

**IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS
AMENDED (THE ACT) AND IN THE MATTER OF TMX GROUP LIMITED
AND TSX INC.**

ORDER (Section 21.2.3 of the Act)

WHEREAS Part 7 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) requires marketplaces to provide accurate and timely information regarding orders and trades in exchange-traded securities, as defined in section 1.1 of NI 21-101 (**Exchange-Traded Securities**), to an information processor (**IP**), as required by the IP;

AND WHEREAS TSX Inc. (**TSX** or the **Applicant**) has filed an application dated December 7, 2021 (the **Application**) with the Ontario Securities Commission (the **Commission**) requesting an order pursuant to section 21.2.3 of the Act designating the Applicant as an IP for Exchange-Traded Securities;

AND WHEREAS the Applicant is currently the IP for Exchange-Traded Securities and the Canadian Securities Administrators (the **CSA**) determined it was not contrary to the public interest for TSX to act as IP for a period ending June 30, 2022;

AND WHEREAS subsection 21.2.3(1) of the Act allows the Commission to designate a person or company as an IP if the Commission considers it to be in the public interest;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant has the necessary systems in place to collect and disseminate information concerning orders and trades in Exchange-Traded Securities on marketplaces that are subject to the transparency requirements contained in Part 7 of NI 21-101;
2. The Applicant is currently the IP for Exchange-Traded Securities and is in compliance with Ontario securities law;
3. The Applicant currently disseminates information about orders and trades in Exchange-Traded Securities in a manner approved by the CSA;
4. The Applicant has sufficient financial and human resources to comply with the requirements applicable to an IP for Exchange-Traded Securities, including those set out in Annex A to this order;
5. The Applicant makes, and for so long as the Applicant operates an IP will continue to make, available comprehensive information about orders and trades in Exchange-Traded Securities to all market participants; and

6. The Applicant has an appropriate governance structure and conflicts of interest policies and procedures in place.

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of this order and the terms and conditions imposed by the Commission as set out in Annex A to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities or as a result of any changes to the laws of Ontario affecting its operations as an IP);

AND WHEREAS the Applicant has acknowledged to the Commission that the CSA is conducting a review of the regulatory regime applicable to market data in Canada (**MD Review**);

AND WHEREAS the Applicant has acknowledged to the Commission that the Commission may withdraw this order as a result of the MD Review upon Staff of the Commission providing the Applicant with one year's notice of any such withdrawal;

AND WHEREAS, based on the Application, the Commission has determined that it is in the public interest to designate the Applicant as an IP for Exchange-Traded Securities;

IT IS HEREBY ORDERED by the Commission, pursuant to section 21.2.3 of the Act, that the Applicant is designated as an IP for Exchange-Traded Securities,

PROVIDED THAT:

- (i) the Applicant complies with the terms and conditions contained in Annex A to this order; and
- (ii) this order expires on June 30, 2026, unless extended by the Commission.

DATED this 19th day of April, 2022, to take effect July 1, 2022.

Frances Kordyback
Commissioner

Cathy Singer
Commissioner

Annex A

TERMS AND CONDITIONS APPLICABLE TO THE APPLICANT AS AN INFORMATION PROCESSOR FOR EXCHANGE-TRADED SECURITIES OTHER THAN OPTIONS

1. DEFINITIONS AND INTERPRETATION

"Act" means the Securities Act (Ontario), as amended from time to time.

"affiliated entity" has the meaning ascribed to it in section 1.3 of NI 21-101.

"Consolidated Data Products" has the meaning ascribed thereto in section 5 of this Annex A.

"Commission" means the Ontario Securities Commission.

"Data Contributors" means, collectively, the marketplaces and any other party that is required to provide order and trade information to TMX IP under NI 21-101.

"Data Purchasers" means, collectively, the subscribers, vendors, and any other party that purchases any Consolidated Data Products offered by TMX IP.

"Designation Order" means the designation order issued by the Commission under section 21.2.3 of the Act, to which this Annex A is appended.

"Exchange-Traded Security" means an exchange-trading security as defined in section 1.1 of NI 21-101, other than a listed option.

"Form F5" means Form 21-101F5 under NI 21-101.

"IP" means an information processor as defined in section 1.1 of NI 21-101.

"IP Governance Committee" means the governance committee established by TMX IP and approved by the CSA for the purpose of providing TMX IP with oversight and decision-making regarding the scope of service, operational priorities and enhancements (within this scope), bandwidth and capacity planning, and criteria and methods of monitoring performance, in each case, in respect of the Consolidated Data Products.

"IP Advisory Sub-Committee" means an ad-hoc sub-committee of the IP Governance Committee, which includes additional representation from at least one data vendor and one market participant from each of a buy and sell side firm, that provides input into certain TMX IP matters, and is advisory in nature.

"marketplace" has the meaning ascribed to it in subsection 1(1) of the Act,

"NI 21-101" means National Instrument 21-101 *Marketplace Operation*.

"TMX IP" means TSX acting in its capacity as an IP.

"TSX" means TSX Inc.

2. PUBLIC INTEREST RESPONSIBILITIES

- (a) TMX IP must conduct its business and operations in a manner that is consistent with the public interest.
- (b) TMX IP must provide written reports to the Commission, as required by the Commission, describing how it is meeting its regulatory and public interest functions.

