



Citation: 2020 BCSECCOM 343

Designation Order

TSX Inc. – Information Processor for Exchange-traded Securities other than exchange contracts for the purposes of National Instrument 21-101 *Marketplace Operation*

Section 187(1)(c.1)(iii) of the *Securities Act*, R.S.B.C.1996, c.418

Background

1. Part 7 of National Instrument 21-101 *Marketplace Operation* (NI 21-101) requires marketplaces to provide accurate and timely information regarding orders and trades in securities, as that term is used in NI 21-101, other than exchange contracts, that are listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or are listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of NI 21-101 and National Instrument 23-101 *Trading Rules* (Exchange-Traded Securities), to an information processor, as required by the information processor.
2. In British Columbia, only a designated information processor is considered an information processor for the purposes of NI 21-101.
3. TSX Inc. (TSX) has submitted an application requesting that the Commission designate TSX as an information processor for Exchange-Traded Securities for the purposes of NI 21-101.
4. TSX has represented to the Commission that:
 - (a) it has the necessary systems in place to collect and disseminate information regarding orders and trades in Exchange-Traded Securities on marketplaces that are subject to the transparency requirements contained in Part 7 of NI 21-101;
 - (b) it is currently the information processor for Exchange-Traded Securities and is in compliance with British Columbia securities laws and the undertakings made to the Commission with respect to its operations as an information processor;
 - (c) it currently disseminates information about orders and trades in Exchange-Traded Securities in a manner approved by the Canadian Securities Administrators (CSA);



- (d) it has sufficient financial and human resources to comply with the requirements applicable to an information processor for Exchange-Traded Securities, including those set out in Schedule A to this order;
- (e) for so long as TSX is designated as an information processor under this order, it will make available comprehensive information regarding orders and trades in Exchange-Traded Securities to all market participants;
- (f) it has an appropriate governance structure and conflicts of interest policies and procedures in place;
- (g) there are no legal restrictions on it acting as an information processor.

Interpretation

5. Terms defined in the *Securities Act* (British Columbia) or in NI 21-101 have the same meaning if used in this decision, unless otherwise defined.

Order

6. The Commission designates TSX, under section 187(1)(c.1)(iii) of the Act, as an information processor for Exchange-Traded Securities for the purposes of NI 21-101, on the terms and conditions set out in Schedule A to this order.
7. This order will expire on June 30, 2022.

Effective date

8. This order comes into effect on August 31, 2020.

August 26, 2020

Brenda M. Leong
Chair



Schedule A

Terms and Conditions applicable to TSX as an Information Processor for Exchange-Traded Securities other than exchange contracts

DEFINITIONS AND INTERPRETATION

1. In this schedule:

"affiliated entity" has the meaning ascribed to it in section 1.3 of NI 21-101.

"Consolidated Data Products" has the meaning ascribed thereto in paragraph 9 of this Schedule A.

"Commission" means the British Columbia Securities Commission.

"Data Contributors" means, collectively, the marketplaces and any other party that is required to provide order and trade information to TMX IP under NI 21-101.

"Data Purchasers" means any purchaser of Consolidated Data Products offered by TMX IP.

"Designation Order" means the designation order issued by the Commission under section 187(1)(c.1)(iii) of the Act to which this Schedule A is appended.

"Form F5" means Form 21-101F5 under NI 21-101.

"IP" means an information processor as defined in section 1.1 of NI 21-101.

"IP Governance Committee" means the governance committee established by TMX IP and approved by the CSA for the purpose of providing TMX IP with oversight and decision-making regarding the scope of service, operational priorities and enhancements (within this scope), bandwidth and capacity planning, and criteria and methods of monitoring performance, in each case, in respect of the Consolidated Data Products.

"IP Advisory Sub-Committee" means an ad-hoc sub-committee of the IP Governance Committee, which includes additional representation from at least one data vendor and one market participant from the buy and sell side, that provide input into certain TMX IP matters, and is advisory in nature.

"marketplace" has the meaning ascribed to it in section 1.1(1) of NI 21-101.

"NI 21-101" means National Instrument 21-101 - *Marketplace Operation*.



"TMX IP" means TSX acting in its capacity as an IP.

"TSX" means TSX Inc.

PUBLIC INTEREST RESPONSIBILITIES

2. TMX IP must conduct its business and operations in a manner that is consistent with the public interest.
3. TMX IP must provide a written report to the Commission, as required by the Commission, describing how it is meeting its regulatory and public interest functions.

CHANGES TO FORM F5

4. As required by section 14.2 of NI 21-101, TMX IP will file with the Commission proposed amendments to the information provided in Form F5. TMX IP must not implement a significant change to the information in the Form F5 without the prior approval of the Commission¹.

