1.1.2 Notice of Commission Approval – Amendments to the Rules of the Toronto Stock Exchange to Update the Order Designation Provisions in TSX Rule 4-403

TSX INC.

AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE TO UPDATE THE ORDER DESIGNATION PROVISIONS IN TSX RULE 4-403

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendments to the Rules of the Toronto Stock Exchange to Update the Order Designation Provisions in TSX Rule 4-403. The amendments in addition to updating the existing order marker requirements in TSX Rule 4-403 also introduce a requirement for Participating Organizations to mark orders when they are entered for the account of an issuer that is purchasing pursuant to a normal course issuer bid.

The amendments were published for comment on March 27, 2009 at (2009) 32 OSCB 2878. No changes have been made to the amendments that were originally published. A summary of the comments received and TSX Inc.'s response are attached to this notice of approval.

SUMMARY OF COMMENTS

AMENDMENTS TO THE TORONTO STOCK EXCHANGE TRADING RULES TO UPDATE THE ORDER DESIGNATION PROVISIONS INCLUDING NORMAL COURSE ISSUER BID MARKERS

List of Commenters:

ITG Canada Corp. (ITG)
RBC Dominion Securities Inc. (RBC)
Raymond James Ltd. (RJ)
Professor Brian F. Smith, School of Business and Economics, Wilfred Laurier University (Smith)

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to the Toronto Stock Exchange Trading Rules to Update the Order Designation provisions including Normal Course Issuer Bid Markers, published in the OSC Bulletin on March 27, 2009.

Summarized Comments Received	*TSX Response*
1. Introduction of the NCIB marker and amendments to TSX Rule 4-403.	
All four of the commenters supported the introduction of the NCIB marker and the amendments to TSX Rule 4-403.	Thank you for your comments. TSX will implement the amendments to TSX Rule 4-403 as proposed in the Request for Comments.
2. Enforcement of the prohibitions against upticks, trading in the opening session and trading in the last 30 minutes of the regular trading session.	
ITG and RJ suggested that TSX should automate enforcement of NCIB orders which would violate a TSX Rule, including the uptick restriction and restrictions against trades in the opening session and last 30 minutes of the regular trading session. They suggested that NCIB orders could either be automatically price-adjusted for those orders which would create an uptick or automatically cancelled when the execution of that order would violate a TSX Rule, such as trading in the opening session or in the last 30 minutes of the regular trading session.	Currently, the Quantum™ trading engine is not programmed to automatically enforce the NCIB trading restrictions as suggested. TSX will review the possibility of effecting cost/benefit analysis regarding automated enforcement of the NCIB trading restrictions. In the meantime, the implementation of the new marker will assist TSX in monitoring and enforcing trading restrictions through a violation notification reporting system, post-trade.
3. Race Conditions Considerations.	
RBC suggested that TSX (and the OSC) should review and consider time stamps at the order origination (i.e. Participating Organizations OMS systems) rather than time stamps at TSX for compliance with the uptick restriction. Trades executed under an NCIB program on behalf of a liquid issuer may inadvertently cause the Participating Organization executing the purchases to receive a potential uptick violation notification. In most cases, trades considered subject to these race conditions have caused no market interruption nor materially influenced the stock price.	TSX does not consider it sufficient to rely upon the time stamp at the order origination for the uptick restriction because a significant amount of time may pass between the order entry and the trade execution. The Participating Organization is responsible for monitoring the order book and ensuring that the order is cancelled or amended if it would otherwise create an uptick. Participating Organizations must be able to demonstrate compliance with the NCIB trading restrictions or take securities into their error accounts for any violations identified post-trade.

Summarized Comments Received	*TSX Response*
4. Multiple Marketplace Environment.	
All four of the commenters suggested that the CSA and TSX consider updating their Rules and Policies governing the execution of NCIBs on an ATS in light of the multiple marketplace environment and ensure there are no inconsistencies with National Instruments 21-101 and 23-101.	TSX agrees that the framework of rules governing NCIBs should be reviewed. In light of the multiple marketplace environment TSX had referred the matter to the OSC for consideration during the fall of 2008. Since that time, TSX has been involved in discussions with IIROC and understands that consideration is underway.
RBC also noted that it is not clear how TSX can effectively conduct surveillance of NCIB trading activity by Participating Organizations if the execution of such order takes place on multiple markets.	TSX cannot monitor NCIB trading activities on marketplaces other than TSX. Such trading activities are subject to the review of IIROC and the Canadian Securities Administrators (CSA).
5. General	
For clarification purposes, RJ asked whether share purchase plan arrangements should be marked with the proposed NCIB marker given that these accounts must also follow the uptick restrictions (unless operated by an independent trustees).	Purchases made by a non-independent trustee for a share purchase plan (or a similar plan) should be marked with the NCIB marker. The trading restrictions apply to all purchases by a non-independent trustee under a share purchase plan (or a similar plan). Participating Organizations are directed to TSX Staff Notice 2008-0003 dated September 29, 2008 for additional guidance on this point.
Smith advises that NCIB purchases should be reported to the public through SEDI, in the same manner as insider trading reports are publicly disclosed.	TSX understands that buying brokers currently mark NCIB trades as insider trades and that issuers file insider trading reports on SEDI as a conservative practice, however it is not entirely clear that brokers and issuers are required to do so under provincial securities legislation. Due to this uncertainty, it is not clear whether the CSA enforces insider trading requirements on NCIB purchase. TSX believes that the CSA could consider Smith's proposal as part of the review referenced above in item 4.