INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÉRES

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July 18, 2011

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Dear Mr. Gilbert and Ms. Beaudoin:

Re: Comments on Proposed Amendments to TMX/The Bourse Rules 6 and 14

The Investment Industry Association of Canada (IIAC) and its members appreciate the opportunity to comment on TMX/The Bourse Circular 109-2011, *Request for comments – Reports related to the accumulation of positions for derivative instruments – Amendments to articles 6654 and 14102*, issued on June 16, 2011 regarding the Bourse Regulatory Division's (the Division's) Large Open Position Reporting (LOPR) requirements (the Circular). We have considered the proposed Rule 6 and 14 amendments from a public interest and market perspective, and from the point of view of clients, regulators and Approved Participants (APs). In light of the Division's request for such Personal Information as four digits of social insurance numbers (SINs), we have also reviewed the proposed changes in the context of Quebec's *An Act respecting the protection of personal information in the private sector*, the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), Quebec's Charter of Human Rights and Freedoms, as well as other provincial privacy legislation and, in the case of SINs, the federal *Income Tax Act* (ITA). Below is a summary of our member APs' views, on which we elaborate in Attachment 1.

- **Purpose:** We agree with the purpose of the amendments, although given that no evidence of abuse has been cited in the Circular or by Division staff, we believe it is better to take the time to implement a comprehensive and practical solution addressing the issues raised in our submission, rather than to introduce an incomplete solution in haste. We very much appreciate the Division's announcement of a delay in implementation, as issued on July 14 in Circular 125-2011, and look forward to continuing to work together to implement LOPR.

- **Confirmation that changes meet privacy principles:** We believe that the proposed amendments in the Circular have a much broader implication than understood as they effectively require the use of the SIN as a linking identifier between not just accounts of the same individual, but between that person's accounts and non-personal accounts, and then among such accounts of that individual at different financial institutions.

  This is a much broader linkage than we believe has been examined and accepted, in terms of the public interest or privacy principles, by the Commission de l'access à l'information (CAI) du Québec, the Office of the Privacy Commissioner of Canada (OPC) and their counterparts in different provinces. While the Division may not be a public body, it derives its authority from l'Autorité des marchés financiers (AMF), which is a public body according to the CAI website. We therefore ask the Division to request a review of the privacy issues by CAI and OPC, including discussion of whether there is a less privacy-intrusive way of achieving the same end, appropriateness of the data aggregation requested and the need for information accuracy. This is particularly important as we suspect it would be unlikely for a client to be aware of or understand the Rule changes' impact on their Personal Information and be able to comment on their own behalf.

- **Data protection confirmation required:** We agree that the proposed reporting mechanism is more secure than the current method. However, it must necessarily be considerably more secure given the requirement for additional client Personal Information, notably the last four digits of SINs, than provided before. We requested an agreed-upon AP-Division confidentiality agreement, access to the Bourse's technology policies and a review of the Bourse's CICA 5970/SAS 70, which we have not yet received. We believe from discussions with Bourse IT representatives that the mechanism and environment may not fully meet the information security standards of APs responsible for the majority of transactions on the Bourse. We would therefore appreciate the outcome of CAI and OPC privacy impact assessments (these can be found respectively at http://www.cai.gouv.qc.ca/06_documentation/01_pdf/cadre_reference.pdf and http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18308. We would also appreciate confirmation of the Bourse's liability if there were to be an inadvertent privacy breach while the Personal Information is within the Bourse's control.

- **Conditional acceptance only:** We understand the desire to move the specifics of reporting from the Rules from an efficiency perspective, but can only support this change if: (1) the Rules provides for meaningful before-the-fact consultation on any changes to the reporting of Personal Information, (2) the Bourse and Division website transparently link the relevant Rule with the instrument prescribing reporting and (3) the Division provides a website-accessible plain-language version of the prescribed reporting for investors explaining why the Division is requiring the data to be collected, used and disclosed, and how it is being stored, shared and disposed of once at the Bourse.

