transaction that would result in TSX Venture ceasing to be wholly-owned or directly controlled by TSX without six month's prior notice to the ASC and BCSC and complying with such terms and conditions as the ASC and BCSC may impose;
- (g) it will adopt TMX Group's existing undertaking to advise the ASC and BCSC if it or TMX Group applies to the Commission for an order permitting Maple and, in turn, TMX Group to own, directly or indirectly, less than all of the issued and outstanding voting shares of TSX;
- (h) it will adopt TMX Group's existing undertakings with respect to TSX Venture's trading systems, operations and procedures;
- (i) it will adopt TMX Group's existing undertaking with respect to access by the ASC and BCSC to information possessed by Maple and its subsidiaries for the purposes of assessing the performance by TSX Venture of its regulation functions and the compliance of TSX Venture with the terms and conditions of its recognition order; and
- (j) it will adopt TMX Group's existing undertaking to maintain a committee of the Maple Board named the Public Venture Market Committee and to refer to such committee for recommendation and advice all policy issues and matters that are likely to have a significant impact on the public venture

capital market in Canada and the role of Maple and/or TSX Venture in relation thereto.

The undertakings will be set out in full in Appendix B to Maple's application to the ASC and BCSC, a copy of which will be furnished to the Commission.

These undertakings will take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would cease to have effect if (a) the ASC or BCSC, as applicable, revokes TSX Venture's recognition order for any reason other than the failure by Maple to fulfill its undertakings, (b) TSX Venture ceases to carry on business after complying with any terms and conditions the ASC and/or BCSC, as applicable, may impose, or (c) TSX Venture ceases to be a subsidiary of Maple.

We respectfully request that the Commission provide an amended and restated exemption order in respect of TSX Venture consistent with the existing exemption order dated August 12, 2005 and referencing any such amended and restated TSX Venture recognition orders.

#### *Montréal Exchange*

On December 17, 2002, as amended on May 13, 2003, MX was recognized by the Commission des valeurs mobilières du Québec as a self-regulatory organization. Under a decision dated April 10, 2008, as amended on November 22, 2010, MX was authorized by the Autorité to carry on business as an exchange in Québec and was recognized by the Autorité as a self-regulatory organization.

In connection with the Maple Acquisition, Maple will be making an application to the Autorité that may impact its recognition order of MX. As part of such application, Maple will propose to undertake to the Autorité that:<sup>24</sup>

- (a) it will do everything within its control to cause TMX Group to fulfill its April 9, 2008 undertakings to the Autorité;
- (b) it will do everything within its control to cause MX to comply with the terms and conditions of its recognition order;
- (c) it will be subject to the Share Ownership Restrictions;
- (d) it will nominate every year, without limit as to time, for election to the Maple Board, at every annual meeting of Maple (i) such number of directors who are independent and represent at least 50% of the total number of directors nominated, (ii) such number of directors who are resident of Québec and represent at least 25% of the total number of directors nominated, (iii) such number of directors who have expertise in

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<sup>24</sup> For purposes of these undertakings to the Autorité, all references to derivatives and related products pertain to equity and fixed income derivatives and exclude any derivatives and related products of TMX Group or any affiliate thereof not under the direct responsibility of MX on the date of the undertakings including, without limitation, derivatives and related products of NGX, Shorcan Brokers Limited, and Shorcan Energy Brokers Inc.

derivatives and represent at least 25% of the total number of directors nominated, and (iv) one director drawn from the Canadian independent investment dealer community (for greater certainty, excluding investment dealers which are affiliates of Canadian Schedule I banks);

