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May 31, 2017

**DELIVERED BY E-MAIL**

Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

Dear Sirs/Mesdames:

**Re: TSX Inc. – Application to Revoke Decision of the Ontario Securities Commission dated September 8, 2006**

TSX Inc. (“**TSX**” or “**we**”) is applying to the Ontario Securities Commission (the “**OSC**”) to revoke the decision of the OSC dated September 8, 2006 (the “**Order**”), pursuant to section 144 of the *Securities Act* (Ontario), in order to remove the requirement that TSX use reasonable commercial efforts to consolidate on a per security basis all trades on TSX that have an insider trading marker and publicly disseminate the information in summary form at the end of the day (the “**Insider Report Requirement**”). The Order is attached as Schedule B.

Related applications on behalf of TSX Venture Exchange Inc. (“**TSXV**”) have been filed concurrently with the Alberta Securities Commission (the “**ASC**”) and the British Columbia Securities Commission (“**BCSC**”) to revoke the decisions by the ASC and BCSC dated September 8, 2006 respectively that impose the same requirement on TSXV. Together, the OSC, ASC and BCSC will be referred to as the “**Decision Makers**”.

**Background**

On November 6, 2015, TSX and TSXV (the “**Exchanges**”) submitted a letter to the Decision Makers outlining the potential market integrity issues that have been raised by market participants in connection with the Insider Report Requirement and proposals to address the concerns identified.

The Exchanges were subsequently asked by the OSC to publish a request for comments to seek public feedback on the issues raised, including whether the purpose of the Insider Report Requirement remains relevant and whether there is any negative impact to producing the Insider Reports that would justify seeking to change or remove the Insider Report Requirement. On December 20, 2016, the Exchanges published a request for comments inviting market participants to comment on a number of specific questions regarding the public benefits derived from the Insider Reports, the potential harms to certain market participants, and alternatives for providing the information in the reports.

We had also indicated that, based on the public feedback we received, we would consider the appropriate course of action. We received eight comment letters from both buy-side and sell-side

participants. The comments we received were substantively aligned, as commenters generally believed that publication of the Insider Reports on an end-of-day basis negatively impacts market integrity and results in harm to certain market participants such as large security holders (i.e., investors that hold more than 10% of a TSX- or TSXV-listed security) and institutional and retail investors. Almost all commenters agreed that such harms are not outweighed by any public benefits.

We attach the Request for Comments as Schedule C and a summary of the comments received as Schedule D.

## **Request**

After considering the comments received, we believe that it would be in the public interest to remove the Insider Report Requirement in order to discontinue the Insider Reports altogether. Therefore, TSX is seeking a revocation of the Order as soon as possible.

## **Submissions**

For the following reasons, we respectfully submit that it would not be prejudicial to the public interest to revoke the Order.

### ***1. The Insider Report Requirement is no longer the best approach to reduce the risk of illegal insider trading in Canada***

As outlined in the Request for Comments, the policy rationale for the Insider Report Requirement, as discussed in the November 2003 report of the Insider Trading Task Force, was originally to level the playing field between insiders and non-insiders in respect of trading information that may be material to investors. In particular, disclosure of insider trades in real time to the public was intended to address the concern 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.

We note that, since the Insider Trading Task Force report in 2003, there have been other legislative developments with respect to the publication of information about insider trading activity that serve similar functions as the intended purpose of the Insider Report Requirement. Specifically, National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (“**NI 55-104**”) came into force in April 2010, which was intended to modernize, harmonize and streamline insider reporting in Canada.<sup>1</sup> As stated in subsection 1.3(1) of Companion Policy 55-104CP:

*The insider reporting requirements serve a number of functions. These include deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders’ views of their issuer’s prospects.*

Accordingly, as the purpose of NI 55-104 is substantially similar to the rationale for the Order, we submit that the information in the Insider Reports for the purposes of levelling the playing field

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<sup>1</sup> See CSA Notice and Request for Comment – Proposed NI 55-104 *Insider Reporting Requirements and Exemptions*, Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* and Related Consequential Amendments, (2008) 31 OSCB 12117.

and increasing market efficiency is already being provided through the insider reporting requirements in NI 55-104, which requires insiders to file an insider report within ten days of becoming a reporting insider, and to file a subsequent report within five days of a change in the reporting insider's holdings. These reports are publicly available through the System for Electronic Disclosure by Insiders (**SEDI**).

We were told through the public comments that, while it is common for investors to use information on insider activity to determine underlying sentiment of insiders to make investment decisions, the information available through SEDI within five days of an insider transaction is sufficient for such purposes. While we received one comment expressing that the prompt information provided by the Insider Reports are useful for investors with respect to junior listed securities, as trading by insiders may have a material impact on prices of those securities, the other comments we received indicate that the reports are not used by long-term investors. Specifically, commenters confirmed that the same-day information in the Insider Reports are generally used by short-term investors to detect trading activity from large security holders and take advantage of short-term market moves, which harms large security holders and long term investors.

We also believe that the insider reporting required through NI 55-104 is more accurate and complete because, unlike the Insider Reports, the information disclosed through SEDI contains information about all insider trading activity in Canada (regardless of what marketplace the trades are executed), and not only on TSX and TSXV. On the other hand, the Insider Report Requirement is not able to fully serve its intended purpose in a multiple marketplace environment.

Further, we submit that the Insider Reports include information that does not reflect meaningful insider trading activity. Specifically, we heard from several commenters that are portfolio managers that they are considered "insiders" under securities law (and are captured by the Insider Report Requirement) because the aggregate assets managed by them on behalf of investment funds and accounts may cumulatively add up to more than 10% of an issuer. Portfolio managers typically do not have any knowledge of any material non-public information, nor are they in a 'special relationship' with the issuer. Accordingly, many investment decisions made by these insiders are not driven by a change in the portfolio manager's views of the particular issuer's prospects, but by other factors such as client cash flow management in the multiple accounts and funds they manage and the need to rebalance portfolios. As a result, disclosing trades by such insiders through the Insider Reports for the purposes of indicating changes of insider sentiment may be misleading and/or of limited utility for insider trading purposes.

We also note that, because disclosure of trades by portfolio managers does not necessarily satisfy the policy rationale for the insider reporting requirements in NI 55-104, the CSA has determined, through its national instruments, that such insiders should be treated differently under the regulatory regime for insiders and have generally exempted these insiders from the insider reporting requirements in NI 55-104.<sup>2</sup>

Therefore, for the reasons stated above, we submit that the insider reporting requirements in NI 55-104 already achieves the policy objectives of the Insider Report Requirement and provides a better approach to reducing the risk of insider trading in Canada.

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<sup>2</sup> Under Part 9 of NI 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*, "eligible institutional investors" (which captures most portfolio managers) are exempt from the insider reporting requirements in NI 55-104 if the specified criteria is met. Among other criteria, eligible institutional investors must comply with the alternative monthly reporting system requirements under NI 62-103.

## ***2. The Insider Reports result in harm to market integrity and investors***

Further to the concerns discussed in our Request for Comments, commenters confirmed that the Insider Reports negatively impacts the trading and market impact costs of certain insiders, particularly investors that hold more than 10% of a TSX- or TSXV-listed security (a “large security holder”). Specifically, it was confirmed to us that the publication of the Insider Reports at the end of the trading day enables sophisticated market participants to use the information to trade ahead of these insiders who are acquiring or disposing of securities over a few days’ time, in the hopes of leveraging off of the insider’s decision to purchase or dispose of the securities, resulting in increased trading costs for the insider.

Because many of these large security holders are portfolio managers of investment funds and managed accounts, we were told that their increased market impact costs in turn negatively impact the investment returns of retail and institutional investors who invest in the funds and accounts. Commenters also made the comment that the concerns are especially acute for portfolio managers of public investment funds because these funds are subject to additional continuous disclosure obligations, such as portfolio holdings on a quarterly basis, which further assists sophisticated participants to trade against the portfolio manager. These commenters highlighted the long term negative impact to the retirement savings and investment objectives of retail and institutional investors.

In addition to the harms identified by commenters to large security holders, institutional and retail investors, some commenters also noted that the publication of the Insider Report creates disincentives for insiders to create large positions in the first place. In the case of inter-listed securities, it can also increase incentives to trade in the U.S. to mitigate market impact costs in Canada, generally decreasing liquidity in Canada. As a result, the trading activities of large security holders are unintentionally restricted and, given that such large security holders are of great value to corporate issuers, these disincentives cause harm to Canadian issuers.

Based on the comments received, we submit that the harms identified potentially undermine the public interest and underscore the policy reasons to remove the Insider Report Requirement.

## ***3. There does not appear to be any value in delaying the Insider Reports***

In the Request for Comments, we asked commenters whether information regarding trading by insiders should continue to be provided through the Insider Reports on a more timely basis than is currently publicly available through SEDI and, if so, what length of delay would be appropriate to balance between any benefits and issues associated with the current end-of-day reporting.

