



CANADIAN SECURITY TRADERS ASSOCIATION, INC.

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Market Regulations Branch
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and

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Re: TSX Request for Comments – Required Insider Report

The Canadian Security Traders Association, Inc. ("CSTA") is a professional trade organization that works to improve the ethics, business standards and working environment for members who are engaged in the buying, selling and trading of securities (mainly equities). The CSTA represents over 850 members nationwide, and is led by volunteer Governors from each of three distinct regions (Toronto, Montreal and Vancouver). The organization was founded in 2000 to serve as a national voice for our affiliate organizations. The CSTA is also affiliated with the Security Traders Association (STA) in the United States of America, which has approximately 4,200 members globally, making it the largest organization of its kind in the world.

This letter was prepared by the CSTA Trading Issues Committee (the "Committee", "CSTA TIC" or "we"), a group of 22 appointed members from amongst the CSTA. This committee has an equal proportion of buy-side and sell-side representatives with various areas of market structure expertise. It is important to note that there was no survey sent to our members to determine popular opinion; the Committee was assigned the responsibility of presenting the views of the CSTA as a whole. The views and statements

provided below do not necessarily reflect those of all CSTA members or of all members of the Trading Issues Committee.

The Canadian Security Traders Association appreciates the opportunity to comment on the proposal by TSX Inc. (“TSX”) to review the Exchanges’ current obligation to publicly disseminate an insider trading marker summary report (the “Required Insider Report”) on an end-of-day basis. As we will discuss below, we believe that this report should not be enhanced but immediately discontinued. If, notwithstanding our arguments, these reports are deemed to be necessary, we believe that a delay of at least 5 days should be implemented in order to manage the unintended consequences of the forced information leakage.

Note that this letter is addressed to both the TMX and the OSC Market Regulations Branch; we believe that the OSC/CSA should ultimately be the regulatory body that retains responsibility of this type of issue.

TSX Required Insider Report should be Discontinued

The creation of the TSX Required Insider Report was originally triggered by the Insider Trading Task Force (ITTF) report published in November 2003 (14 years ago). The ITTF 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”, such that it may not trigger certain obligations under securities law, but is arguably material information for investors that may not be generally disclosed. Since the ITTF issued its report, there have been many technological developments that have dramatically improved accessibility to information, including the ability to easily access insider-related SEDI/SEDAR filings, diminishing the need for additional reporting requirements.

In principle, having all Canadian marketplaces’ T+1 insider transaction information available via a Required Insider Report may seem like a proposal to “level the playing field” between investors and insiders. In practice, the report can in fact serve as a tool for short term oriented participants to detect trading activity from large security holders. Note that many large securityholders with ownership above 10% of voting/equity securities file required insider holding information via the Alternative Monthly Reporting System on SEDAR under the specific premise that they do not routinely have access to non-public information. We argue that the information that a large securityholder with no routine access to non-public information was trading a given security on the previous day is only useful to those who wish to take advantage of information relating to potentially short-term market moving trades. For those long-term investors that wish to be informed of transactions by insiders that do routinely have access to material information (CEOs, CFOs etc), the information is already made available to them via SEDI within 5 days of a transaction. We believe that this provides sufficient disclosure for long term investors and their investment decisions.

In February 2016, the CSA concluded that the insider reporting threshold for insiders should not be decreased from 10% to 5%. We wholeheartedly agree with their decision and believe that the same

arguments that were used in their conclusion can be used to argue for the discontinuation of the TSX Required Insider Report:

*“[A] majority of commenters raised various concerns about potential unintended consequences of reducing the early warning reporting threshold from 10% to 5% in light of the unique features of the Canadian public capital markets, including the large number of smaller issuers as well as limited liquidity. These commenters noted the potential risks of reducing access to capital for smaller issuers, hindering investors' ability to rapidly accumulate or reduce large ownership positions in the normal course of their investment activities, decreased market liquidity, and increased compliance costs. Taking into account these concerns, we have concluded that it is not appropriate at this time to proceed with this proposal. **We are of the view that the intended benefits of the enhanced transparency are outweighed by the potential negative impacts of implementing the lower reporting threshold.**” (CSA Notice of Amendments to NI 62-104, NI 62-103 and NI 62-203, February 25, 2016)”*

We do not believe that continuing a T+1 disclosure of trades of those large securityholders that provide capital and liquidity to Canadian issuers is of net positive value to the Canadian public markets.

