

2012 BCSECCOM 273

Recognition Order

TSX Venture Exchange Inc.

Section 24(b) of the *Securities Act*, RSBC 1996, c. 418

Maple Group Acquisition Corporation (Maple) intends to acquire TMX Group Inc. (TMX Group), a subsidiary of which is TSX Venture Exchange Inc. (TSX Venture). Maple applied to the Commission to confirm its recognition of TSX Venture.

The Commission considers it appropriate to revise the terms and conditions of the continued recognition of TSX Venture as an exchange following the acquisition.

TSX Venture will be subject to the joint regulatory oversight of the Commission and the Alberta Securities Commission.

Based on the application and representations of Maple in connection with the application, and on the condition that Maple, TMX Group, TSX and the original Maple shareholders provide undertakings to the Commission, the Commission is satisfied that the continued recognition of TSX Venture following the acquisition will not be prejudicial to the public interest.

The Commission orders the continued recognition of TSX Venture as an exchange under section 24(b) of the Act, effective on the completion of the initial take-up by Maple of a minimum of 70% of the outstanding shares of TMX Group in connection with the acquisition and the delivery of signed undertakings from Maple, TMX Group, TSX and all original Maple shareholders to the Commission. While this order is effective, TSX Venture must meet and continue to meet the revised terms and conditions set out in Schedule A.

Recognition will continue until the Commission, after giving TSX Venture an opportunity to be heard, revokes it.

July 11, 2012

Brenda M. Leong
Chair and CEO

2012 BCSECCOM 273

Schedule A

Definitions

1. For the purposes of this order:

“affiliated entity” has the meaning ascribed to it in section 1.3 of NI 21-101 *Marketplace Operation*;

“Exchange” means the TSX Venture Exchange Inc.;

“Maple clearing agency” means any clearing agency owned or operated by Maple or Maple’s affiliated entities;

“Maple marketplace” means any marketplace owned or operated by Maple or Maple’s affiliated entities;

“Maple marketplace participant” means a marketplace participant of any Maple marketplace;

“Maple nomination agreement” means a nomination agreement provided for under section 12(h) of the *Amended and Restated Acquisition Governance Agreement* of June 10, 2011 of Maple, as amended;

“marketplace” has the meaning ascribed to it in NI 21-101 *Marketplace Operation*;

“marketplace participant” has the meaning ascribed to it in NI 21-101 *Marketplace Operation*;

“original Maple shareholder” means each of the Alberta Investment Management Corporation, AIMCo Maple 1 Inc., AIMCo Maple 2 Inc., Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), The Manufacturers Life Insurance Company, National Bank Financial & Co. Inc., National Bank Financial Inc., Ontario Teachers’ Pension Plan Board, Scotia Capital Inc., and TD Securities Inc.; and

“significant Maple shareholder” means a person that:

- (a) beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple provided, however, that the ownership of

2012 BCSECCOM 273

or control or direction over additional Maple shares in connection with the following activities shall not be included for the purposes of determining whether the 5% threshold has been exceeded:

- (i) investment activities on behalf of the person or its affiliated entity where such investments are made (I) by a bona fide third party investment manager with discretionary authority (subject to such retained discretion in order for the person or its affiliated entity to fulfil its fiduciary duties); or (II) by an investment fund or other pooled investment vehicle in which the person or such affiliated entity has directly or indirectly invested and which is managed by a third party who has not been provided with confidential, undisclosed information about Maple;
- (ii) acting as a custodian for securities in the ordinary course;
- (iii) normal course trading (including proprietary client facilitation trading) and wealth management activities (including, for greater certainty, in connection with the management of any mutual funds, pooled funds, trust accounts, estate portfolios and other investor funds and portfolios), including electronic securities trading, conducted for or on behalf of clients of the person , provided that any fund manager with discretionary authority carrying out such activities on behalf of such clients, or such clients, have not been provided with confidential, undisclosed information about Maple;
- (iv) the acquisition of Maple shares in connection with the adjustment of index-related portfolios or other “basket” related trading;
- (v) making a market in securities to facilitate trading in shares of Maple by third party clients or to provide liquidity to the market in the person’s capacity as a designated market-maker for shares of Maple, in the person’s capacity as designated market-maker for derivatives on Maple shares, or in the person’s capacity as market-maker or “designated broker” for exchange traded funds which may have investments in shares of Maple, in each case in the ordinary course (which, for greater certainty, shall include acquisitions or other derivative transactions undertaken in connection with hedging positions of, or in relation to, Maple shares); or