- **Need for change in daily reporting deadline:** In view of the overnight batch processing of those APs responsible for the majority of transactions, an 8:00 a.m. ET reporting deadline on the business day following trade date (T+1) is problematic and will remain so for the foreseeable future. We believe that the reporting cut-off must move from 8:00 a.m. ET on

the day following trade date (T+1) to the end of the business day on T+1 (or to 8:00 a.m. on T+2 if the Division wishes to avoid systems changes at this time).

- **Need for phase-in of other requirements:** While the intention to amend LOPR requirements was announced in April 2010, and additional technical detail was promised for September 2010, details on the GUI reporting option adopted by all APs of which we are aware was published only on March 11, 2011 (there were indications in January 2011 in the documentation for the SAIL option), followed by further amendments. Updates were announced on July 5, 2011 in Technical Notice 014-11 – two weeks before testing and three weeks before LOPR's stated implementation date – and these require further systems changes to and testing of the LOPR mechanism amid summer vacations. There are a number of as-yet-unanswered questions regarding privacy and other matters that affect a significant portion of APs by transaction volume. In light of this, aspects of the reporting requirements cannot be completed – or cannot be implemented to the degree with which our members would be comfortable – by July 25, 2011, although we understand that our member APs are proceeding where they can and are generally in the testing phase for the application itself.

  We appreciate the extension in the mandatory implementation date and hope that the effective date of the full Rule amendments mandating LOPR tool use can be pushed out, we believe, with data aggregation and other aspects, such as those where we require answers on privacy matters, being phased in over a reasonable time-frame that we can discuss with the Division. In particular, the aggregation of the information requested by LOPR is not required in any meaningful way for business or, until now (with a limited exception) for regulatory purposes. For weekly LOPR reporting to date, many of our members have been manually aggregating by beneficial owner. Although efforts to automate are proceeding as mentioned, most members do not yet have an effective systems solution in-house or through service providers to allow for daily aggregated T+1 reporting.

As section 21 of the Quebec *Derivatives Act* specifies that the Division must consider the costs that may result from its rules for APs and since there does not appear to be a manipulation problem that will not be caught by either moving the 8:00 a.m. T+1 reporting threshold or phasing in implementation, we believe that the above timing proposals are justified. Moreover, contrary to the perception that implementation problems are only being experienced by a small number of APs, a list of those firms that have asked, unusually, for their firm's names to be formally included with this letter (a large subset, but not all, of those IIAC members expressing worries in IIAC meetings on LOPR) shows that APs seriously concerned are those involved directly, or indirectly as clearing brokers on behalf of others, in what we believe are the majority of options trading on the Bourse.

In conclusion, we support the Division's efforts to monitor for abusive market trading, which is in the public interest of a well-functioning derivatives market. We believe it is reasonable to consider reporting along the lines of what is done in the United States, however, the size of the Canadian derivatives marketplace is considerably smaller than that south of the border, meaning that some differences can apply in the absence of major trading manipulation. We also believe that certain U.S. practices should be considered here, for example, aggregation at the trading agent rather than beneficial owner level, and continuation of the practice of the Division (as with its U.S. counterpart) contacting the AP if there are questions regarding holdings, activity or clients.

We hope that you find our comments helpful and would be pleased to elaborate on our issues at your convenience. We look forward to continuing to work with the Division on a successful implementation of LOPR.

Yours sincerely,

Marcel St. Amour
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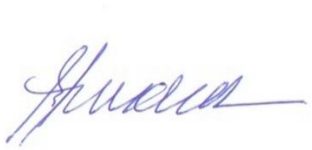

Cc: Mme. Jacinthe Bouffard, Directrice de la supervision des OAR, l'Autorité des marchés financiers (jacinthe.bouffard@lautorite.qc.ca)
Mme. Chantal Bernier, Assistant Privacy Commissioner, Office of the Privacy Commissioner of Canada (chantal.bernier@priv.gc.ca)
M. Jacques Tanguay, Vice-President, Regulatory Division (JTanguay@m-x.ca)

INVESTMENT INDUSTRY ASSOCIATION OF CANADA
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Background on IIAC Views on Proposed Amendments to TMX/The Bourse Rules 6 and 14

Note: We continue to address process and other LOPR project implementation issues in separate correspondence with the Bourse.