- (e) it will select as the chair of the Maple Board an independent director;
- (f) it will, unless it obtains the prior authorization of the Autorité to make changes, maintain mirror boards of directors for Maple, TMX Group and MX;
- (g) it will appoint such number of persons with expertise in derivatives to the special regulatory committee of the board of MX such that at least 25% of that committee will be comprised of directors who have expertise in derivatives;
- (h) it will adopt TMX Group's existing undertaking that it will cause the existing derivatives trading and related products operations of the MX to remain in Montreal;
- (i) it will adopt TMX Group's existing undertaking that it will not, without the approval of the Autorité, do anything to cause MX to cease to be the Canadian national exchange for all derivatives trading and related products, including being the sole platform for trading of carbon and other emission credits in Canada;
- (j) it will adopt TMX Group's existing undertakings that:
  - (i) without the Autorité's consent, it will not complete a transaction resulting in any person or company, or any combination of persons or companies acting jointly or in concert, owning or exercising control or direction over more than 10 per cent of any class or series of voting shares of the MX, except for Maple or an affiliate of Maple;
  - (ii) it will continue to exercise control or direction over more than 50 percent of all classes or series of voting shares of the MX; and
  - (iii) without the Autorité's consent, it will not complete a transaction resulting in more than 50 percent of any class or series of voting shares of the MX ceasing to be controlled by Maple, directly or indirectly;
- (k) it will adopt TMX Group's existing undertaking that it will submit annually to the Autorité, within two months of its approval, its strategic plan for derivatives as approved by the Maple Board and further undertakes that the strategic plan will address the progress achieved during the past year in the fulfillment of previous strategic plan for derivatives;

- (l) it will invest in the continued growth of trading and clearing of derivatives and related products;
- (m) if MX determines from time to time to export their knowledge of derivatives trading and clearing, such international activity will be directed from Montréal;
- (n) MX will continue as the exclusive business unit responsible for exchange traded derivatives and related products;
- (o) adopt MX's existing obligation to maintain MX's head office and executive office in Montreal and further undertake that the mind and management of MX responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal;
- (p) if Maple establishes an exchange or clearing agency for trading or clearing derivatives that are presently over-the-counter derivatives, that exchange or clearing agency will comply with (q) and (r) below;
- (q) the head office and executive office of any business unit under (p) will be located in Montreal, and that the mind and management of any business unit under (p) responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal;
- (r) the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility for MX and any business unit under (p) shall be a resident of Quebec at the time of his or her appointment and for the duration of his or her term of office and shall work in Montreal, and that the executives responsible for managing the development and execution of the policy and direction of MX and any business unit under (p) sufficient to permit the senior officer to execute his or her responsibilities, will work in Montreal;
- (s) it will adopt TMX Group's existing undertaking with respect to access by the Autorité to information possessed by Maple and its subsidiaries for the purposes of assessing the performance by Maple, TMX Group and MX of their regulatory functions and compliance with the terms and conditions of the Autorité's decisions; and
- (t) it will adopt TMX Group's existing undertaking, subject to certain notice obligations and for so long as TMX Group and MX carry on business as an exchange, to allocate sufficient financial and other resources to TMX Group and MX to ensure their financial viability, the proper performance of their functions and the exercise of the self-regulatory functions of MX and its self regulatory division.

These undertakings would take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would, as

applicable, cease to have effect if (a) the Autorité revokes the applicable recognition orders for any reason other than the failure by Maple to fulfill its undertakings with the Autorité, (b) TMX Group or MX ceases to carry on business after complying with any terms and conditions the Autorité may impose, or (c) TMX Group or MX ceases to be a subsidiary of Maple.

The undertakings are set out in full in Appendix B to Maple's application to the Autorité, a copy of which will be furnished to the Commission.

We respectfully request that the Commission provide an amended and restated exemption order in respect of MX consistent with the existing exemption order dated April 30, 2008 and referencing any such amended and restated MX recognition order.

### *CDCC*

In connection with the Maple Acquisition, Maple will be making application to the Autorité with respect to CDCC. As part of such application, Maple will propose to undertake to the Autorité that:

- (a) it will do everything within its control to cause the CDCC to comply with the terms and conditions of its recognition order;
- (b) it will cause to be nominated every year, without limit as to time, for election to the board of directors of CDCC, at every annual meeting of CDCC (i) such number of directors who are independent (as defined in footnote 11 hereof) and represent at least 45% of the total number of directors, of which at least two will not be an associate, partner, director, officer or employee of a participant of CDCC or its affiliates or an associate of such director, partner, officer or employee, (ii) such number of directors who are a current or former associate, partner, director, officer or employee of a participant of CDCC or its affiliates and represent at least 33% of the total number of directors, (iii) such number of directors who are resident of Québec and represent at least 25% of the total number of directors, and (iv) such number of directors who have expertise in derivatives clearing and represent at least 25% of the total number of directors;
- (c) if CDCC determines from time to time to export their knowledge of derivatives trading and clearing, such international activity will be directed from Montréal;
- (d) it will adopt CDCC's existing obligation to maintain CDCC's head office and executive office in Montreal and further undertake that the mind and management of CDCC responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal;
- (e) the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility for CDCC shall be a resident of Quebec at the time of his or her appointment and for the duration of his or her term of

office and shall work in Montreal, and that the executives responsible for managing the development and execution of the policy and direction of CDCC sufficient to permit the senior officer to execute his or her responsibilities, will work in Montreal;

- (f) it will permit the Autorité to access information possessed by Maple and its subsidiaries for the purposes of assessing the performance by CDCC of its regulatory functions and compliance with the terms and conditions of the Autorité's decisions; and
- (g) it will, subject to certain notice obligations and for so long as CDCC carries on business as a clearing house, allocate sufficient financial and other resources to CDCC to ensure its financial viability and the proper performance of its functions.

These undertakings would take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would cease to have effect if (a) the Autorité revokes the applicable recognition orders for any reason other than the failure by Maple to fulfill its undertakings with the Autorité, (b) CDCC ceases to carry on business after complying with any terms and conditions the Autorité may impose, or (c) CDCC ceases to be a subsidiary of Maple.

The undertakings are set out in full in Appendix B to Maple's application to the Autorité, a copy of which will be furnished to the Commission.

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I trust the foregoing is satisfactory.

Yours very truly,



Luc Bertrand  
on behalf of  
Maple Group Acquisition Corporation

cc. Jacinthe Bouffard  
*Autorité des marchés financiers*

Ashlyn D'Aoust  
*Alberta Securities Commission*

Mark Wang  
*British Columbia Securities Commission*

## **Appendix A – Integrated Exchanges**

# Integrated exchanges

- The integrated exchange model exists in several market places

	ASX	DB	BM&F Bovespa	TMX (CURRENT)	TMX (Alpha+CDS)
<b>Trading</b>					
Equities Exchange	✓	✓	✓	✓	✓
Fixed Income Exchange	✓	✓	✓	✓	✓
Derivatives Exchange	✓	✓	✓	✓	✓
ATS				✓	✓
<b>Clearing &amp; Settlement</b>					
Equities	✓	✓	✓		✓
Fixed Income	✓	✓	✓		✓
Derivatives	✓	✓	✓	✓	✓
<b>Depository</b>					
Equities	✓	✓	✓		✓
Fixed Income		✓	✓		✓
Derivatives	✓	✓	✓	✓	✓

# ASX is fully integrated, offering multi-asset trading and post-trade operations

	Equities	Fixed Income	Listed Derivatives/ Energy		OTC Derivatives	
Trading	ASX	ASX	ASX Futures & Options		Bilateral	
	National Stock Exchange					
	SIM Venture Security Exchange	Yieldbroker			ATS/ Multiple expected	
	Asia Pacific Exchange	FIIG Securities				
	IMB					
	Liquidnet Australia	Bloomberg BondTrader				
	Chi-X Australia					
	Chi-East	BGC Partners				
Clearing	ASX Clear		ASX Clear (Futures)		LCH	
	ASX Settlement / Clearing House Electronic Settlement System (CHESS) <sup>1</sup>	SFE Austraclear				CME
Settlement					NYPC	
					ICE	
Depository					Others	
					Australian OTCD CCP	
Payment	Reserve Bank Information and Transfer System (RITS)	RITS	RITS	CLS	RITS	CLS



- Ownership
- ASX Group
  - Australia Financial Institutions
  - Independent
  - Proposed build

1. CHESS operated by ASX Settlement  
 Note: ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear are all part of ASX Group

# Overview of Australian Securities Exchange

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- The Australian Securities Exchange functions as a market operator, clearing house and payments system facilitator

