

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.2 Amendment to Recognition Order of TSX Group Inc. and TSX Inc. to Reflect Changes to the Definition of an Independent Director

AMENDMENT TO RECOGNITION ORDER OF TSX GROUP INC. AND TSX INC. TO REFLECT CHANGES TO THE DEFINITION OF AN INDEPENDENT DIRECTOR

On August 12, 2005, the Commission approved the following documents in connection with changes to the definition of an independent director in the recognition order of TSX Group Inc. (TSX Group) and TSX Inc. (TSX):

- (a) An amended and restated recognition order for TSX Group and TSX (published in Chapter 2 of this Bulletin).
- (b) Board standards on the independence of directors for TSX Group and TSX.

A copy of the board standards for TSX Group and TSX is attached.

TSX Group Inc.**Board of Directors Independence Standards**

The Board of Directors has adopted these standards to determine whether individual members of the Board are independent from TSX Group Inc. These standards are derived from the rules of the Ontario Securities Commission and the Canadian Securities Administrators and the Recognition Order of TSX Group Inc. and TSX Inc. The Board will update these standards from time to time as required. These standards were reviewed and approved by the Board on July 26, 2005.

1. Composition

At least fifty per cent (50%) of members of the Board shall be independent within the meaning of and as required by Multilateral Instrument 52-110—Audit Committees (“MI 52-110”). In addition, TSX Group will take steps to ensure that each member of the Board is a fit and proper person and the past conduct of the member affords reasonable grounds for belief that the member will perform his or her duties with integrity.

2. Determination by Board

A director is considered independent only where the Board affirmatively determines that the director has no material relationship with TSX Group.¹ A “material relationship” is a relationship which could, in the view of the Board, reasonably interfere with the exercise of a director’s independent judgement.² The Board shall make a determination concerning the independence of a director each year at the time the Board approves director nominees for inclusion in TSX Group’s information circular. Where a director joins the Board mid-year, the Board will make a determination at that time.

3. General Independence Standards

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Group and are therefore considered NOT to be independent:

- (a) an individual who is, or has been within the last three years, an employee or executive officer³ of TSX Group or any of its affiliates;

- (b) an individual whose immediate family member⁴ is, or has been within the last three years, an executive officer of TSX Group or any of its affiliates (past or present employment of the individual or immediate family member, on a part-time basis, as the chair or vice-chair of the board or any board committee does not disqualify the individual from being independent);

- (c) an individual who:

- (i) is a partner of a firm that is the internal or external auditor of TSX Group or any of its affiliates,
- (ii) is an employee of that firm, or
- (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Group or any of its affiliates within that time;

- (d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:

- (i) is a partner of a firm that is the internal or external auditor of TSX Group or any of its affiliates,
- (ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or
- (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Group or any of its affiliates within that time;

- (e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the current executive officers of TSX Group or its affiliates serves or served at that same time on the entity’s compensation committee; and

- (f) an individual who received, or whose immediate family member who is

¹ MI 52-110, section 1.4(1).

² MI 52-110, section 1.4(2).

³ “Executive officer” means a chair, vice-chair, president, any vice-president in charge of a principal business unit, division or function (including sales, finance or production), any officer of the company or its subsidiaries who performs a policy-making function, or any other individual who performs a policy-making function.

⁴ “Immediate family member” means an individual’s spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of the individual or the individual’s immediate family member) who shares the individual’s home.

employed as an executive officer of TSX Group or any of its affiliates received, more than \$75,000 in direct compensation from TSX Group or any of its affiliates during any 12 month period within the last three years (other than director or board committee fees and retirement plan payments or other deferred compensation for prior service, provided the compensation is not contingent in any way on continued service).

its management information circular delivered to shareholders in connection with its annual meeting of shareholders:

- (i) the nature of the relationship of the individual with TSX Group; and
- (ii) the explanation of the Board's determination as to why the individual should be considered independent.

4. Additional TSX Group Independence Standards

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Group and are therefore considered NOT to be independent:

- (a) an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of an entity that is a Participating Organization⁵; and
- (b) an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of an entity that has a Participating Organization as a significant affiliate⁶, who is responsible for or is actively or significantly engaged in the day-to-day operations or activities of the Participating Organization.

- (c) TSX Group will notify the Manager of Market Regulation for the Ontario Securities Commission in writing of the Board's intention to make the determination referred to in clause 5(a) as soon as practicable, and in any event no less than 15 business days before the written statement in clause 5(b) is made.

5. Determination by the Board and Notice to the Ontario Securities Commission

- (a) The Board may determine that an individual who is considered to have a material relationship under Section 4 is nonetheless independent, if the Board is satisfied that the material relationship under Section 4 will not, in the view of the Board, reasonably interfere with the exercise of the individual's independent judgment.
- (b) If the Board makes the determination referred to in clause 5(a), TSX Group must disclose in a written statement in

⁵ A "Participating Organization" is an entity desiring access to the trading facilities of Toronto Stock Exchange whose application is accepted by Toronto Stock Exchange.

