

February 15, 2017

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

Dear Ms. Kwan,

Re: TSX Inc. and TSX Venture Exchange Inc. - Request for Comments – Required Insider Reports

Manulife Asset Management Limited is pleased to have the opportunity to provide comments on the TSX Inc.'s and TSX Venture Exchange Inc.'s (collectively, the “**Exchanges**”) Request for Comments on the proposed changes under consideration to the Required Insider Trading Reports (the “**Proposed Amendments**”).

Capitalized terms used in this letter but not defined here have the same meaning given to them in the Proposed Amendments.

About Us

Founded in 1949, Manulife Asset Management Limited (“**MAML**”) provides a range of investment fund products and a range of services including acting as portfolio manager and investment fund manager. These products and services may be provided in the name of MAML, and/or one or more of its divisional trade names for external clients, including Manulife Asset Management and Manulife Investments.

Manulife Asset Management entities provide comprehensive asset management solutions for institutional investors and investment funds in key markets around the world. This investment expertise extends across a broad range of public, private, and alternative asset classes, as well as asset allocation solutions. Manulife Asset Management has offices with full investment capabilities in the United States, Canada, the United Kingdom, Japan, Hong Kong, Singapore, Taiwan, Indonesia, Thailand, Vietnam, Malaysia, and the Philippines. In addition, it has a joint venture asset management business in China, Manulife TEDA. It also has operations in Australia, New Zealand and Brazil. As at September 30, 2016, assets under management for Manulife Asset Management were approximately C\$450 billion.

Manulife Investments, a division of Manulife Asset Management Limited, builds on 125 years of Manulife's wealth and investment management expertise in managing assets for Canadian investors. As one of Canada's leading integrated financial services providers, Manulife Investments offers a variety of products and services including mutual funds, non-redeemable

investment funds and structured products, and separately offers banking and insurance products through its affiliates. As of September 30, 2016, Canadian mutual fund assets for Manulife Investments were approximately C\$49 billion.

General Observations

We commend the Exchanges for being willing to re-examine the current utility of "...the Required Insider Reports against the potential harms to certain market participants and market integrity".

We also commend the Exchanges on their open-mindedness to consider a range of possible outcomes following their re-examination, including potentially seeking to vary or revoke the "...Orders to remove the Insider Report requirement entirely".

While we respectfully defer to the Exchanges' further study of the current utility of these reports to other Market Participants, we are writing to express our concern regarding the potential harm the Required Insider Reports can cause our retail and institutional investors, directly and indirectly, including through our investment funds, as well as to share ideas on potential solutions.

We confirm we would not object if this Insider Report requirement were revoked entirely.

We are grateful to the Exchanges for their recognition of the complaints received about the reports, which were described by the Exchanges as follows in the Proposed Amendments:

"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 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 trust the Exchanges fully appreciate that increased market impact costs, on an ongoing basis, can materially impair the investment returns our clients receive, which can in turn meaningfully impact their retirements and/or other investment objectives. We also trust the Exchanges fully appreciate that many of regulated products we portfolio manage, such as mutual funds, require us to provide more detailed and frequent continuous disclosure on portfolio holdings at a fund level,

and thereby increases the risk of a sophisticated market participant seeking to use the Required Insider Reports to trade against us.

For greater certainty, as an asset manager, we most commonly are only deemed to be an “insider” of an issuer as defined by ss. 1(1) of the *Securities Act Ontario*), because the sizeable assets in the investment funds and managed accounts we have been entrusted with give us:

“...a combination of beneficial ownership of, and control or direction over, directly or indirectly, securities of a reporting issuer carrying more than 10 per cent of the voting rights attached to all the reporting issuer’s outstanding voting securities...”

In other words, our “insider” status is generally only a reflection of the aggregate assets we portfolio manage on behalf of our clients which cumulatively add to more than 10% of any issuer, and not because of any knowledge of any material non-public information (“MNPI”) about the issuer, or any other ‘special relationship’ with the issuer.¹ Of course, to the extent we do have MNPI about an issuer, we are generally prohibited from trading in that issuer.²

We believe many of our “insider” trades are not driven by changes in our views on a particular issuer, or based on changes relating to the issuer, but rather are in response to our client asset inflows and outflows in the many accounts and funds we portfolio manage.

For example, as new and existing investors provide daily new capital to our Canadian equity mutual funds, we need to deploy those newly invested dollars in a timely manner so as to minimize performance ‘cash drag’, and commonly allocate those new subscriptions to issuers in line with our target weightings to each holding in the fund (our Canadian equity index mandates would of course passively seek to deploy the capital in line with their index). To the extent the fund holds issuers that we are deemed to be an “insider” of due merely to aggregate ownership, those issuers would similarly receive an allocation.

To the extent our insider trades are instead being driven by our own proprietary valuation targets for the issuer being achieved, we believe it unfair that other sophisticated market participants can use the Reports to seek to emulate our trading strategies, and/or trade ahead of us.

As further context, substantially all of our investments in reporting issuers are on behalf of regulated funds, such as mutual funds and segregated funds, as well as pension plans, all of which are subject to strict concentration and control limits.³ None of our mandates contemplate seeking to take-over, acquire or re-organize a reporting issuer.

Accordingly, as elaborated further below, we typically qualify as an “eligible institutional investor”, as defined in National Instrument 62-103, *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*, and are therefore generally subject to lesser insider and early warning reporting requirements.