## Business Overview

- **Listing** - Offers both national and international companies the opportunity to access growth capital through IPOs or debt offerings
- **Cash & Derivatives Trading** - Operates two trading platforms, ASX Trade and ASX Trade24, and executes more than 10 million equity trades per month
- **Clearing** - Offers ASX Clear and ASX Clear (Futures) that provide central counterparty facilities as well as risk management systems
- **Settlement** - Operates ASX Settlement and ASX Austraclear which offer a variety of settlement services
- **Market Data & Access** - Provides the market with a reliable and timely information service

## Competitive Advantages

- Relatively fixed cost base provides positive leverage to improved markets
- Despite ASX's equity trading fees already being the third lowest globally (behind NDAQ and NYSE), its aggressive 35% reduction heading into FY11 sees it even better positioned to compete with other exchanges

## Key Milestones

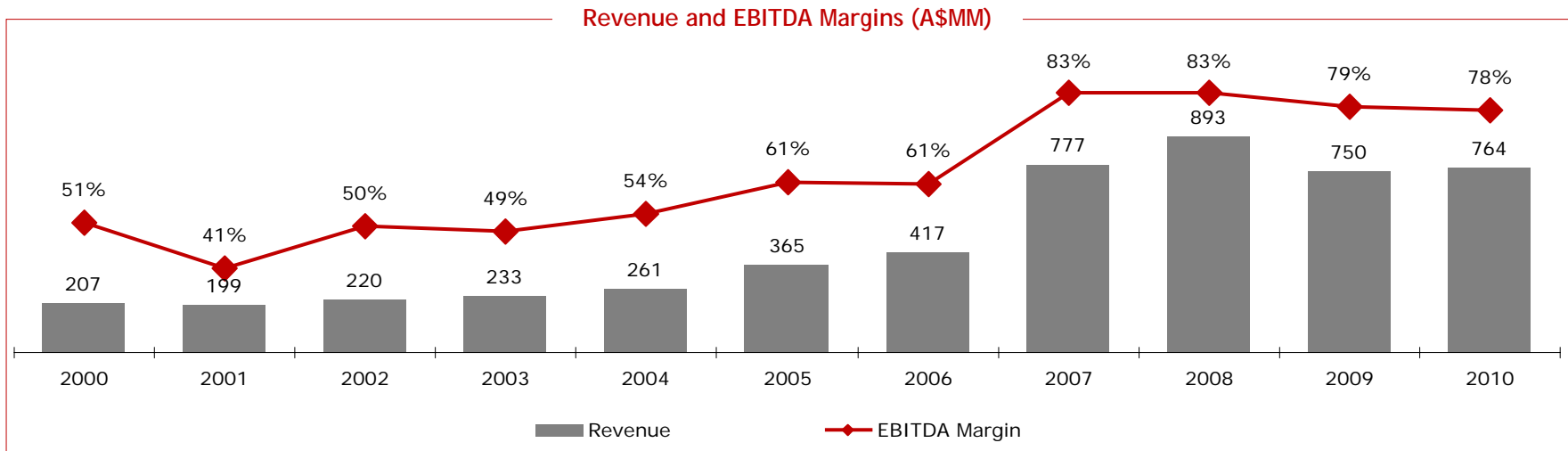
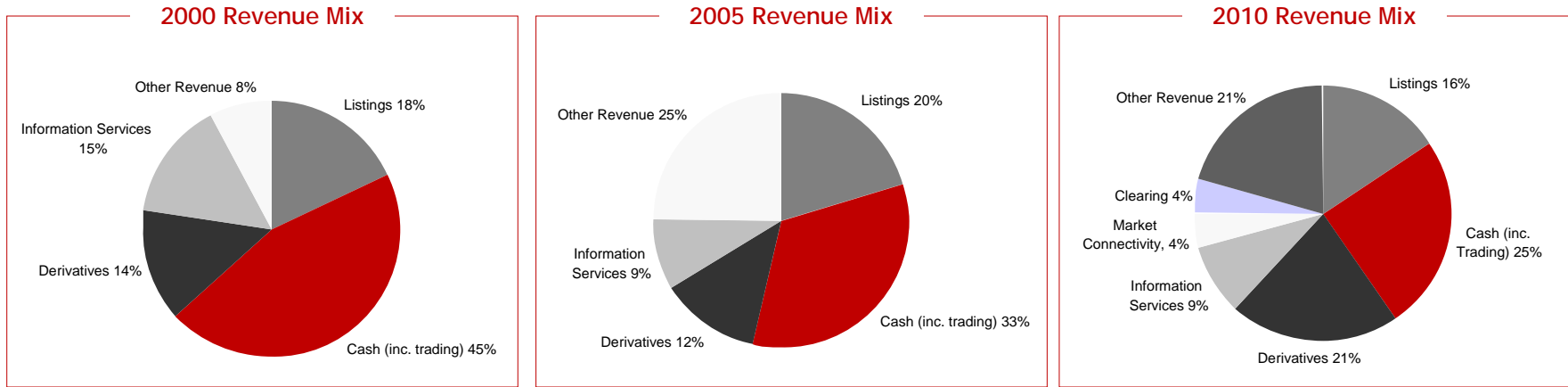
- **2002** - Sydney Futures Exchange demutualised in 2000 and listed on the ASX
- **2006** - Australian Stock Exchange and SFE merged to create the ASX
- **2007** - ASX began trading ASX Contracts for Differences
- **2010** - SGX approached ASX for a potential takeover
- **2011** - Australian Government blocked the proposed takeover by SGX
- **2011** - Chi-X has been granted approval to operate an alternate exchange and is expected to commence operations late in 2011