1. Confirmation that changes meet privacy principles

The Bourse has requested that firms provide additional account owner information, including a portion of clients' social insurance number (SIN) and account number. As, while the Bourse is located in Quebec, options and futures clients live across (and outside of) the country, we have considered the relevance of, as well discussed with and written to the Division regarding, the Division's request for such Personal Information in light of Quebec's *An Act respecting the protection of personal information in the private sector* (Quebec Privacy Legislation), the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), as well as provincial privacy legislation in Alberta and B.C., and, in the case of SINs, the federal *Income Tax Act* (ITA). Quebec privacy legislation defines personal information as "information concerning a natural person which allows the person to be identified…" We believe that we are in agreement with the Division that providing Personal Information such as a client's SIN or other individual number is information about a now identifiable individual that does not fit into one of the exemptions to the prohibition on releasing such information without a person's knowledge or informed consent in section 18 of the Quebec Privacy Legislation or in subsection 7(3) of PIPEDA.

In considering whether the wording of the Rule, which provides for the Bourse to require the last four digits of a SIN and account number, is appropriate, our attention was drawn to 2004 Office of the Privacy Commissioner of Canada (OPC) guidance on the subject, as well as to a ruling from the website of the OPC's counterpart, the Commission d'accès à l'information (CAI) (http://www.cai.gouv.qc.ca/index-en.html). It establishes that, while using SINs for other than authorized purposes is not *prohibited*, using a SIN, or indeed a part of a SIN, to link individuals is not *condoned* by the OPC. The Bourse's requirement therefore puts APs in an awkward position without guidance from privacy regulators, as we believe that the OPC's view applies whether the entity holding or receiving the Personal Information is a public or a private-sector entity.

In the case of public sector demands for Personal Information, it is a question of 'necessity' for federal entities, and there is a similar test used under Quebec Privacy Legislation and Quebec's Charter of Human Rights and Freedoms. The federal privacy commissioner uses four questions to assess 'necessity'

(http://www.priv.gc.ca/information/pub/gd_exp_201103_e.cfm#toc2a), and our view as to whether the proposed Rule changes meet these tests in the case of Personal Information and of the SIN, in particular, is provided after each question below:

1. ***Is the measure demonstrably necessary to meet a specific need?*** While there is a need to prevent and address potentially manipulative market behaviour, and we were advised that there is no evidence that there has been abusive activity, we accept that some form of LOPR reporting and monitoring is required in the current market environment. However, as discussed below, we do not believe that there has been a demonstration that four digits of a SIN are required for this reporting.

2. ***Is it likely to be effective in meeting that need?*** Partially. We believe that the use of SIN in aggregating information for LOPR will be only somewhat effective, as we suspect that abusive activity, should it arise, is likely to be enacted by sophisticated parties across multiple affiliates, names and identifying numbers. Operational concerns raised and the inability to cross-reference some client relationships will also limit the effectiveness of the initiative.

3. ***Is the loss of privacy proportional to the need?*** We do not think so. As noted above, we are not convinced that SINs will be effective in identifying potential abuse; we also have the following concerns regarding the proportionality of some of the possible outcomes on individuals' right to privacy.

    i. A LOPR submission time of 8:00 a.m. ET (5:00 a.m. PT) on the day following the trade (T+1) means the many firms using overnight batch processing for transactions and/or client name/address updates will, if an 8:00 a.m. ET time can be met at all, submit unreconciled data (with 'unreconciled' meaning transaction cancellations and corrections of inaccurate amounts and account numbers will not have been completed). This will result in the possible reporting of accounts that do not actually meet the reporting thresholds, leading to these accounts' holders' having their privacy breached by unnecessary reporting.

    ii. As holdings from joint accounts will be linked with holdings from individual accounts, there is a possibility that this linking could lead to inappropriate disclosure to one of the holders about the other's individual account (the LOPR requirements demand that holdings of an individual be linked with his or her holdings in a registered corporation or corporation owned exclusively by the individual, as well as those accounts in which he or she has a greater than 50% share (e.g., joint account, partnerships, investment clubs, registered entities other than corporations and corporations that are not 100% owned)).