⁶ A Participating Organization is a "significant affiliate" of another entity if the Participating Organization is an affiliate of that entity (as defined in the *Business Corporations Act* (Ontario)) and if the annual revenues of the Participating Organization for its most recently completed fiscal year represent more than 10% of the consolidated revenues of its group parent.

TSX Inc.**Board of Directors Independence Standards**

The Board of Directors has adopted these standards to determine whether individual members of the Board are independent from TSX Inc. These standards are derived from the rules of the Ontario Securities Commission and the Canadian Securities Administrators and the Recognition Order of TSX Group Inc. and TSX Inc. The Board will update these standards from time to time as required. These standards were reviewed and approved by the Board on July 26, 2005.

1. Composition

At least fifty per cent (50%) of members of the Board shall be independent within the meaning of and as required by Multilateral Instrument 52-110—Audit Committees (“MI 52-110”). In addition, TSX Inc. will take steps to ensure that each member of the Board is a fit and proper person and the past conduct of the member affords reasonable grounds for belief that the member will perform his or her duties with integrity.

2. Determination by Board

A director is considered independent only where the Board affirmatively determines that the director has no material relationship with TSX Inc.¹ A “material relationship” is a relationship which could, in the view of the Board, reasonably interfere with the exercise of a director’s independent judgement.² The Board shall make a determination concerning the independence of a director each year at the time the Board approves director nominees for inclusion in TSX Group’s information circular. Where a director joins the Board mid-year, the Board will make a determination at that time.

3. General Independence Standards

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Inc. and are therefore considered NOT to be independent:

- (a) an individual who is, or has been within the last three years, an employee or executive officer³ of TSX Inc. or any of its affiliates;

- (b) an individual whose immediate family member⁴ is, or has been within the last three years, an executive officer of TSX Inc. or any of its affiliates (past or present employment of the individual or immediate family member, on a part-time basis, as the chair or vice-chair of the board or any board committee does not disqualify the individual from being independent);
- (c) an individual who:
 - (i) is a partner of a firm that is the internal or external auditor of TSX Inc. or any of its affiliates,
 - (ii) is an employee of that firm, or
 - (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Inc. or any of its affiliates within that time;
- (d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:
 - (i) is a partner of a firm that is the internal or external auditor of TSX Inc. or any of its affiliates,
 - (ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or
 - (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Inc. or any of its affiliates within that time;
- (e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the current executive officers of TSX Inc. or its affiliates serves or served at that same time on the entity’s compensation committee; and
- (f) an individual who received, or whose immediate family member who is employed as an executive officer of TSX Inc. or any of its affiliates received, more

¹ MI 52-110, section 1.4(1).

² MI 52-110, section 1.4(2).

³ “Executive officer” means a chair, vice-chair, president, any vice-president in charge of a principal business unit, division or function (including sales, finance or production), any officer of the company or its subsidiaries who performs a policy-making function, or any other individual who performs a policy-making function.

⁴ “Immediate family member” means an individual’s spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of the individual or the individual’s immediate family member) who shares the individual’s home.

than \$75,000 in direct compensation from TSX Inc. or any of its affiliates during any 12 month period within the last three years (other than director or board committee fees and retirement plan payments or other deferred compensation for prior service, provided the compensation is not contingent in any way on continued service).

- (i) the nature of the relationship of the individual with TSX Inc.; and
- (ii) the explanation of the Board's determination as to why the individual should be considered independent.

- (c) TSX Inc. will notify the Manager of Market Regulation for the Ontario Securities Commission in writing of the Board's intention to make the determination referred to in clause 5(a) as soon as practicable, and in any event no less than 15 business days before the written statement in clause 5(b) is made.

4. Additional TSX Inc. Independence Standards

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Inc. and are therefore considered NOT to be independent:

- (a) an individual who is an employee, associate (within the meaning of the Securities Act (Ontario)), or executive officer of an entity that is a Participating Organization⁵; and
- (b) an individual who is an employee, associate (within the meaning of the Securities Act (Ontario)), or executive officer of an entity that has a Participating Organization as a significant affiliate⁶, who is responsible for or is actively or significantly engaged in the day-to-day operations or activities of the Participating Organization.

5. Determination by the Board and Notice to the Ontario Securities Commission

- (a) The Board may determine that an individual who is considered to have a material relationship under Section 4 is nonetheless independent, if the Board is satisfied that the material relationship under Section 4 will not, in the view of the Board, reasonably interfere with the exercise of the individual's independent judgment.
- (b) If the Board makes the determination referred to in clause 5(a), TSX Group must disclose in a written statement in its management information circular delivered to shareholders in connection with its annual meeting of shareholders:

⁵ A "Participating Organization" is an entity desiring access to the trading facilities of Toronto Stock Exchange whose application is accepted by Toronto Stock Exchange.

⁶ A Participating Organization is a "significant affiliate" of another entity if the Participating Organization is an affiliate of that entity (as defined in the *Business Corporations Act* (Ontario)) and if the annual revenues of the Participating Organization for its most recently completed fiscal year represent more than 10% of the consolidated revenues of its group parent.