## Financial Highlights

- Cash equity trading accounts for only 6.5% of the FY11F revenues, reflecting ASX's diversified and vertically integrated business and the impact of recent fee reductions
- Revenue grew from A\$207MM in 2000 to A\$764MM in 2010 (CAGR of 13.9%)
- The previous takeover offer by the SGX included improved operating efficiency (US\$30MM cost synergies, 10% of combined cost base) and enhanced revenue opportunities over the medium-term (not quantified)

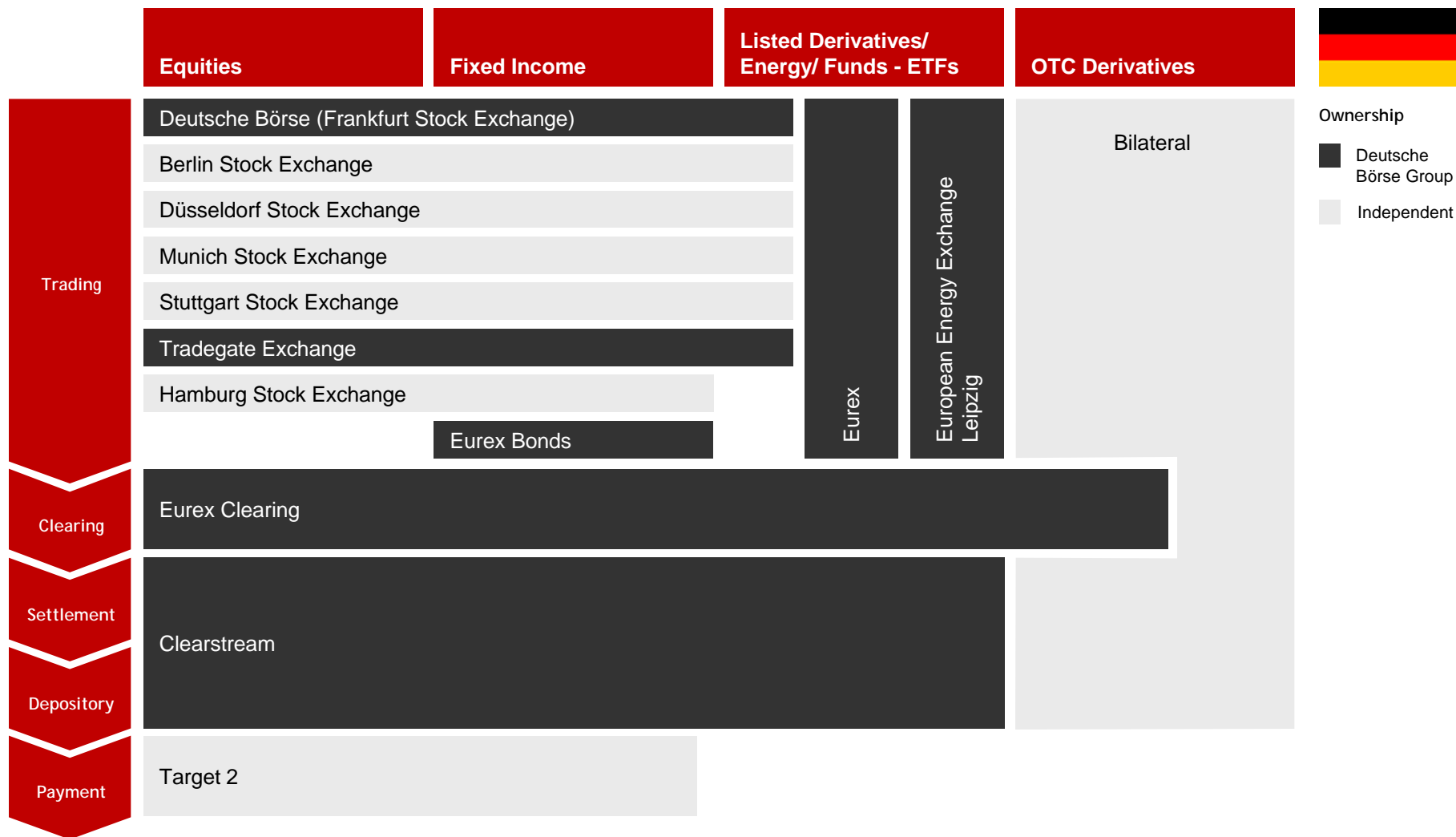
# Overview of Australian Securities Exchange (cont'd)