    Another feature of the LOPR system – defaulting to a "speculator" designation when information is not available or cannot be known (e.g., when a retail client may use some option transactions to hedge and others to speculate), runs counter to the need for accuracy – one of the ten universal privacy and fair information practice principles of the Canadian Standards Association discussed in more detail below. We are persuaded that alternatives suggested in (4) below will make the risk of privacy loss more proportionate to the regulatory need without materially reducing the effectiveness of the reporting.

4. ***Is there a less privacy-invasive way of achieving the same end?*** Yes. As the Circular notes that alternatives have not been considered, we suggest the following ways that we believe will help mitigate privacy concerns. For example, the Bourse could:

   - Require aggregation by name and address including postal code, and then ask for additional information when needed as has been done for a number of years (there are 840,000 postal codes in Canada, which suggest 40 or so Canadians per postal code, and a relatively small number of possible aggregation questions for the Bourse);

   - Allow reports to be filed after review and correction of errors (e.g., by close of business rather than at 8:00 a.m. ET (5:00 a.m. in B.C.) on T+1;

   - Consider aggregation at the trading-agent rather than beneficial-owner level as we understand is done in the U.S., with follow-up contacts (as by the Division's U.S. counterpart) to the AP if there are questions regarding holdings, activity or clients.

In the case of private sector demands for Personal Information, requesting and using Personal Information is a question of receiving informed consent from the individual, which usually is obtained through the account-opening agreement with the client in the case of APs. The wording of account-opening agreements, which the Bourse reviewed as part of its due diligence, provides for information to be provided to regulators. When the account-opening documentation the Bourse reviewed was drafted, it was, among other things, to be consistent with a December 3, 2003 Joint Regulatory Notice on Federal and Provincial Privacy Legislation, to which the Bourse was party and which states that "Regulated Persons have obligations to produce or make available for inspection documents and information to SROs, *from time to time*, for regulatory purposes." (emphasis added).

Consistent with this apparent regulatory reference to infrequent and situation-specific delivery of Personal Information for regulatory purposes, we believe that clients expect their information to be transmitted on a periodic basis only in the case of, for example, audits, enforcement efforts or complaint resolution, rather than on a regular daily basis. We think that a client would be surprised to learn that values of his or her personal and non-personal accounts would be aggregated with values of third-party holders in an account majority-owned by the client, and then provided to regulators, possibly to be combined across financial intitutions, and when the APs that collected information from the client have concerns from an information security perspective.

The following are our specific areas of concern with our recommendations to address each. While some are beyond the wording of the Rule amendments, which remove specifics of the Personal Information to be transmitted and leave it to be prescribed, we believe that they each require resolution before the amendments to the Rules and/or the LOPR requirements are fully implemented.

- ***Privacy and account aggregation:*** The Bourse is effectively requiring the use of the SIN to link different types of holdings of individuals at an enterprise level (and with the stated intent of aggregating across APs) where personal and non-personal accounts are rarely if ever linked in the same relational database and, if so, not for regulatory

purposes. If one regulator may require use of the SIN, including reporting of the last four digits for administrative purposes in fulfilling a regulatory mandate, it would be a precedent for other regulators also requiring this for administrative purposes of regulation. If the precedent were used by securities regulators and then be used as a precedent more broadly, it would affect significantly more people than meeting Bourse requirements alone. An OPC publication, *Expectations: A Guide for Submitting Privacy Impact Assessments to the Office of the Privacy Commissioner of Canada*, emphasizes the importance of the right to privacy, saying:

> "The risks of certain government programs and initiatives should be measured and assessed in the context of their potential impact on our democratic society, our civil liberties, and our fundamental human right to privacy as recognized in Canadian law, including the *Privacy Act*, the *Canadian Charter of Rights and Freedoms*, and the case law interpreting them. The *Privacy Act* sets out fundamental rights of Canadians in their interactions with the federal state. The Supreme Court of Canada has recognized on numerous occasions that privacy interests are worthy of protection under the *Charter* and has further stated that the *Privacy Act* has quasi-constitutional status."