We note that, while one commenter suggested that the Insider Reports should be provided on a timelier basis than SEDI (and on the timeliest basis possible), all other commenters indicated support for the discontinuation of the Insider Reports entirely. While some of those commenters were strongly opposed to the continuation of the Insider Reports with any amount of delay for dissemination (given the harms discussed above), some commenters believed a delay for dissemination of the Insider Reports should be up to five days to prevent the potential harms discussed. For example, in certain circumstances (e.g., depending on the liquidity of an issuer or the size of a position), up to five days may be required to allow an insider to divest or increase its position without permitting other participants to trade ahead of the insider.

We submit that, while delaying the dissemination of the Insider Reports by five days would prevent potential harm to large security holders, it would not result in any benefits, as the same information is already being disseminated on the same timeline through SEDI.

***4. Updating insider reporting requirements through CSA policy would result in more consistent application***

As the marketplace environment and regulatory landscape has changed significantly since the introduction of the Insider Report Requirement, we submit that the Insider Report Requirement in its current form is outdated and results in harms that were not contemplated in 2006. We note in particular that Canada is now a multiple marketplace environment for equities and, because TSX and TSXV are the only marketplaces that are subject to the Insider Report Requirement, the Insider Reports do not reflect trading across all venues.

We submit that, while there may be options to revise or improve the Insider Reporting Requirement (including delaying the dissemination of the reports or applying the requirement to all marketplaces), we do not believe that there are any benefits to modifying the requirement as compared to removing it completely. Based on an analysis of the comments we received, it appears that the potential harms caused by the Insider Reports are not appropriately balanced by corresponding benefits in terms of disclosing meaningful information to investors. We also note from the comments we received that applying the Insider Report Requirement to all marketplaces would only exacerbate the concerns identified and would harm the competitiveness of the Canadian market, as insiders would attempt to trade in the U.S. or other international markets.

We echo the comments received suggesting that the insider reporting regime more recently modernized by the CSA through the national instruments has generally reduced the usefulness and public benefit of the Insider Reports. Accordingly, we would also agree with commenters who suggested that any necessary enhancements to the insider reporting regime would be more efficient and effective if the changes were made through CSA or IIROC policy initiatives. We submit that this would be the best approach to ensure that the requirements are applied more consistently across all Canadian marketplaces and that there are no gaps in the information provided by the Insider Reports.

**Draft Decision Document**

Attached as Schedule A with this application is a draft order for your review.

Please do not hesitate to contact me at (416) 365-8130 should you have any questions or require more information on this matter.

Yours truly,

*“Deanna Dobrowsky”*

Deanna Dobrowsky  
Vice President, Regulatory

cc: Kevin Sampson, TMX Group

**SCHEDULE "A"**

●, 2017

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

**AND**

**IN THE MATTER OF  
TSX INC.  
(TSX)**

**REVOCATION ORDER**

**Section 144 of the Act**

**WHEREAS** the Ontario Securities Commission (the **Commission**) issued a decision dated September 8, 2006 pursuant to section 21(5) of the Act (the **Order**) requiring TSX to 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 (the **Insider Report Requirement**);

**AND WHEREAS** TSX has filed an application (the **Application**) with the Commission to revoke the Order pursuant to section 144 of the Act in order to remove the Insider Report Requirement;

**AND WHEREAS** other regulatory developments have been established since the date of the Order to better address illegal insider trading in the Canadian capital markets;

**AND WHEREAS** the Commission has determined based on the Application and representations made by TSX that it is not prejudicial to the public interest to remove the Insider Report Requirement;

**IT IS HEREBY ORDERED** that, pursuant to section 144 of the Act, the Order is revoked.

**DATED** at Toronto this     day of     , 2017.

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Commissioner  
Ontario Securities Commission

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Commissioner  
Ontario Securities Commission

**SCHEDULE "B"**

*(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 8<sup>th</sup> day of September, 2006.

"Paul M. Moore"

"Suresh Thakrar"

**SCHEDULE "C"**

***(attached)***

## 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](mailto: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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> This marker is not publicly displayed on the order.<sup>4</sup> 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

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

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

<sup>3</sup> Universal Market Integrity Rules (UMIR), 6.2(1)(b)(xiv).

