

TSX INC. AND TSX VENTURE EXCHANGE INC.

REQUEST FOR COMMENTS

TSX Inc. (“**TSX**”) and TSX Venture Exchange Inc. (“**TSXV**”, and together with TSX, the “**Exchanges**” or “**we**”) are publishing a Request for Comments relating to the Exchanges’ current obligations to publicly disseminate an insider trading marker summary report on an end-of-day basis.

Market participants are invited to provide comments on a number of specific questions set out below. Comments should be in writing and delivered by January 31, 2017 to:

Carina Kwan
Legal Counsel, Regulatory Affairs (Equity Trading)
TMX Group
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Email: tsxrequestforcomments@tsx.com

Comments will be made publicly available unless confidentiality is requested.

Introduction

On September 8, 2006, the Ontario Securities Commission, Alberta Securities Commission, and British Columbia Securities Commission (collectively, the “**Securities Regulators**”) issued decisions that require TSX and TSXV to use reasonable commercial efforts to publicly disseminate a consolidation of all trades that have an insider trading marker, on a per security basis, in summary form at the end of each trading day (the “**Required Insider Reports**”).

The decisions of the Securities Regulators will be collectively referred to as the “**Orders**” and are attached at Appendix “A”.

TSX and TSXV have been made aware of potential market integrity issues arising from the requirement to provide the Required Insider Reports. The Exchanges raised these concerns with the Securities Regulators and were subsequently asked to publish for comment a notice on the issues raised and potential solutions. The Exchanges are therefore publishing this Request for Comments to solicit public feedback on whether the purpose of the Required Insider Reports remain relevant today and whether there is any negative impact to producing the Required Insider Reports that would justify changing or removing the requirement to provide them.

Based on this feedback, TSX and TSXV will consider the appropriate course of action. This may include:

- a) seeking a variation of the Orders to change the manner in which the Required Insider Reports are delivered;
- b) seeking a revocation of the Orders to remove the Insider Report requirement entirely; or
- c) any other course of action that may be appropriate.

In determining our next steps, we will appropriately weigh any public benefits derived from the Required Insider Reports against the potential harms to certain market participants and market integrity.

Background

In November 2003, an insider trading task force (“**ITTF**”) comprised of the Securities Regulators along with other regulatory authorities responsible for regulating insider trading, published a report titled “*Illegal Insider Trading in Canada: Recommendations on Prevention, Detection and Deterrence*” (“**ITTF Report**”). In

discussing the need to reduce the risk of illegal insider trading occurring, the ITTF Report recommended, among other things, that all trades that have insider markers be disclosed in real time to the public.¹ This recommendation was intended to address the issue that insiders could potentially trade on information that may not necessarily meet the definitions of a “material fact” or a “material change” with respect to an issuer, such that it may not trigger certain obligations under securities law, but is arguably material information for investors that may not be generally disclosed. Accordingly, the ITTF Report recommended the disclosure of insider trades on a real time basis to level the playing field in respect of trading information that may be material to investors. We understand that the Orders were effected in response to this recommendation.

National Instrument 55-104 *Insider Reporting Requirements and Exemptions* requires a reporting insider to file an insider report within ten (10) days of becoming a reporting insider, and to file a subsequent report within five (5) days of a change in the reporting insider’s holdings. These reports are publicly available through the System for Electronic Disclosure by Insiders (**SEDI**). The policy rationale behind these requirements is to deter improper insider trading based on material undisclosed information and to increase market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and by inference, the insiders’ views of the issuer’s prospects.²

Members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are required to apply an insider marker to an order entered on an equity marketplace in Canada if the order is for the account of a person who is an insider of the issuer of the security.³ This marker is not publicly displayed on the order.⁴ As a result, and because the Orders are only applicable to TSX and TSXV, we are not aware of any similar insider information being publicly disseminated on an end-of-day basis by other Canadian marketplaces despite trades by insiders being effected on those markets.

Summary of Issues

Timing of Publication

We have received complaints about the Required Insider Reports from investors that hold more than 10% of a TSX- or TSXV-listed security (a “large securityholder”), and are therefore reporting insiders under securities law. The complaints originate primarily from institutional investors who have expressed their concerns to us directly and indirectly through our Participating Organizations. These investors believe that the publication of the Required Insider Reports on trade day releases information that other market participants can use and trade on, thereby negatively impacting subsequent trading by the institutional investor and potentially increasing market impact costs.