Quebec's Charter of Human Rights and Freedoms similarly provides for "Every person to have a right to respect for his private life", including in terms of relationships with government bodies and, we believe, the organizations that derive their authority from these entities.

- ***Accuracy:*** Quebec Privacy Legislation requires "*any file held on another person [to be] up to date and accurate when used to make a decision in relation to the person concerned*". The federal *Privacy Act* requires all government institutions subject to that legislation to take "all reasonable steps to ensure that personal information is as accurate, up-to-date and complete as possible". In some cases involving LOPR, accurate information cannot be provided, notably, in creating a requirement where unreconciled/ unaudited/uncorrected information will have to be provided to meet the 8:00 a.m. ET on T+1 deadline with the possibility of reporting client Personal Information where it is not required by the Rule, but as a result of operational issues (and the LOPR mechanism has no correction mechanism for later in the day). As well, and as noted above, the LOPR mechanism requires the AP to default to Speculator when information is not known or varies from transaction to transaction.

- ***Inability to provide:*** Reporting to be required under the Rules mandates four digits of a SIN, however, an AP has no legal requirement to, and therefore should not, collect the individual's SIN if a customer's account were not of a type that earns interest or there were not some other legitimate reason to obtain it. As well, there is no obligation for the individual to supply it. Even where the SIN is to be used for tax reporting purposes, an AP must provide clients with a convenient mechanism to withdraw consent to SIN use other than for tax purposes. In either case, the AP will not be able to report the last four digits of the SIN.

Recommendation 1: Please confirm that the Division's privacy-related need meets the expectations of the CAI and OPC and that these provisions are all completely in place at the Bourse before implementation of LOPR.

Recommendation 2: Please expand consultation on privacy and aggregation matters, which we believe is a matter of public interest. The change from ad hoc use of a small sample of information by a regulator to significantly more and more frequent aggregated information merits, we believe, more extensive discussion among privacy commissions, and possibly broader public consultation specifically on the use of SINs and other matters, which would not have been easily evident to an uninformed person reviewing the Circular.

Recommendation 3: Please ensure that "Not available (N/A)" is an option in the reporting for the Speculator/Hedger field and implementation of the Rule amendments should not proceed, or the field should not be mandatory, until this is addressed.

Recommendation 4: Please confirm that the prescribed reporting form and requirements will formally recognize that the last four digits of the SIN (or equivalent Personal Information) may not be provided for valid reasons.

2. Data protection confirmation required

Were a CAI privacy impact assessment done and/or an assessment under the federal Directive on Privacy Impact Assessment completed for LOPR Requirements, we believe that they would reveal the majority of risk areas identified would be material, or levels 3 or 4 of 4 levels in the case of the federal assessment, meaning the more likely it is that specific risk areas will need to be addressed in a more comprehensive manner, particularly in terms of data protection. Consistent with this, and in the absence of a signed confidentiality agreement with the Bourse that respects the Bourse's regulatory mandate and responsibilities as market regulator, we had requested and have not yet received limited access to Bourse information security policies or results of the Bourse's CICA 5970/SAS 70 audit of its internal controls to help ensure the ongoing privacy of Personal Information. We have been provided with the TMX Group Inc. Employee Code of Conduct, which is very thorough, however, our members believe that privacy legislation requires them to make every reasonable effort to ensure that collection, storage and destruction of Personal Information occurs to a very high standard. As recent cases attest, at least the OPC's findings generally are that the party that originally collected the Personal Information remains ultimately liable for its protection when under the auspices of others.

Recommendation 5: Please confirm that:

1. Bourse privacy-related information security protection measures – both systems and procedures – meet the expectations of the CAI and OPC from a data protection perspective given the heightened sensitivity of the increased Personal Information that the Bourse will receive and store; and

2. These provisions are all completely in place at the Bourse before implementation of LOPR.

Also, we would also appreciate confirmation of the Bourse's liability if there were to be an inadvertent privacy breach while the Personal Information is within the Bourse's control.

