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

Re: Exchanges' Request for Comments on Required Insider Reports

The Portfolio Management Association of Canada (“**PMAC**”), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to provide comments on the Request for Comments from TSX Inc. and TSX Venture Exchange Inc. (the “**Exchanges**”) with respect to Required Insider Reports (the “**Reports**”). Capitalized terms used in this letter but not defined here have the same meaning given to them in the Consultation.

PMAC thanks the Exchanges for considering and raising the feedback they received with respect to the Reports to the Securities Regulators and for engaging in this public consultation on the continued utility of the Reports, concerns raised and potential solutions to these concerns.

Overview

PMAC represents investment management firms registered to do business in Canada as portfolio managers. PMAC members encompass both large and small firms managing total assets in excess of \$1.5 trillion for institutional and private client portfolios¹. PMAC advocates for the highest standard of unbiased portfolio management in the interest of the investors served by our members.

PMAC members share the concerns noted by the Exchanges in the Request for Comments around the potential market integrity issues raised by the Reports. PMAC appreciates the Exchanges' consultation around appropriate courses of action that could appropriately balance any public benefits derived from the Reports against potential harms to the integrity of the Canadian capital markets, to certain market participants and, ultimately, negative impacts on end investors.

PMAC supports measures that protect the integrity and transparency of the Canadian capital markets while ensuring that investor returns are protected from the risk of unnecessary erosion through increased market costs arising out of the manipulation of information in the Reports. This is especially true where alternative reporting methods may otherwise achieve the same policy objective.

Background

As portfolio managers, PMAC members are most commonly “insiders” as a result of their aggregate ownership of assets managed on behalf of their investors amounting to 10% or greater of a

¹ Many of PMAC's members are also registered as investment fund managers that offer a variety of investment products to institutional investors and private clients. For more information about PMAC and our mandate, please visit our website at: www.portfoliomanagement.org.

reporting issuer's voting securities, as opposed to by virtue of being in possession of any material non-public information or being in a "special relationship" with the issuer and which would give rise to trading prohibitions.

We believe that this is an important distinction in that the information regarding trades by insiders such as asset managers in the Reports may be of different utility and subject to different uses than information provided by other types of insiders. It is based on this distinction that we propose the potential solution to certain concerns arising out of the Reports below.

We understand that the genesis of these Reports over a decade ago was the need for additional information to reduce the risk of illegal insider trading and to provide arguably material information to investors that would not otherwise trigger disclosure obligations under securities law. PMAC is supportive of measures that promote transparency, information sharing and that protect the integrity of the Canadian capital markets. We understand that there has been an expansion and maturation of the insider reporting regime since 2006, such that we wonder if the disclosure gap has narrowed to the point where the Reports are still providing investors with useful information that has not been disclosed. While PMAC is not in a position to evaluate the general usefulness of the Reports to investors, we wonder whether the Reports could be filed directly with the Regulators without being made immediately publicly available while still fulfilling their original policy objective and meeting information transparency benefits.

Beyond concerns around the ability of sophisticated market participants to use the Reports to "front-run" trades by insiders, PMAC has questions about the utility of certain information in the Reports to the market and, ultimately, has concerns about potential adverse impacts on end investors and their ability to realize their savings objectives.

Exchanges' Questions

For ease of reference, PMAC has responded to each of the questions posed by the Exchanges in turn below.

1. Are the Required Insider Reports useful for investors?

PMAC is not in a position to comment as to the general utility of the Reports to investors. Our members are also investors and, while we have not asked each of our members about the utility of the Reports from their perspective as investors, we have sampled a limited number of our membership who were unanimous in replying that they do not use the Reports for any purpose. Were the Exchanges and the Securities Regulators to determine that these Reports are not useful to investors nor required to be publicly disseminated at all or as frequently, PMAC would be supportive of discontinuing these Reports in their current form.

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

PMAC believes there may be valid concerns about the public dissemination of the Reports on an end-of-day basis and our members have identified certain other issues and concerns for the Exchanges to consider.

Our members feel there may be valid concerns about the possibility of sophisticated market participants being able to use the Reports, in conjunction with other publicly disclosed information, to trade ahead of insiders over a few days' time in the hopes of leveraging off of the insider's decision to purchase or dispose of securities. This concern is pronounced for members who act as portfolio managers of public funds and who have continuous public disclosure records that can assist sophisticated parties in guessing at which insider is making a trade.

Beyond concerns around front-running in unfair reliance on an insider firm's proprietary valuation model, however, is whether the information in the Reports is indicative of a firm's sentiment about a security when that insider is an asset manager. Of note on this point is that trading decisions made by our members with respect to securities of an issuer of whom they are insiders can be driven by factors that are *not* rooted in a change in the firm's views of the merits of a particular issuer. For example, asset managers will often make trading decisions based on the flow of client assets in the accounts and assets under the purview of the portfolio manager. For this reason, putting the information in the Reports into the market as indicative of a change in insider sentiment may be misleading and/or of limited utility.