<sup>4</sup> 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?**

**SCHEDULE "D"**

*(attached)*

## TSX INC. AND TSX VENTURE EXCHANGE INC.

### Summary of Comments

On December 20, 2016, the TSX Inc. ("TSX") and TSX Venture Exchange Inc. ("TSXV") published a Request for Comments to solicit feedback on the current relevance and market impact of the insider trading marker summary reports that TSX and TSXV are required to publicly disseminate on an end-of-day basis (the "Required Insider Reports"). Below is a summary of the comments received. We received comments from the following eight commenters and thank all those who took the time to comment.

List of Commenters:

1. 1832 Asset Management L.P.
2. Canadian Security Traders Association, Inc. (CSTA)
3. Investment Funds Institute of Canada (IFIC)
4. ITG Canada Corp.
5. Leede Jones Gable
6. Manulife Asset Management
7. Portfolio Management Association of Canada (PMAC)
8. RBC Dominion Securities Inc.

Capitalized terms used and not otherwise defined have the meaning given to them in the Request for Comments published on the TMX website.

<p><b>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.</b></p>	<p>Several commenters were of the view that the Required Insider Reports only benefit short-term investors that use the reports for speculative purposes. These commenters noted that, while the purpose of the reports were to "level the playing field" between investors and insiders, in practice, the reports are used by short-term oriented participants to detect trading activity from large security holders and take advantage of short-term market moves.</p> <p>For example, one commenter suggested that proprietary trading firms and hedge funds use the Required Insider Reports to detect trades from insiders in order to trade "along" with the insider in an attempt to scalp short term profits. This commenter also suggested that most major trading desks subscribe to the Required Insider Reports and may use the information to inform large clients entering new orders about whether the security is being acquired or sold in size by an insider. Such information could help the client determine the urgency of competing on contra side orders in a tactical fashion – likely improving their own execution costs to the detriment of the insider who is attempting to build or unwind a large position.</p> <p>It was also noted that, while it may be common for long term investors to use information on insider activity (such as the information from the Required Insider Reports) to determine underlying sentiment of insiders to make investment decisions,</p>
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	<p>the information available through SEDI within 5 days of an insider transaction is sufficient for such purposes.</p> <p>We heard from several commenters that the insiders captured by the Required Insider Reports include many portfolio managers who are only “insiders” because the aggregate assets managed by them on behalf of investment funds and accounts may cumulatively add up to more than 10% of an issuer. Portfolio managers typically do not have any knowledge of any material non-public information, nor are they in a ‘special relationship’ with the issuer. Accordingly, many investment decisions made by these insiders are not driven by a change in the portfolio manager’s views of the merits of a particular issuer, but by other factors such as client cash flow management in the multiple accounts and funds they manage and the need to rebalance portfolios. As a result, commenters noted that using the Required Insider Reports for the purposes of indicating changes of insider sentiment may be misleading and/or of limited utility in the case of such insiders.</p> <p>One commenter expressed that the timely information provided by the Required Insider Reports are very useful for investors with respect to junior listed securities, as trading by insiders may have a material impact on the prices of those securities.</p>
<p><b>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?</b></p>	<p>All commenters agreed that the public dissemination of the Required Insider Reports on an end-of-day basis is harmful to large security holders. In particular, commenters agreed that sophisticated market participants are able to use the Required Insider Reports to trade ahead of these insiders who are acquiring or disposing of securities over a few days’ time, in the hopes of leveraging off of the insider’s decision to purchase or dispose of the securities, resulting in increased trading costs for the insider.</p> <p>We were told by commenters that this concern is especially acute for portfolio managers of public investment funds who are subject to other continuous disclosure obligations, including quarterly investment portfolio disclosure. This additional public disclosure assists sophisticated participants with guessing at which insider is making a trade and trading against the portfolio manager. The increase to the portfolio manager’s market impact costs negatively affects the investment performance of their managed accounts and investment funds and ultimately impairs the investment returns realized by end retail and institutional investors (and in turn, their retirement savings and/or other investment objectives). This impact can be significant over the long term and creates investor protection issues.</p> <p>Some commenters also noted that the information leakage caused by the Required Insider Reports creates disincentives for</p>