The Required Insider Reports provide same day information on the amount of trading by insiders, including large securityholders, on an aggregated and anonymous basis. Specifically, the Required Insider Reports provide, by security: volume, value, and number of trades; grouped by “buys” and “sells”. There is a potential that, with this knowledge, coupled with the public information that discloses the identity of large securityholders of a reporting issuer, sophisticated market participants are in a position to use the Required Insider Reports to deduce that a large securityholder may be changing its holdings in a particular security. The market participant could then use this educated guess, based on information from the Required Insider

¹ Recommendation #11, [Illegal Insider Trading in Canada: Recommendations on Prevention, Detection and Deterrence](#) (November 2003) at page 20.

² Companion Policy 55-104CP – *Insider Reporting Requirements and Exemptions*, s. 1.3.

³ Universal Market Integrity Rules (UMIR), 6.2(1)(b)(xiv).

⁴ UMIR, 6.2(6)(b).

Report, to trade ahead of the large securityholder in subsequent days, hoping to profit from a future move in the direction the large securityholder is transacting.

We note that a potential solution to the issues identified above is to delay the publication of the Required Insider Reports. It has been suggested that large position changes by large securityholders can often be achieved over the course of a few trading days. By publishing the Required Insider Reports with an appropriate delay (e.g., three days), large securityholders such as institutional investors will have the opportunity to divest or increase their large positions with less market impact.

With respect to instances of potential illegal insider trading, our understanding is that producing the Required Insider Reports on a delayed basis would not impact the manner in which insider trading investigations are currently performed by regulators. We also question whether the production of aggregated insider trading information in near real time serves to level the playing field between insiders and non-insiders, as was surmised in the ITTF Report.

Question 1: Are the Required Insider Reports useful for investors? If so, please explain why they are useful and how the Required Insider Reports are used.

Question 2: Does the public dissemination of the Required Insider Reports on an end-of-day basis result in the potential harms to large securityholders of issuers identified above? Are there other concerns and issues we have not identified?

Question 3: Should information regarding trading by insiders continue to be provided through the Required Insider Reports on a more timely basis than is currently publicly available through SEDI? If it should be delayed from the current end-of-day reporting, what length of delay is appropriate to balance between any benefits and issues associated with the current end-of-day reporting? For example, would delaying publication until T+3 achieve that balance?

Content of Required Insider Reports

The Required Insider Reports contain data derived solely from trading that occurs on TSX or TSXV and do not capture data from trades that occur on any other exchange or ATS in Canada. We note that while Canada has become a multi-marketplace environment for equities since the time of the publication of the ITTF Report, TSX and TSXV are the only Canadian marketplaces that are required to produce the Required Insider Reports. Potentially, this may cause insiders to send their orders to other Canadian marketplaces that do not publish insider trades or to the US for execution in the case of interlisted securities. As a result, the Required Insider Reports produced in this context do not provide a full picture of trading equity securities by insiders in Canada.

For information to be accurate and complete for public consumption, we believe that any insider trading report should contain information that is derived from order and trade data on all marketplaces that trade Canadian equities. Otherwise, there is a risk that the Required Insider Reports could be incomplete and potentially misleading. To achieve this outcome, it may be more appropriate and efficient for a market-wide report to be created and published by a regulator rather than to require each individual marketplace to produce its own report that must then each be consumed and consolidated by interested parties.

Question 4: If the Required Insider Reports are considered to be valuable to the public, do you agree that similar information should also be made available from all marketplaces? How would this be best achieved? Is there a benefit to having the information be provided on a consolidated basis?