3. CHANGES TO FORM F5

- (a) As required by section 14.2 of NI 21-101, TMX IP will file with the Commission amendments to the information provided in Form F5. TMX IP must not implement a significant change to the information in the Form F5 without the prior approval of the Commission.¹

4. GOVERNANCE AND CONFLICTS OF INTEREST

- (a) TMX IP will notify the Commission of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee, and will provide notice of any changes to those representatives.
- (b) The Boards of Directors of TMX Group Limited and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities, bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to TMX IP.
- (c) TMX IP will maintain and monitor compliance with policies and procedures to separate TSX's marketplace business operations from TMX IP operations and manage inherent conflicts of interest and provide material changes to these policies and procedures to the Commission for review.
- (d) The technology used by TMX IP will not give the marketplaces affiliated with TMX Group Limited an advantage with respect to their data as compared to other marketplaces.

¹ Examples of significant changes are provided in section 16.3 of the Companion Policy to NI 21-101.

5. IP PRODUCTS

- (a) Unless TMX IP obtains prior Commission approval, it may only distribute the following products (together, the **Consolidated Data Products**):
 - a. The Consolidated Data Feed (**CDF**);
 - b. The Canadian Best Bid and Offer (**CBBO**);
 - c. The Consolidated Best Bid and Offer for Protected Only Markets (**CBBOP**);
 - d. The Consolidated Last Sale (**CLS**);
 - e. The Consolidated Depth of Book (**CDB**); and
 - f. The Consolidated Depth of Book for Protected Only Markets (**CDBP**).
- (b) Unless TMX IP obtains prior Commission approval, it must distribute all Consolidated Data Products.
- (c) TMX IP will review the Consolidated Data Products, and consider any new products or changes to the Consolidated Data Products that may be reasonably required by amendments that may be adopted by the Commission during the term of the Designation Order.
- (d) TMX IP may bundle each data product comprising the Consolidated Data Products for sale to Data Purchasers, but must also make each data product available as a separate permissionable feed.
- (e) If TSX or any of its affiliated entities intend to create and distribute products using the data provided to TMX IP under Part 7 of NI 21-101 through its commercial distribution channels and not through TMX IP:
 - i. The data required to be provided to TMX IP by Data Contributors, other than data from the marketplaces that are affiliates of TSX, must not be used without the permission of the Data Contributors; and
 - ii. Any additional product must be made available for purchase separately from, and not bundled with, the Consolidated Data Products or any other products approved under paragraph 5(a).
- (f) TSX, in its capacity as TMX IP, will not provide any of its affiliated entities with the data provided by the Data Contributors, other than the data from the marketplaces that are affiliates of TSX, without the permission of the Data Contributors.
- (g) TMX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an IP under NI 21-101, provided that TMX IP may perform normal course recycle, batch and maintenance operations. TMX IP will provide customer support between the hours of 7:30 — 17:30 Toronto time and 24/7 technical support.

6. AGREEMENTS WITH DATA CONTRIBUTORS

- (a) TMX IP will ensure that Data Contributors are given access to TMX IP on fair and reasonable terms.
- (b) The standard agreements and contracts to be entered into between TMX IP and Data Contributors in connection with TMX IP services will be provided to the Commission for review and approval prior to their execution.
- (c) Proposed material changes to agreements or contracts between TMX IP and Data Contributors will be provided to the Commission for review and approval,

7. FEES, FEE STRUCTURE AND REVENUE SHARING

- (a) TMX IP will make available, on its website, the fee schedule for TMX IP Consolidated Data Products.
- (b) If any adjustments or modifications are proposed to fees, fee structure, or the fee/revenue sharing model relating to the services of TMX IP, TMX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.
- (c) TMX IP will report annually, in writing, to the Commission whether it has fully recovered its costs (including cost of capital and cost to meet the requirements under subsections 14.4(2), (4), and (5) of NI 21-101) associated with offering TMX IP services and will review and report on whether the profit margin received from TMX IP services is in line with industry standards.
- (d) If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of TMX IP, the TMX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. TMX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to TMX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to the Commission within 30 days of the IP Governance Committee having received the analysis and recommendations.
- (e) TMX IP will conduct reviews of the "pass-through" fee model, as requested by the Commission (the **Review Initiation Date**). Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. TMX IP will ask the IP Governance Committee to review the report and provide its views, in writing, to TMX IP. The report and the views of the IP Governance Committee will be provided to the Commission within 90 days of the Review Initiation Date.

8. NON-EXCLUSIVITY

TMX IP acknowledges that the designation as an IP does not grant TMX IP any exclusive right to consolidating and disseminating order and trade data. TMX IP will not seek exclusivity through the terms of any contract relating to the Consolidated Data Products, or involving the data underlying the Consolidated Data Products, with a Data Contributor or Data Purchaser.

9. SELF-ASSESSMENT

- (a) TMX IP will conduct the annual independent system review referred to in section 14.5 of NI 21-101 and provide the report of such review to the Commission in accordance with the timelines set out in subsection 14.5(d) of NI 21-101.
- (b) TMX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4) and (5) of NI 21-101 and with its performance with respect to the terms and conditions of the Designation Order. The report of such self-assessment will be provided to the IP Governance Committee promptly upon its completion. TMX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to the Commission no later than 90 days after the end of TMX IP's fiscal year.

10. FINANCIAL VIABILITY

TMX Group Limited will provide TMX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

11. NOTICE

TMX IP must provide the Commission with at least one year's notice should it determine not to continue to act as an IP.