Crucially, in the asset manager context, PMAC has concerns that the potential for the Reports to be used by market participants to increase market impact costs can negatively impact the investors on whose behalf our firms hold these securities in the aggregate through investment funds and managed accounts. PMAC believes that both retail and institutional investors may be adversely affected by increased market impact costs which can, over the long term, significantly impact the investment returns that firms' clients are able to realize. These costs adversely affect clients' retirement savings and other investment savings objectives in a way that is not beneficial to Canadians or to our capital markets.

- 3. Should information regarding trading by insiders continue to be provided through the 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 end-of day reporting? For example, would delaying publication until T+3 achieve that balance?*

Based on the information available to us, we believe that a delay in the public dissemination of the Reports until T+3 would be preferable to the end-of-day dissemination.

However, depending on the liquidity of a particular issuer and/or the size of the position that the insider is seeking to change, three days may not always provide sufficient time to allow for the insider to move its position without permitting other participants to front-run those trades and/or to generate market impact costs to the detriment of investors.

Proposed Solution

Based on the important distinction that PMAC sees between insiders by virtue of their aggregate holdings, as opposed to insiders with material non-public information and/or insiders who make or intend to make a bid for the issuer, propose a reorganization or merger etc. of the issuer or solicit proxies from the issuer², PMAC believes that certain insiders filing the Reports could be treated in a manner analogous to certain insiders filing insider reports under the Alternative Monthly Reporting System ("**AMR**") under National Instrument 62-103 – The Early Warning System and Related Take-Over Bid and Insider Reporting Issues ("**NI 62-103**").

NI 62-103 has established the concept of an "eligible institutional investor" ("**EII**") and permits such EIIs (provided they are not disqualified under Section 4.2 of the instrument) to file less frequent insider reports in comparison to insiders who do not meet the EII definition and whose trading may therefore be more germane to disseminate to the public via press release and expedited filings. We believe that Reports for the equivalent of non-disqualified EIIs should be permitted to be filed within 10 days after the end of the month in which the trade took place.

NI 62-103 has the benefit of being an established national instrument on which market participants and regulators have recently consulted and whose regime they are accustomed to complying with.

Were the Reports to be modified and their continued public dissemination determined to be beneficial, PMAC believes that aligning the policy rationales and existing regulatory filing timelines

² All as further set out in Section 4.2 of NI 62-103.

of the Reports with the AMR would be a good approach. There would be an intellectual consistency if the information in the Reports from insiders who are not disqualified EIIs were to be treated similar to that of EIIs permitted to file under AMR, as we believe that Reports from insiders by virtue of aggregated holdings only contain information that is of less value to the market in general and therefore is of less urgency to be disseminated. Once disqualified for any reason from being an EII, an insider would then have to file Reports on an end-of-day basis for that issuer.

We believe that this approach could provide a number of benefits, including that the Reports would allow market participants to more clearly distinguish between the types of trades that are indicative of insider sentiment and therefore more useful (for example, trades by insiders who intend to propose a take-over bid for an issuer) as well as to reduce the risk of front-running that may be caused by end-of-day Reports.

4. *If the 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 information provided on a consolidated basis?*

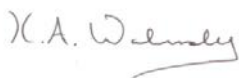
PMAC believes that there could be an adverse impact on the markets were market participants to engage in regulatory arbitrage by deliberately diverting certain trades away from the Exchanges in order to avoid these trades being reflected in the Reports. We query why the Reports would not be required for all marketplaces based on the underlying policy rationale of assisting in reducing the risk of illegal insider trading and providing information to investors. As such, we believe the Reports – in whatever form and frequency the Exchanges and Securities Regulators settle on – ought to be applicable to all Canadian marketplaces in the absence of compelling regulatory or administrative reasons otherwise.

Concluding Comments

PMAC has concerns that the end-of-day dissemination of information in the Reports may serve to harm end investors by increasing market impact costs, without a corresponding benefit in terms of disclosing information to investors. Canadian investors are facing a volatile and low interest rate market while their ability to realize their individual and retirement savings objectives are of paramount importance. PMAC supports the Exchanges' consultation around measures that would continue to protect the integrity and transparency of the Canadian capital markets while ensuring that investor returns are protected from unnecessary erosion and supports the exploration of viable alternative reporting methods that could avoid such risks while achieving the same policy objective. PMAC would be pleased to speak with you further about the Reports and anything contained in our letter.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
President, PMAC



Margaret Gunawan
Managing Director – Head of Canada Legal
& Compliance
BlackRock Asset Management Canada
Limited