
Toronto Stock Exchange Inc., Re

Reference: Section 144

In the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, As Amended (the "Act") and In the Matter of The Toronto Stock Exchange Inc.

Citation: 25 O.S.C.B. 929

Tribunal: Ontario Securities Commission

Panel: Howard I. Wetston, Derek Brown

Date: January 29, 2002

Year: 2002

WHEREAS the Commission issued an order dated April 3, 2000 granting and continuing the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange pursuant to section 21 of the Act (the "Previous Order");

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect the transfer of regulation services by the TSE to Market Regulation Services Inc.;

IT IS ORDERED, pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990 CHAPTER S. 21, AS AMENDED (the "Act") AND IN THE MATTER OF THE TORONTO STOCK EXCHANGE INC.

RECOGNITION ORDER (Section 21)

WHEREAS the Commission granted and continued the recognition of The Toronto Stock Exchange Inc. (the "TSE") as a stock exchange on April 3, 2000 (the "Previous Order") following the continuance of the TSE under the Business Corporations Act (Ontario) (the "demutualization");

AND WHEREAS the TSE intends to retain Market Regulation Services Inc. ("RS Inc.") as a regulation services provider ("RSP") under National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (the "ATS Rules");

AND WHEREAS, RS Inc. has agreed, pursuant to an agreement between RS Inc. and the TSE (the "Regulation Services Agreement"), to provide certain market regulation services to the TSE as an RSP under the ATS Rules, as the TSE's agent;

AND WHEREAS the Commission has considered the submissions of the TSE and based upon the representations and undertakings made and given by the TSE;

AND WHEREAS the Commission considers it appropriate to set out in an order the terms and

conditions of the TSE's continued recognition as a stock exchange, which terms and conditions are set out in Schedule "A" attached;

AND WHEREAS the TSE has agreed to the terms and conditions set out in Schedule "A";

AND WHEREAS the Commission has determined that recognizing and continuing to recognize the TSE is not prejudicial to the public interest;

The Commission hereby amends the TSE's recognition as a stock exchange so that the recognition pursuant to section 21 of the Act continues, subject to the terms and conditions attached as Schedule "A".

DATED April 3, 2000, as amended on January 29, 2002.

"A" — Terms and Conditions

1) Corporate Governance

a) The TSE's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the TSE, namely, the governing body, shall be such as to ensure a proper balance between the interests of the different entities desiring access to the facilities of the TSE ("Participating Organizations"), and, in recognition that the protection of the public interest is a primary goal of the TSE, a reasonable number and proportion of directors shall not be associated with Participating Organizations within the meaning of the TSE's by-laws in order to ensure diversity of representation on the Board. In particular, the TSE shall ensure that at least fifty per cent (50%) of its directors shall consist of individuals who are not associated with Participating Organizations within the meaning of the TSE's by-laws, and, in the event that at any time it fails to meet such requirement, it shall promptly remedy such situation.

b) Without limiting the generality of the foregoing, the TSE's governance structure shall provide for:

i) Fair and meaningful representation on its governing body, in the context of the nature and structure of the TSE, and any governance committee thereto and in the approval of rules;

ii) Appropriate representation of persons not associated with Participating Organizations on the TSE's committees and on any executive committee or similar body within the meaning of the TSE's by-laws; and

iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of the TSE generally.

2) Fees

a) Any and all fees imposed by the TSE on its Participating Organizations shall be equitably allocated. Fees shall not have the effect of creating barriers to access and shall be balanced

with the criteria that the TSE have sufficient revenues to satisfy its responsibilities.

b) The TSE's process for setting fees shall be fair and appropriate.

3) Access

a) The requirements of the TSE shall permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy the TSE's criteria to access the trading facilities of the TSE.

b) Without limiting the generality of the foregoing, the TSE shall:

i) establish written standards for granting access to trading on its facilities;

ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and

iii) keep records of:

(A) each grant of access including, for each entity granted access to its trading facilities, the reasons for granting such access; and

(B) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

4) Financial Viability

a) The TSE shall maintain sufficient financial resources for the proper performance of its functions.

b) The TSE shall file quarterly financial statements within 60 days of each quarter end and audited annual financial statements within 90 days of each year-end.

c) The TSE shall report to the Commission when (1) its liquidity measure is equal to or less than zero [working capital plus borrowing capacity: two years each of net operating income (less depreciation which is a non-cash item), capital investment and debt repayment requirements]; (2) its solvency ratio is equal to or less than 1.3:1 (total assets: total liabilities); or (3) its financial leverage ratio is equal to or greater than 4.0 (total assets: total capital).

d) If the TSE fails to satisfy any of the above acceptable liquidity measure, solvency or financial leverage ratios for a period of more than three months, its President will deliver a letter advising the Commission of the reasons for the continued ratio deficiencies and the steps being taken to rectify the problem, and the TSE will not, without the prior approval of the Director, make any capital expenditures not already reflected in the financial statements, or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been eliminated for at least six months.

e) The TSE shall provide a report annually of the monthly calculation of the measure and

ratios, the appropriateness of the calculations and whether any alternative calculations should be considered.

5) Regulation

- a) The TSE shall retain RS Inc. as an RSP to provide, as agent for the TSE, certain regulation services which have been approved by the Commission. The TSE shall provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS Inc. and the regulation services performed by the TSE. All amendments to those listed services are subject to the prior approval of the Commission;
- b) In providing the regulation services, as set out in the Regulation Services Agreement, RS Inc. will act as the agent of the TSE pursuant to a delegation of the TSE's authority in accordance with Section 13.0.8(4) of the Toronto Stock Exchange Act and will be entitled to exercise all the authority of the TSE with respect to the administration and enforcement of certain market integrity rules and other related rules, policies and by-laws.
- c) TSE shall provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report shall be in such form as may be specified by the Commission from time to time.
- d) The TSE shall continue to perform all other regulation functions not performed by RS Inc.
- e) Management of the TSE (including the President and CEO) shall at least annually assess the performance by RS Inc. of its regulation functions and report thereon to the Board, together with any recommendations for improvements. The TSE shall provide the Commission with copies of such reports and shall advise the Commission of any proposed actions arising therefrom.

6) Systems

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, the TSE shall:

- a) Make reasonable current and future capacity estimates;
- b) Conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- c) Develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
- d) Review the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards and natural disasters;
- e) Establish reasonable contingency and business continuity plans;
- f) On an annual basis, perform an independent review, in accordance with established audit procedures and standards, of its current systems technology plans and whether there are

appropriate processes in place to manage the impact of changes in technology on the exchange and parties interfacing with exchange systems. This will include an assessment of the TSE's controls for ensuring that each of its systems that support order entry, order routing, execution, data fees, trade reporting and trade comparisons, capacity and integrity requirements is in compliance with paragraphs (a) through (e) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and

g) Promptly notify the Commission of material systems failures and changes.

7) Purpose of Rules

The TSE shall, subject to the terms and conditions of this Recognition Order and the jurisdiction and oversight of the Commission in accordance with Ontario securities laws, through RS Inc. and otherwise, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and shall in so doing specifically govern and regulate so as to:

- a) Seek to ensure compliance with securities legislation;
- b) Seek to prevent fraudulent and manipulative acts and practices;
- c) Seek to promote just and equitable principles of trade;
- d) Seek to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and
- e) Seek to provide for appropriate discipline.

8) Rules and Rule-Making

- a) The TSE shall comply with the existing protocol between the TSE and the Commission, as it may be amended from time to time, concerning Commission approval of changes in its rules and regulations.
- b) All by-laws, rules, regulations and policy statements of general application, and amendments thereto, adopted by the TSE must be filed with the Commission.

9) Financial Statements

The TSE shall file audited annual and quarterly financial statements.

10) Discipline of Participating Organizations

The TSE shall ensure, through RS Inc. and otherwise, that its Participating Organizations are appropriately disciplined for violations of securities legislation and the by-laws, rules, regulations, policies, procedures, practices and other similar instruments of the TSE.

11) Due Process

The TSE shall ensure that the requirements of the TSE relating to access to the facilities of the TSE, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions for appeals.

12) Information Sharing

The TSE shall co-operate by the sharing of information and otherwise, with the Commission and its staff, the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions.

13) Additional Information

The TSE shall file any information required under the ATS Rules.