



BC Notice 2012/17

**Notice of Commission Recognition Orders for TSX Venture Exchange the Canadian
Depository for Securities Limited and Related Instruments**

I Introduction

The British Columbia Securities Commission is issuing recognition orders and related instruments relating to TSX Venture Exchange (TSX V), the Canadian Depository for Securities Limited (CDS), the Canadian Derivatives Clearing Corporation, and TSX Inc. We are issuing these orders and instruments in response to an application by Maple Group Acquisition Corporation. Maple's application was in connection with its proposed acquisitions of the TMX Group Inc. and other entities.

As a condition of issuing the orders, we are requiring a number of entities to provide undertakings to the Commission. The recognition order will not become effective until these undertakings are signed and delivered to the Commission. When we have received the signed undertakings, we will publish a notice to that effect.

II Background

In June 2011, Maple offered to acquire all of the issued and outstanding common shares of TMX Group, a public company listed on the Toronto Stock Exchange.

TMX Group's principal subsidiaries are TSX Inc. (which operates the Toronto Stock Exchange), TSX Venture, the Natural Gas Exchange Inc., the Bourse de Montréal and the Canadian Derivatives Clearing Corporation (CDCC).

Maple also intends to acquire the parent of the Alpha Exchange Inc. and to acquire the Canadian Depository for Securities Limited (CDS) with a view to taking advantage of potential synergies between CDS and CDCC.

We held consultations in the summer of 2011 about Maple's proposed acquisitions. In October 2011, we published for comment Maple's application (see BCN 2001/27). In May 2012, we published for comment proposed recognition order conditions for TSX V, proposed recognition order conditions for CDS, and related undertakings (see BCN 2012/11). We also held targeted consultations after our May 2012 publications with a number of individuals with significant venture experience. We received nine comment letters.

We thank those who consulted with us and those who responded to our request for comment for their invaluable assistance in considering the issues before us. Their thoughtful responses were helpful as we analyzed the proposed transaction and our proposed orders and undertakings.

III Decision

In our May publication, we noted the critical importance of the Canadian public venture market to British Columbia's economy. The market owes its vigour to the presence of TSX Venture in British Columbia. TSX Venture is recognized internationally as the leading exchange for venture capital raising in the world.

British Columbia companies also have a significant presence on TSX Venture – they make up 50% of its listed issuers and 44% of its total market capitalization. This significantly exceeds the issuer presence of any other jurisdiction.

It is in the public interest that the venture market's presence and strength in British Columbia be preserved and that it operate in an environment that fosters its future growth and prosperity.

In our May publication, we identified four major risks to the Canadian public venture market associated with the Maple transaction. All four stemmed from the question of whether the Maple owners, all large financial institutions and all but one based in central Canada, would understand the vital role of the venture market in Canada, or would understand what it takes to make a venture market successful. We also identified an issue related to systemic risk arising from the concentration of control of Canada's equity and derivatives markets and clearing facilities.

We said that the Commission, in considering Maple's application, would have to decide whether the risks constitute a threat to the Canadian venture market sufficiently serious to conclude that Maple's proposed acquisitions would, if completed, be prejudicial to the public interest in British Columbia.

In our request for comment, we asked whether we had properly identified the risks, or had overstated them, and whether the conditions and undertakings described in the notice would be adequate to address the risks.

None of those commenting was able to identify any benefits of the transaction to venture market participants. They generally confirmed that we had properly identified the risks, and none thought we had overstated them.

Most commenters believed that the Maple transaction would be completed. From that perspective, some suggested changes to our proposed conditions and undertakings to better address the risks.

In response to these suggestions and other comments, and our further analysis of the transaction, we made changes to the proposed orders and undertakings to address the risks associated with the Maple transaction.

The Commission has not changed its view that the proposed Maple acquisitions carry significant risks to British Columbia's public venture market. However, in determining what is in the public interest in British Columbia, we recognize that the Ontario Securities Commission, the Québec Autorité des marchés financiers and the federal Competition Bureau have approved the transaction. We have concluded that refusing to recognize TSX Venture to operate as an exchange in British Columbia after the acquisition, or to recognize CDS to operate a clearing agency in British Columbia, would be counterproductive to the continued operation of our markets.

We therefore are issuing the orders described in this notice.

IV Summary of the key conditions of the recognition orders and undertakings

TSX V recognition order

1. TSX V must adopt a mission statement that it maintain and grow a competitive Canadian public venture market.
2. At least 25% of the TSX V board's directors must have venture experience as described in the order. The order clarifies some aspects of the venture experience criteria..
3. TSX V must have regional advisory committees comprised of participants in the Canadian public venture capital market, with mandates to advise on all policy, operational and strategic issues that are likely to have an impact on the Canadian public venture market. TSX V must also have a national advisory committee comprised of members of the regional advisory committees. The national advisory committee will report to the TSX V board and to the Commission. These roles were enhanced in response to our comments and consultations.
4. TSX V must maintain an office in Vancouver that has a significant role in the Exchange's: development of expertise in the public venture market, maintenance and growth of a competitive Canadian public venture market, and development of innovations and policies for the public venture market. TSX V must also locate in Vancouver the executive, management and operations personnel necessary to fulfill these requirements.
5. TSX V must manage real or potential conflicts of interest arising from the management or operation of the Exchange or the services or products it provides.
6. The Commission must approve changes to the business or operations of TSX V that may impact the venture market.

CDS recognition order

1. The Commission must approve all changes to access, fees, capital and collateral requirements and risk models.
2. CDS's board of directors must include at least two directors who represent independent investment dealers who have a significant amount of their activity in trading, clearing and settling securities listed on a Canadian venture exchange.
3. At least one director on the risk management and audit committee of the CDS board must be an independent dealer.
4. CDS must use its best efforts to enable independent dealers to participate in key marketplace advisory committees.
5. In response to comments from local users of CDS services, we added a requirement that CDS maintain in Vancouver a level of service that ensures British Columbia CDS users are not disadvantaged, and that the services are priced equally to services it provides in other offices.
6. CDS must obtain Commission approval before making changes to its business or operations that would have a significant impact on the Canadian public venture market.
7. CDS must comply with the Ontario Securities Commission's recognition order and oversight regime.

Undertakings

1. Maple, TMX Group and TSX must take all necessary steps to enable TSX V to comply with the recognition order.
2. Maple, TMX Group and TSX must allocate sufficient financial and other resources to TSX V to ensure it can perform its functions in a manner consistent with its mission statements, the public interest and the terms and conditions of TSX V's recognition order.
3. Maple, TMX Group and TSX must ensure that their boards, and TSX V's board are composed of the same individuals, that at least 50% of the directors are independent, and that at least 25% of the directors are persons who meet the venture expertise requirements.

4. Maple shareholders must comply with the terms and conditions in the Ontario Securities Commission order that impose obligations on the shareholders that address conflicts of interest raised by Maple shareholders' ownership of the TMX Group, anti-competitive behaviour, and protecting confidential information Maple shareholders could access through their ownership of the TMX Group.

Please refer your questions to any of the following:

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