- The ASX has diversified its product offering, and increased its EBITDA margin to 78%



Source: Public filings, CapitalIQ.

# Deutsche Börse is vertically integrated, but operates separate entities between trading, clearing and CSD



Source: Company Websites, Presentations, Handbook of Exchanges, BIS CPSS

# Overview of Deutsche Börse

- Deutsche Börse AG operates electronic trading systems that provide securities and derivatives trading, clearing, settlement, custody, and market data services

## Business Overview

- **Xetra:** Provides listing, trading and clearing services for issuers, intermediaries and investors in the cash market via its Xetra business
- **Eurex:** Leading global provider of trading and clearing services in the derivatives market
- **Clearstream:** Provides custody services to financial institutions across the globe
- **Market Data:** Offer market data and analyses
- **Information Technology:** Leading international full-service provider for the development and operation of trading and settlement systems

## Key Milestones

- **June 1998:** Deutsche Börse and the Swiss exchange Schweizer Börse merged futures exchanges to form Eurex
- **January 2000:** Deutsche Börse Clearing AG merges with Cedel International S.A. to form Clearstream
- **May 2001:** Deutsche Börse introduces the centralized high-performance CEF data feed for market and price data
- **December 2007:** Eurex completes the acquisition of the US options exchange International Securities Exchange Holdings (ISE), creating the largest transatlantic marketplace for derivatives
- **February 2011:** Announced all-stock merger offer to purchase the NYSE Euronext. NYSE Euronext shareholders will vote on the offer on July 7, 2011

## Competitive Advantages

- Currently pursuing operating efficiencies across the group, with the aim of saving €150MM in run-rate costs:

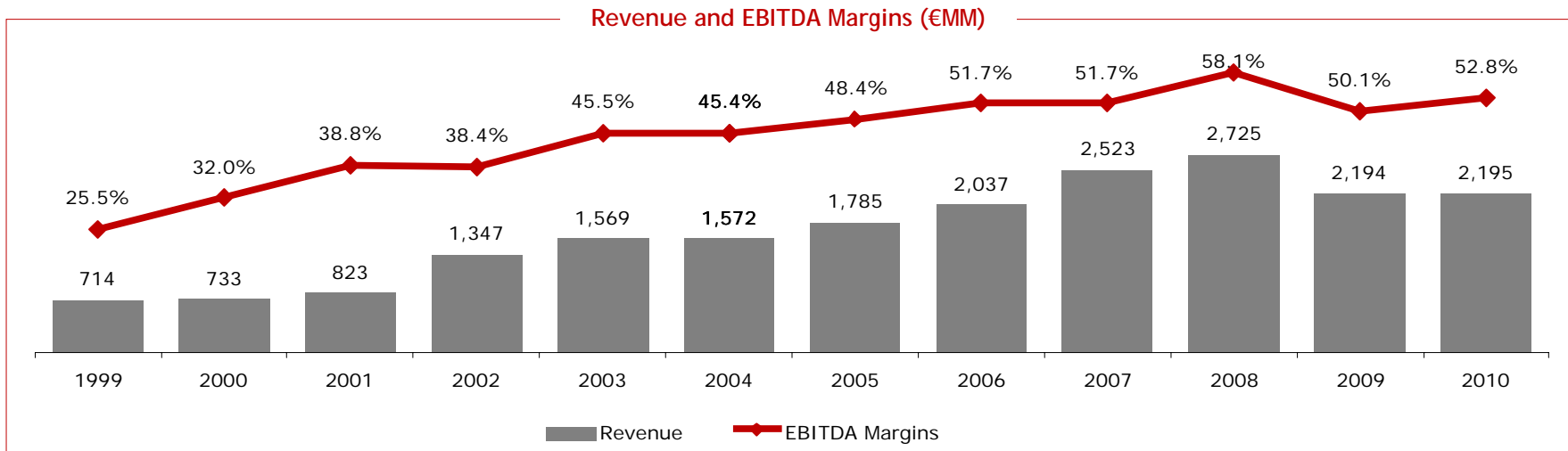
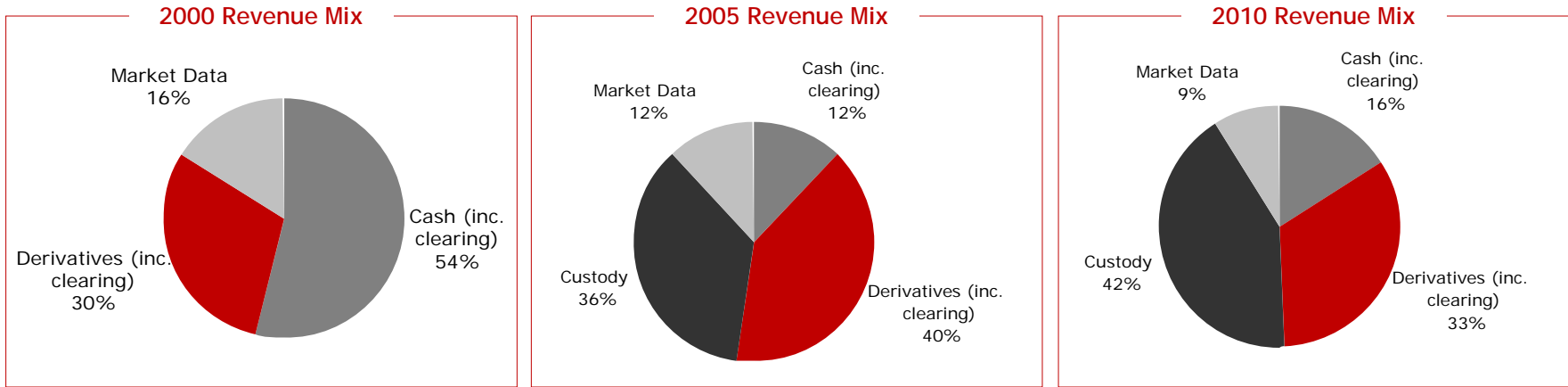
	<u>% of savings</u>
Headcount reduction (~370 staff)	50%
Moving operational functions to Prague	20%
Harmonisation of IT infrastructure	10%
Reduction in management headcount	10%
Focus on core activities	10%