¹ By “special relationship”, we include the full range of such relationships as set out in the definition “person or company in a special relationship with an issuer” set out in ss. 76(5) of the *Securities Act (Ontario)* (“OSA”).

² For some examples of the few exceptions to this general prohibition, see OSA s.175.

³ For example, see the 10% limits on mutual funds set out in s. 2.1 and 2.2 of National Instrument 81-102, *Investment Funds*.

As explained below, we believe NI 62-103 may provide inspiration for other alternative potential solutions, in addition to those contemplated by the Exchanges.

We turn now to the Exchanges' specific questions in the request for comments, which have reproduced in bold for ease of review.

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.

Manulife AM Comment: We have no comment on the utility of the Required Insider Reports to all investor types, but encourage further re-examination of the Reports relative to other insider and early warning reporting obligations.

Again, we confirm we would not object if this Insider Report requirement were revoked entirely.

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?

Manulife AM Comment: Yes – the public dissemination of the Required Insider Reports on an end-of-day can and is believed to result in potential harm to large securityholders, inclusive of our many retail and institutional clients in investment funds and managed accounts.

As described above, as a portfolio manager of regulated funds, we believe our clients may be particularly at risk of harm, as we are required to provide continuous disclosure of funds holdings (albeit on stale basis), thereby providing sophisticated traders an additional means of guessing the probability that it is us trading in the issuer.

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?

Manulife AM Comment: We would welcome as an improvement the Exchanges' potential delay solution in the Proposed Amendments, which read:

"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 [Insider Trading Task Force] Report.”

While a three-day delay would be a welcome improvement, we trust the Exchanges will understand that length of delay may not always sufficiently protect institutional investors like us from the risk of front-running by others, and will depend on factors including but not limited to the amount of shares needed to be traded and the liquidity of the particular issuer. In other words, a larger and/or less liquid position to be traded may take longer to complete.

One alternative potential solution, drawing inspiration from NI 62-103, may be to:

- separate out the insider trades of non-disqualified “eligible institutional investors” from other insider trades; and
- only provide a summary report on the insider trades of non-disqualified eligible institutional investors once a month, 10 calendar days following the end of the month in which the insider trades occurred.

Our assumption is that this longer delay would generally prevent the likelihood of others using the Report to trade against non-disqualified eligible institutional investors like us. As this longer delay is consistent with insider reporting principles under NI 62-103, we are hopeful it may be acceptable to securities regulators.

To elaborate, insiders acquiring 10% or more of an issuer that do not qualify as “eligible institutional investors”, are generally subject to reporting obligations within 10 days of becoming an insider.⁴ Subsequent reporting obligations regarding changes can be due within as little as 5 calendar days.⁵ These same insiders would be subject to early warning press release and potentially other reporting requirements.

By contrast, non-disqualified eligible institutional investors, who are investing ‘passively’ in the sense of not seeking to take-over or re-organize the issuer, are relieved by s. 9.1 of NI 62-103 from the insider reporting requirements, on conditions including complying with the early warning reporting requirements under the alternative monthly reporting system.

That alternative system does not require any press release for non-disqualified eligible institutional investors, and only requires reports within 10 days *following the end of the month* in which a filing requirement is initially triggered, and similarly for when there are significant changes in ownership (i.e., increases or decreases of 2.5% or more).⁶

As more fully particularized in s. 4.2 of NI 62-103, an eligible institutional investor becomes disqualified from using the alternative monthly reporting system if they alone, or together with a “joint actor”, intends to make a formal bid for an issuer, or proposes or solicits proxies for a purpose that will result in the investor alone or with a joint actor acquiring control over all or part

⁴ As per s.107 of the OSA or under National Instrument 55-104, *Insider Reporting Requirement and Exemptions*. 10-day requirement in NI 55-104, s. 3.2.

⁵ 5-day requirement per NI 55-104, s. 3.3; Ontario’s 10-day change requirement is set out in OSA ss. 107(2).

⁶ NI 62-103, Part 4.

of the reporting issuer. Once disqualified, press release and other requirements apply on immediately to two day timelines.

We believe NI 62-103 wisely puts lesser reporting obligations on non-disqualified eligible institutional investors, as their trades are less meaningful to the marketplace, relative trades by insiders with a more 'activist' intent (i.e., to take over, etc.).

As noted above, many insider trades by institutional investors like us would normally be of lesser relevance to markets, as they often are based on capital inflows and outflows, rather than any change in sentiment on the issuer.

Accordingly, reducing the frequency by which such trades are summarized in the Required Insider Reports might not only better help protect from the front-running described above, but may also benefit users of the Reports by allowing them to better see only other types of insider trades that may have greater meaning to them (e.g., non-institutional trades, and institutional trades by those that intend to make a formal bid, propose an amalgamation or reorganization, etc.).

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?

Manulife AM Comment: If the Exchanges' conclusion is that the Required Insider Reports remain sufficiently valuable to the public, then we would agree similar information should be made available from all other Canadian marketplaces. We defer to others on how to best achieve this consolidation, and while we presume there is a benefit to consolidated reporting, encourage those benefits be weighed against any associated costs.

We thank you for your consideration of our comments and welcome your inquiries, which can be directed to our firm's General Counsel, Warren Rudick at Warren_Rudick@manulife.com or (416) 852-5338.

Yours very truly,

Manulife Asset Management Limited



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