	<p>insiders to create large positions in the first place. In the case of interlisted securities, it can increase incentive to trade in the U.S. to mitigate market impact costs, generally decreasing liquidity in Canada. As a result, the trading activities of large security holders are unintentionally restricted and, given that such investors are of great value to corporate issuers, causes harm to Canadian issuers.</p> <p>However, while the Required Insider Reports may harm large security holders, one commenter believes that trades by large security holders are a material event and should be reported in the timeliest fashion possible.</p>
<p><b>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?</b></p>	<p>Several commenters do not believe that the information in the Required Insider Reports should be provided on a timelier basis than is currently available through SEDI and strongly feel that the reports should be discontinued altogether, as the reports do not satisfy the regulatory policy objectives that supported the requirement in the first place. Instead, the Required Insider Reports has resulted in real harm to insiders and corporate issuers.</p> <p>Some of these commenters suggested that exchange-based insider reporting mechanisms may not be the appropriate mediums for such disclosure and noted that since the introduction of the requirement in 2006, technological developments have improved accessibility to insider information through SEDI/SEDAR filings and IIROC has greatly improved its monitoring capabilities. Further, other legislative developments with respect to insider reporting have matured, thereby reducing the usefulness of the reports.</p> <p>One commenter suggested that, while they do not believe that the Required Insider Reports should exist at all, they believe that, if the reports are deemed to be absolutely necessary, the length of the delay should be as long as possible and be at least 5 days.</p> <p>Four other commenters suggested that delaying the publication of the Required Insider Reports until T+3 would be preferable to the current end-of-day dissemination. However, these commenters believe that, in certain circumstances (e.g., depending on the liquidity of an issuer or the size of a position), three days may not be sufficient to allow an insider to divest or increase its position without permitting other participants to trade ahead of the insider. Some of these commenters further noted that they would also not object to the Required Insider Reports being eliminated entirely.</p> <p>These same commenters proposed an alternative solution and suggested that insiders who are considered non-disqualified “eligible institutional investors” under National Instrument 62-103</p>

	<p><i>The Early Warning System and Related Take-Over Bid and Insider Reporting Issues</i> (NI 62-103) should be subject to less stringent reporting requirements than other types of insiders, similar to the alternative monthly reporting system in NI 62-103. Because “eligible institutional investors” (including portfolio managers) generally acquire insider positions for purposes of investing on behalf of investment funds and managed accounts only, and not with a view to takeover, reorganize, amalgamate or merge with any reporting issuer (nor with any knowledge of non-public material information), the trading activity of these insiders are viewed to be less meaningful to the investing public than trades by other kinds of insiders who may have a more activist intention. Accordingly, non-disqualified eligible institutional investors are subject to less frequent reporting requirements under NI 62-103, which requires that they provide a summary report of their insider trades on a monthly basis, 10 calendar days following the end of the month in which the insider trades occurred. These commenters suggested that a similar framework for the Required Insider Reports should be implemented, which would not only prevent the risk of market participants using the reports to trade against these types of insiders, but would allow market participants to more clearly distinguish those types of trades that are indicative of insider sentiment or of a possible control transaction.</p> <p>In contrast to the other commenters, one commenter disagreed and expressed that the Required Insider Reports should be provided on the timeliest possible basis, and certainly on a more timely basis than SEDI, in order to ensure that material information is made available to all investors promptly.</p>
<p><b>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?</b></p>	<p>Although the majority of commenters were of the view that the Required Insider Reports should not be required in their present form, commenters agree that, if they are viewed to remain sufficiently valuable to the public and continue to exist, there are no reasons why any requirement to produce the reports should not be applicable to all Canadian marketplaces.</p> <p>Several commenters warned, however, that imposing a similar requirement on all marketplaces in Canada would incent large security holders to trade away from Canada to protect against the information leakage associated with the Required Insider Reports. Where possible, large security holders would attempt to trade in the U.S. or other international markets, which would harm the competitiveness of the Canadian market as a whole. We were also told that continuing this requirement for all marketplaces would make large security holders less likely to trade the securities of an issuer in which they are insiders, which would decrease overall liquidity. These commenters were generally of</p>

the view that any attempt to require this reporting from all marketplaces would only exasperate all the problems identified.

One commenter suggested that, rather than requiring exchanges to produce these reports, the established SEDI, early warning and alternative monthly reporting regimes are more appropriate mechanisms to require such disclosures. If modifications to insider disclosure requirements are deemed necessary, these channels are the correct mechanism to effect such modifications, as it would enable the reporting to be fair and consistent. This commenter encourages the CSA, in cooperation with IIROC, to explore strengthening measures to validate that obligations to report through SEDI and SEDAR are being complied with in a consistent and timely manner.

One commenter believes that the requirement to produce the Required Insider Reports should be extended to all Canadian marketplaces, as the current structure allows insiders to trade on other exchanges without this information becoming public. This commenter believes information from all marketplaces should be provided in a consolidated report.