3. Conditional acceptance only of removing reporting provisions from Rule

- ***Consultation:*** The draft rule amendments, which remove detail of the Personal Information required up until now, would not provide for automatic formal discussion of any future changes in the reporting fields required for LOPR reporting, notably requests for additional Personal Information. The Division has advised that changes in prescribed reporting is a matter the Division will discuss with the Autorité des marchés financiers (AMF) and then determine if any change may be problematic, in which case consultation would be undertaken. We believe that it may not always be evident when a change will be problematic, whether from a legal standpoint (e.g., original proposal to use the full SIN) or technical perspective (e.g., the LOPR vehicle was designed for a two-digit country code whereas the industry mailing address standard, for the data used for LOPR, is three characters).

  Recommendation 6: Please add provision for before-the-fact (at the start of a project that may require systems changes) meaningful consultation, or at least a 30-day comment period requirement, to the Rule amendments or as a written, publicly available general policy. We believe that this would, at worst, delay process improvements by 30 days (trivial to the extent that we believe the Bourse has powers to address any immediate risks), while at best save regulators, APs and their service providers missteps and expense. Such consultation is also consistent with the *Governance Statement of the Autorité des marchés financiers* (http://www.lautorite.qc.ca/files/pdf/a-propos-autorite/codes-ethique-gouvernance/enonce-gouvern-an.pdf), including the organizational value of active listening to stakeholders and the governance principle of openness, which, we presume, would both apply equally to the self-regulatory organizations, such as the Bourse, that the AMF oversees.

- ***Transparency:*** Given the sensitivity of AP client Personal Information requested, we believe, as said in our May 5th meeting with the Bourse on confidentiality issues, that it is important that there be a Rule requiring the information to be provided; that the process leading to the new requirements be public and clear; and that information on the Personal Information to be required by APs be widely obtainable through the Bourse's website. If the required information on the form is to be "prescribed", it must be made clear what the evidence of "prescription" is – the circular with attached data points. It is important for our members' and their clients' purposes that there to be an explicit link or connection between the Rule and what is prescribed – including reference to the requirement for the last four digits of the SIN.

  Recommendation 7: We suggest that the Bourse and Division websites transparently hyperlink the Rule to the instrument prescribed under the Rule and that the Division provide a website-accessible plain-language version of the prescribed reporting under the Rule for investors explaining what the Personal Information requirements under LOPR are, why the Division is requiring the data to be collected, used and disclosed, and how it is being stored, shared and disposed of once at the Division.

4. Need for change in daily reporting deadline

LOPR files must be submitted to the Bourse by 8:00 a.m. ET on the date following the transaction (T+1). The majority of transactions and/or client name and address updates necessary for LOPR reporting are processed overnight in batch form and many of the APs will continue operating in this manner for all or part of their processing for the foreseeable future. As noted above, to meet an 8:00 a.m. ET deadline (5:00 a.m. PT) would generally require data to be provided by firms with volumes using batch processing to the Bourse in unreconciled form. This is contrary to privacy laws' accuracy principle.

Recommendation 8: We believe that the reporting cut-off must move from 8:00 a.m. on the day following trade date (T+1) to the end of the business day on T+1 (or to 8:00 a.m. on T+2 if the Bourse wishes to avoid systems changes at this time). Once the full process is implemented, the time could be moved to noon on T+1, however, we are not sure that this would result in a material increase in the Bourse's ability to detect and address possible abuses.

5. Need for phase-in of other requirements

The LOPR project was scheduled in April 2010 for implementation of the new reporting on July 25, 2011, and an August 2010 release said that technical detail was to be provided in September 2010. The specifications for the LOPR filing method that the majority of our members will use were not available until March 11, 2011 (there were indications in January 2011 in the documentation for the SAIL option), two months after the expected date promised in October 2010, and further material development and policy issues emerged. As could be expected, it was not always straightforward for the Division or APs to then immediately determine whether a change was possible or which approach would be preferable. We appreciate efforts on the Bourse's part to allow VPN access for the GUI LOPR filing option chosen, at least initially, by most, if not all, of our member APs.