GOVERNANCE AND CONFLICTS OF INTEREST

5. TMX IP will notify the Commission of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee, and will provide notice of any changes to those representatives.
6. The Boards of Directors of TMX Group Limited and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities, bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to TMX IP.
7. TMX IP will maintain and monitor compliance with policies and procedures to separate TSX's marketplace business operations from TMX IP operations and manage inherent conflicts of interest and provide material changes to these policies and procedures to the Commission for review.
8. The technology used by TMX IP will not give the marketplaces affiliated with TMX Group Limited an advantage with respect to their data as compared to other marketplaces.

IP PRODUCTS

- 9 Unless TMX IP obtains prior approval from the Commission, it may only distribute the following products (together the **Consolidated Data Products**):

¹ Examples of significant changes are provided in subsection 16.3 of the Companion Policy to NI 21-101.



- a. The Consolidated Data Feed (**CDF**);
 - b. The Canadian Best Bid and Offer (**CBBO**);
 - c. The Consolidated Best Bid and Offer for Protected Only Markets (**CBBOP**);
 - d. The Consolidated Last Sale (**CLS**);
 - e. The Consolidated Depth of Book (**CDB**); and
 - f. The Consolidated Depth of Book for Protected Only Markets (**CDBP**).
- 10** Unless TMX IP obtains prior approval from the Commission, it must distribute all Consolidated Data Products.
- 11** TMX IP will review the Consolidated Data Products, and consider any new products or changes to the Consolidated Data Products that may be reasonably required by amendments that may be adopted by the Commission during the term of the Designation Order.
- 12** TMX IP may bundle each data product comprising the Consolidated Data Products for sale to Data Purchasers, but must also make each data product available as a separate permissionable feed.
- 13** If TSX or any of its affiliated entities intend to create and distribute products using the data provided to TMX IP under Part 7 of NI 21-101 through its commercial distribution channels and not through TMX IP:
- i. The data required to be provided to TMX IP by Data Contributors, other than data from the marketplaces that are affiliates of TSX, must not be used without the permission of the Data Contributors; and
 - ii. Any additional product must be made available for purchase separately from, and not bundled with, the Consolidated Data Products or any other products approved under paragraph 9.
- 14** TSX, in its capacity of TMX IP, will not provide any of its affiliated entities with the data provided by the Data Contributors, other than the data from the marketplaces that are affiliates of TSX, without the permission of the Data Contributors.
- 15** TMX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an IP under NI 21-101, provided that TMX IP may perform normal course recycle, batch and maintenance operations. TMX IP will provide customer support between the hours of 7:30 – 17:30 Toronto time and will also provide 24/7 technical support.



AGREEMENTS WITH DATA CONTRIBUTORS

- 16 TMX IP will ensure that Data Contributors are given access to TMX IP on fair and reasonable terms.
- 17 The standard agreements and contracts to be entered into between TMX IP and Data Contributors in connection with TMX IP services will be provided to the Commission for review and approval prior to their execution.
- 18 Proposed material changes to agreements or contracts between TMX IP and Data Contributors will be provided to the Commission for review and approval.

FEEES, FEE STRUCTURE AND REVENUE SHARING

- 19 TMX IP will make available, on its website, the fee schedule for TMX IP Consolidated Data Products.
- 20 If any adjustments or modifications are proposed to fees, fee structure, or the fee/revenue sharing model relating to the services of TMX IP, TMX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.
- 21 TMX IP will report annually, in writing, to the Commission whether it has fully recovered its costs (including cost of capital and cost to meet the requirements under subsections 14.4(2), (4), and (5) of NI 21-101) associated with offering TMX IP services and will review and report on whether the profit margin received from TMX IP services is in line with industry standards.
- 22 If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of TMX IP, TMX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. TMX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to TMX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to the Commission within 30 days of the IP Governance Committee having received the analysis and recommendations.
- 23 TMX IP will conduct reviews of the “pass-through” fee model, as requested by the Commission (the **Review Initiation Date**). Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. TMX IP will ask the IP Governance Committee to review the report and provide its views, in writing, to TMX IP. The report and the views of the IP



Governance Committee will be provided to the Commission within 90 days of the Review Initiation Date.

SELF-ASSESSMENT

- 24** TMX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4) and (5) of NI 21-101 and of its performance with respect to the terms and conditions of the Designation Order. The report of such self-assessment will be provided to the IP Governance Committee promptly upon its completion. TMX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to the Commission no later than 90 days after the end of TMX IP's fiscal year.

FINANCIAL VIABILITY

- 25** TMX Group Limited will provide TMX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

NOTICE

- 26** TMX IP must provide the Commission with at least one year's notice should it determine not to continue to act as an IP.