APPENDIX "A"

ORDERS

(attached)

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990,
CHAPTER S.5, AS AMENDED (Act)**

AND

**IN THE MATTER OF
TSX INC.**

DECISION

Section 21(5) of the Act

1. In September 2002, a task force was established by the Ontario, British Columbia and Alberta Securities Commissions, the Commission des valeurs mobilières du Québec, the Investment Dealers Association of Canada, the Bourse de Montréal and Market Regulation Services Inc. to evaluate how best to address illegal insider trading in the Canadian capital markets (Insider Trading Task Force).
2. The Insider Trading Task Force released a report in November 2003 outlining a series of recommendations. One recommendation dealt with the disclosure to the public of trades that are marked for the account of an insider of an issuer of a security (insider trading marker). Currently, the insider trading marker is available for regulatory purposes but is not disclosed to the public.
3. To implement this recommendation, the Insider Trading Task Force members asked TSX Inc. (TSX) to consolidate on a per security basis all trades on Toronto Stock Exchange that have an insider trading marker and publicly disseminate the information in summary form at the end of the day.
4. The Commission believes it is in the public interest for TSX to publish an end of day summary of trades with an insider trading marker.

Citation: (2006) 29 OSCB 7392

IT IS THE DECISION of the Commission, pursuant to subsection 21(5) of the Act, that TSX shall use reasonable commercial efforts to consolidate on a per security basis all trades on Toronto Stock Exchange that have an insider trading marker and publicly disseminate the information in summary form at the end of the day.

DATED this 8th day of September, 2006.

"Paul M. Moore"

"Suresh Thakrar"

2006 BCSECCOM 544

COR#06/083

Order

TSX Venture Exchange Inc. (TSX-V)

Section 27 of the *Securities Act*, RSBC 1996, c. 418

Background

In September 2002, a task force was established by the Ontario, British Columbia and Alberta Securities Commissions, the former Commission des valeurs mobilières du Québec, the Investment Dealers Association of Canada, the Bourse de Montréal and Market Regulation Services Inc. to evaluate how best to address illegal insider trading in the Canadian capital markets (Insider Trading Task Force).

A recommendation of the Task Force's November 2003 report was that Market Regulation Services Inc. amend the Universal Market Integrity Rules to permit trades that are marked for the account of an insider of an issuer (insider trading marker) to be disclosed to the public in real time.

To implement the recommendation, the Task Force asked the TSX-V to publicly disseminate a consolidation of all trades on the TSX-V that have an insider-trading marker, on a per security basis, in summary form at the end of each trading day.

The Commission considers it in the public interest to direct the TSX-V to publish an end of day summary of trades with an insider trading marker.

Order

Considering that it is in the public interest, the Commission orders under section 27 that the TSX-V must use reasonable commercial efforts to publicly disseminate a consolidation of all trades on the TSX-V that have an insider-trading marker, on a per security basis, in summary form at the end of each trading day.

September 8, 2006

Douglas M. Hyndman
Chair

Alberta Securities Commission (the Commission)

In the Matter of the *Securities Act*,
R.S.A. 2000, c. S-4 (the Act)

and

In the Matter of TSX Venture Exchange Inc.

ORDER
(Section 63(4) of the Act)

Background

1. The TSX Venture Exchange is recognized as an exchange in Alberta under subsection 62(2) of the Act pursuant to an order granted by the Commission on August 12, 2005.
2. In September 2002, a task force was established by the Ontario, British Columbia and Alberta Securities Commissions, the Commission des valeurs mobilières du Québec, the Investment Dealers Association of Canada, the Bourse de Montréal and Market Regulation Services Inc. to evaluate how best to address illegal insider trading in Canadian capital markets (Insider Trading Task Force).
3. The Insider Trading Task Force released a report in November 2003 outlining a series of recommendations. Recommendation 11 of the report dealt with the disclosure to the public of trades that are marked for the account of an insider of an issuer of a security (insider-trading marker). Currently, the insider-trading marker is available for regulatory purposes but is not disclosed to the public.
4. To implement Recommendation 11, the Insider Trading Task Force asked the TSX Venture Exchange Inc. (TSX-V) to publicly disseminate a consolidation of all trades on the TSX-V that have an insider-trading marker, on a per security basis, in summary form at the end of each trading day.

Decision

5. The Commission, considering that it is in the public interest to do so, orders under subsection 63(4) of the Act that the TSX-V shall use reasonable commercial efforts to publicly disseminate a consolidation of all trades on the TSX-V that have an insider-trading marker, on a per security basis, in summary form at the end of each trading day.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission