
Toronto Stock Exchange, Re

Reference: Section 21

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.

Citation: **23 O.S.C.B. 2495**

Tribunal: Ontario Securities Commission

Panel: David Brown, Howard I. Wetston

Date: April 3, 2000

Year: 2000

WHEREAS the Toronto Stock Exchange (the "TSE"), which term includes the continued corporation following the continuance of the TSE under the Business Corporations Act (Ontario) (the "demutualization") has sought Commission review of its demutualization;

AND WHEREAS the Commission has considered it appropriate to set out in an order the terms and conditions of the TSE's continued recognition as a stock exchange in Ontario following the demutualization;

AND WHEREAS the TSE has agreed to the terms and conditions attached;

AND WHEREAS the TSE has determined to establish a separate division ("Regulatory Services") with clearly defined market regulation responsibilities and a distinct governance structure;

AND UPON considering the submissions of the TSE and based upon the representations and undertakings made and given by the TSE to the Commission;

AND UPON the Commission being satisfied that the continuance and recognition of the TSE following the demutualization would not be contrary to the public interest;

The Commission hereby grants and continues the TSE's recognition as a stock exchange pursuant to section 21 of the Act effective upon the demutualization of the TSE, provided that the TSE meets and continues to meet the terms and conditions attached hereto as Schedule "A" and the standards set out in the recognition criteria published at (1999) 22 OSCB 8284.

"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 50 per cent 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 TSE 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 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. Regulatory Services

(a) The TSE shall provide the Commission with an annual report (including a report on the operations of Regulatory Services) and with such information regarding its affairs, including the affairs of Regulatory Services, 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.

(b) The TSE shall not make fundamental changes to the organizational structure of Regulatory Services or to the structure of the TSE that would materially affect Regulatory Services without prior Commission approval.

(c) Regulatory Services shall promptly report to the Commission misconduct or apparent misconduct by Participating Organizations and their Approved Persons and others where investors, Participating Organizations or their customers, the Canadian Investor Protection Fund or

the TSE may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of a Participating Organization is at risk, the TSE has a reasonable apprehension that material fraud may be present or there may exist material deficiencies in supervision or internal controls.

(i) The public and media shall be notified by way of press release of any disciplinary or settlement hearing not less than 10 days prior to the date of any such hearing, and such information shall also be published in the Ontario Securities Commission Bulletin (unless the Commission determines otherwise). The public and the media shall be promptly notified by way of press release and publication in the Ontario Securities Commission Bulletin of the disposition of all disciplinary actions (unless the Commission determines otherwise).

(ii) Disciplinary and settlement hearings shall be open to the public and media except where required for the protection of confidential matters.

(d) The Commission shall be notified on a monthly basis of: (i) all new investigations initiated by Regulatory Services, including the persons involved and the nature of the investigation; and (ii) all investigations which do not lead to disciplinary proceedings and which are closed, including the date the investigation started, the conduct and persons involved and the disposition of the investigation.

(e) Subject to any changes that may be agreed between the TSE and the Commission, Regulatory Services shall be operated on the following basis:

(i) The functions of Regulatory Services shall be carried out with a view to operating on a cost-recovery basis and shall be independent and structurally separated from the for-profit operations of the TSE.

(ii) Regulatory Services shall be a separate division of the TSE which shall be governed by the Board of Directors of the TSE. The Board shall establish a special committee of the Board (the "Regulation Committee") to oversee the operations of Regulatory Services. The Regulation Committee shall consist of the President (if a Director) and such other Directors as the Board may determine, provided that more than 50% of the members of the Regulation Committee shall consist of directors who are not associated with any Participating Organization within the meaning of the TSE's by-laws, rules or regulations. In addition to members of the Board, the Regulation Committee may also consist of members who are associated with a Participating Organization, including alternative trading systems which are Participating Organizations, as well as any alternative trading system for which Regulatory Services provides services.

(iii) The chief operating officer of Regulatory Services (referred to herein as the "COO") shall, while reporting to the TSE's President, generally be present wherever practicable at all meetings of the Regulation Committee and at all meetings of the Board relating to the operations of Regulatory Services unless the Regulation Committee or the Board determines otherwise, and shall provide information upon request to the Regulation Committee or the Board with respect to the operations of Regulatory Services. The COO and the President shall both be responsible for ensuring that the operations of Regulatory Services are

conducted appropriately.

(iv) Regulatory Services shall have a segregated budget, including for technological support and development, which budget shall be subject to the approval of the Board upon the advice of the Regulation Committee and shall be administered by the COO in consultation with the President. Regulatory Services shall also be allocated the necessary support from other departments of the TSE, including in the technology area, in accordance with its budgets and reasonable requirements.

(v) The TSE shall adopt and use all reasonable efforts to comply with policies and procedures designed to ensure that confidential information concerning the operations of Regulatory Services is maintained in confidence and not shared inappropriately with the for-profit operations of the TSE or other persons.

(vi) The COO, the President, the Regulation Committee and the Board shall provide information with respect to the operations of Regulatory Services to the Commission upon request.

(vii) The TSE shall maintain the ability of Regulatory Services to perform its market regulation functions and shall advise the Commission at least annually of its staff complement, by function, and of any material changes or reductions in Regulatory Services staff, by function.

(viii) Management of the TSE (including the President and the COO) shall at least annually self-assess the performance by Regulatory Services of its market regulation functions and report thereon to the Regulation Committee, together with any recommendations for improvements. The Regulation Committee shall in turn report to the Board as to the performance by Regulatory Services of its market regulation functions. The TSE shall provide the Commission with copies or summaries of such reports and shall advise the Commission of any proposed actions arising therefrom.

(ix) The TSE shall report to the Commission within 18 months of the operation of Regulatory Services on how it has fulfilled the terms and conditions regarding Regulatory Services.

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 change 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 feeds, trade reporting and trade comparison, 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 Regulatory Services 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, including Regulatory Services, 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 Board must be filed with the Commission.

9. Financial Statements

The TSE shall file audited annual and quarterly financial statements, with segmented reporting for Regulatory Services.

10. Discipline of Participating Organizations

The TSE shall appropriately discipline its Participating Organizations 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, including Regulatory Services, 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, including Regulatory Services, 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

Following implementation of the Alternative Trading System proposal, the TSE shall file any information required thereunder.