To Delay or Not To Delay

Since the arrival of multiple marketplaces in Canada in 2007, the TSX Required Insider Report has been incomplete as it only considered trades on the TSX itself and not on other marketplaces. This limitation oftentimes allowed large securityholders deemed insiders the ability to manage unnecessary information leakage by trading on Canadian marketplaces other than the TSX. Since the report is now being envisioned to include trades marked as “IA” (Insider) or “SS” (Significant Shareholder) across all Canadian marketplaces, it now becomes much more important to ensure that the report is completely discontinued. The proposed report will make it much more difficult for large securityholders to manage the unintended consequences associated with the forced information leakage.

If trades from all Canadian marketplaces marked as “IA” and “SS” must be amalgamated into one report, large securityholders deemed as insiders would inevitably attempt to decrease the unnecessary information leakage associated with the Required Insider Reports by trading in the US (on public and/or OTC markets) or other international markets when it possible to do so. Requiring the disclosure of trades on a T+1 basis not only incents those large securityholders to trade away from Canada to protect against information leakage, it also makes them generally less likely to trade the securities of an issuer in which they are insiders (or close to becoming insiders) and thus decreases overall liquidity. We believe that unintentionally restricting the trading activities of large shareholders that have no routine access to non-public information in Canada serves no purpose to the Canadian public markets and may instead cause harm to Canadian issuers and large Canadian investors. In addition, we believe that the great proportion of retail investors that are holders of large pooled/mutual funds are being harmed by the forced transparency of reporting insider trades, since those funds are commonly reporting insiders for at least some issuers or intentionally trade below a threshold that is not based on an investment thesis to avoid becoming reporting insiders in order to manage the information leakage.

While we do not agree that the Required Insider Report should exist at all, we believe that the length of the delay of the reporting after Trade Date should be as long as possible. The length of the delay would be inversely proportionate with the amount of effort that would have to be used by large securityholders deemed insiders to avoid the unintended consequences of information leakage. We would suggest at least a 5 day delay be used if the report is deemed absolutely necessary.

In conclusion, while we acknowledge the need for insider reporting in order to level the playing field for investors, we believe that the required reporting regime under SEDI, Early Warning and Alternative Monthly Reporting is more than adequate and provides enough information to ensure that the public is well informed. Since discontinuing the TSX Required Insider Report does not affect UMIR requirements to mark trades as "IA" or "SS", IIROC will still have the same supervisory abilities and transparency as they did before in order to monitor for illegal insider trading.

Thank you for your attention in this matter.

Respectfully,

"Signed by the CSTA Trading Issues Committee"

c.c. to:

Ontario Securities Commission:

Ms. Maureen Jensen, Chair & CEO
Ms. Susan Greenglass, Director, Market Regulation
Ms. Tracey Stern, Manager, Market Regulation

Alberta Securities Commission:

Ms. Lynn Tsutsumi, Director, Market Regulation

Autorité des marchés financiers:

M^e Elaine Lanouette, Directrice des bourses et des OAR

British Columbia Securities Commission:

Mr. Mark Wang, Director, Capital Markets Regulation

IIROC:

Mr. Andrew Kriegler, President and CEO
Ms. Victoria Pinnington, Senior Vice President, Market Regulation
Mr. Kevin McCoy, Vice-President, Market Regulation Policy
MS. Sonali GuptaBhaya, Director, Market Regulation Policy