## Financial Highlights

- The proposed purchase of the NYSE Euronext would generate cost savings of €300MM, principally from information technology, clearing and market operations, as well as from corporate administration and support functions; in addition, €100MM of revenue synergies are expected.
- The cost synergies are expected to be realized at an annual run rate of 25% by the end of the first year, 50% by the end of the second year, and 100% by the end of the 3<sup>rd</sup> year





# Overview of Deutsche Börse (cont'd)

- Deutsche Börse's transformation has diversified its revenue mix during the last decade, and doubled its EBITDA margin



Source: Public filings, CapitalIQ.

# BM&F BOVESPA has integrated its trading platforms with plans to integrate its clearing and settlement operations

	Equities	Fixed Income (Govt. Bonds)		Fixed Income	Derivatives	OTC Market <sup>1</sup>				
Trading	BM&F Bovespa	SELIC	Tesouro Direto	SISBEX CETIPNet	CETIPNet	Bovespa FIX	BM&F Bovespa	SISBEX CETIPNet	BM&F Bovespa SOMA FIX	<b>Ownership</b>  BM&F Bovespa  CETIP  Government owned
Clearing	CBLC	SELIC	CBLC	Câmara de Ativos CETIP	CETIP	CBLC	Câmara de Derivativos	Câmara de Ativos CETIP	Câmara de Derivativos CBLC	
Settlement										
Depository	STR	STR	STR	STR	STR	STR	STR	STR	STR	
Payment										

1. For OTC Market: SISBEX (public bonds); CETIPNet (private bonds and derivatives); SOMA FIX (private bonds); BM&F Bovespa (derivatives)  
 Source: Mercado Financeiro - Eduardo Fortuna; IPO memorandum; CVM; Central Bank; press clippings

# Overview of BM&F BOVESPA

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- BM&F BOVESPA is the only securities, commodities and futures exchange in Brazil; develops, implements and provides systems that allow for securities and derivatives trading, registration, clearing, settlement and central depository

## Business Overview

- **BM&FBOVESPA S.A.:** Develops, implements and operates vertically integrated solutions for the trading, registration, clearing & settlement in markets for stocks, futures, FX, options, funds & ETFs, carbon credits, public and private auction and fixed-income
- **Bovespa Market Supervision:** Oversee and enforce compliance of applicable rules, standards of conduct and regulations
- **Brazilian Commodities Exchange:** Develops and provides operating system for trading in commodities, goods, services and securities, in the spot, term and full term mode
- **BM&F Settlement Bank:** Settlement and custody bank for trades in the markets managed by BM&F BOVESPA
- **Clearinghouses:** Renders clearing, settlement, risk management, central depository and securities lending services

## Competitive Advantages

- Fully integrated business model comprising the entire chain of trading, including clearing and settlement activities under responsibility of equities and securities, derivatives and foreign exchange clearinghouses and a settlement bank, as well as a full service CSD (central securities depository)
- Upside potential due to current low penetration of Brazilian equity and derivatives in domestic & foreign investors' portfolios
- Larger exchange encouraging domestic companies to list locally rather than seek out international markets
- Product diversification initiatives strengthening competitive position

## Key Milestones

- **2007:** Demutualization of Bovespa and BM&F; IPO of both entities
- **2008:** Merger of Bovespa and BM&F
- **2009:** End of open outcry derivatives transactions; Licensing agreement with NASDAQ regarding a variety of tools and platforms
- **2010:** Develops a "Global Preferred Strategic Partnership" with the CME Group aiming at the pursuit of strategic investments and commercial opportunities with other international exchanges, on a shared and equal basis; BM&F Bovespa increases its ownership interest in CME from 1.8% to 5%, receiving board representation

## Financial Highlights

- Net operating revenue grew from BRL 1,602MM in 2008 to BRL 1,890MM in 2010 (CAGR of 8.6%)
- Cash equity trading accounts ~ 39% of the FY10A revenues reflecting a certain degree of diversification and vertical integration
- Announced growth initiatives regarding product diversification and expansion of investor base to help fuel future growth