As evidenced by correspondence between the Bourse and IIAC on behalf of its members, a number of items remain open at this late stage in the project lifecycle and a further Technical Notice 014-11, provided on July 5, 2011 by the Division, requires systems changes, re-installation of the GUI application and retesting, a process that for the larger APs usually requires a four-to-six week lead-time. The Circular does not specify an implementation date, which will depend on the self-certification process under section 24 of the Quebec *Derivatives Act*. We very much appreciate the July 14th announcement by the Division of a delay in implementation and hope to work co-operatively to discuss a timeline to work out effective delivery of the full reporting requirements. We are pleased that the Division will accept a best-efforts basis for some period of time that should allow, as privacy and other issues are addressed, a phase-in permitting APs and the Division to gain familiarity with the LOPR interface and address any remaining issues.

Recommendation 9: Please provide that the implementation date of relevant parts of Rule amendments and reporting will be after the noted LOPR requirements are confirmed or

amended to allow privacy and other requirements to be satisfied, as described above, and to ensure a certain smoothness in the transition to the new LOPR tool, as promised in Appendix A of the Circular for reasons elaborated on below.

- ***Systems and procedural readiness:*** There has not been a need to collect some of the data required (Speculator or Hedger for options trading), and in retail accounts, as mentioned, the answer may differ as a client may use options to hedge or to speculate. Where data may exist (e.g., joint account percentage ownership), it would be highly unlikely for it to be stored in a relational database format for easy use as the business reasons to link these accounts are more for service, than regulatory (except in limited circumstances) or transaction, purposes. Also, it is our understanding that similar aggregation requirements in the U.S. are required by control or order placer, and not by beneficial owner, which is more difficult and expands the number of parties regarding whom data is required to be collected, linked and reported.

  For these reasons, significant manual AP work will be required to obtain certain missing information; to develop or have service providers develop systems logic to match beneficial owners, link registered companies, replace a business or incorporation number or other identifier with the last four SIN digits for sole proprietorships and build other data relationships; and complete fields that currently do not exist. While on average a small number of positions per day per AP may be being reported, thousands of accounts will have to be identified and searched for available additional information that may be in different parts of the AP or not exist at all.

- ***Omnibus accounts:*** We understand that there are still questions regarding reporting of or for omnibus accounts.

- ***Future changes:*** We understand that future changes to LOPR are being planned. It is important for the industry to know what the proposed changes are and when they are scheduled to allow for the most reasonable implementation. Section 21 of the Quebec *Derivatives Act* states that, "In establishing its rules, the entity [the Bourse] must consider the costs to its members and to market participants that may result from their application." Our members and the service providers of those using such entities continue to look at what work-arounds or practical steps will most cost-efficiently achieve Division requirement. They will continue to discuss alternatives with the Division, however, these decisions may be affected by changes the Division wishes to make in future.

Recommendation 10: We recommend phased implementation and note that a phased bring-on strategy is frequently used to reduce implementation risk and better manage the roll-out of new requirements. We believe that this is reasonable as there are no indications that there is a history of unfair practices. The timetable that we propose would be somewhat delayed from that proposed to the Division on May 20 due to June discussions with the OPC, which we believe confirmed that filing unreconciled data or data defaulting to an answer that has not or cannot be confirmed with the option-holder is contrary to privacy legislation.

Attachment 2

APs Wishing to Be Formally Identified as Having Concerns with LOPR Implementation

BMO Nesbitt Burns Inc.

CIBC World Markets Inc.

Desjardins Securities Inc.

Fidelity Clearing Canada ULC

Friedberg Mercantile Group Ltd.

Fraser Mackenzie Limited*

GMP Securities L.P.

MacDougall, MacDougall & McTier Inc.

Mackie Research Capital

National Bank Financial Inc.

NBCN*

Penson Financial Services Canada Inc.

Raymond James Ltd.

RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

TD Waterhouse Canada Inc.

** Not an AP, however, concerned with clients' privacy*