2012 BCSECCOM 273

- (vi) providing financial services to any other person in the ordinary course of business of its and their banking, securities, wealth and insurance businesses, provided that such other person has not been provided with confidential, undisclosed information about Maple;

and subject to the conditions that the ownership of or control or direction over Maple shares by a person in connection with the activities listed in (i) through (vi) above:

- (vii) is not intended by that person to facilitate evasion of the 5% threshold set out in clause (a); and
 - (viii) does not provide that person the ability to exercise voting rights over more than 5% of the voting shares of Maple in a manner that is solely in the interests of that person as it relates to that person's ownership of or control or direction over the subject shares, except where the ability to exercise voting rights over more than 5% of the voting shares arises as a result of the activities listed in (v) above in which case the person must not exercise its voting rights with respect to those excess voting shares;
- (b) is an original Maple shareholder that is a party to a Maple nomination agreement, for as long as its Maple nomination agreement is in effect; or
 - (c) is an original Maple shareholder (A) whose obligations by way of undertakings to the Commission in connection with this order have not terminated and (B) that has a partner, officer, director or employee who is a director on the Maple board other than pursuant to a Maple nomination agreement, for so long as such partner, officer, director or employee remains a director of Maple.
2. For the purposes of this order, an individual is unrelated to an original Maple shareholder if the individual:
- (a) is not a partner, officer or employee of an original Maple shareholder or any of its affiliated entities or an associate of that partner, officer or employee;
 - (b) is not nominated under a Maple nomination agreement;
 - (c) is not a director of an original Maple shareholder or any of its affiliated entities or an associate of that director; and

2012 BCSECCOM 273

- (d) does not have, and has not had, any relationship with an original Maple shareholder that could, in the view of the Maple governance committee having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of the individual's independent judgment as a director of the Exchange.
3. For the purposes of section 2, the Maple governance committee may waive the restriction in section 2(c) if:
- (a) the individual being considered does not have, and has not had, any relationship with an original Maple shareholder that could, in the view of the Maple governance committee having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of the Exchange;
 - (b) the Exchange publicly discloses the use of the waiver with reasons why the particular candidate was selected;
 - (c) the Exchange provides advance notice to the Commission, at least 15 business days before the public disclosure in section 3(b) is made; and
 - (d) the Commission does not object within 15 business days of its receipt of the notice provided under section 3(c).
4. For the purposes of this order, an individual is independent if the individual is "independent" within the meaning of sections 1.4 and 1.5 of National Instrument 52-110 *Audit Committees*, as amended from time to time, and is not:
- (a) a partner, director, officer or employee of a Maple marketplace participant or an associate of a partner, director, officer or employee of a Maple marketplace participant; or
 - (b) a partner, director, officer or employee of an affiliated entity of a Maple marketplace participant, who is responsible for or is actively or significantly engaged in the day-to-day operations or activities of that Maple marketplace participant.

Mission

5. The Exchange will adopt a mission statement that includes the objective of maintaining and growing a competitive Canadian public venture market.

2012 BCSECCOM 273

6. The Exchange will operate a national exchange for venture issuers under a separate brand identity and separately from the national exchange for senior issuers operated by TSX.
7. The Exchange will maintain an office in Vancouver that has a significant role in the Exchange's:
 - (a) development of expertise in the public venture market;
 - (b) maintenance and growth of a competitive Canadian public venture market;
 - (c) development of innovations in the public venture market; and
 - (d) development of policy that enhances the competitive position of the Exchange.
8. From its office in Vancouver, the Exchange will also:
 - (a) provide corporate finance services to, and perform corporate finance functions for, its listed issuers and applicants for listing; and
 - (b) perform issuer regulation functions.
9. The Exchange will locate in its Vancouver office the executive, management, and operations personnel necessary to ensure it meets the requirements of paragraphs 7 and 8.

Public interest

10. The Exchange will operate in the public interest.

Regulation functions of the Exchange

11. The Exchange will set, maintain and enforce rules, policies, and other similar instruments that:
 - (a) govern listing and corporate finance requirements for its listed issuers;
 - (b) govern the conduct of and trading by Exchange marketplace participants;

2012 BCSECCOM 273

- (c) require listed issuers and Exchange marketplace participants to comply with securities legislation and the rules, policies or other instruments of the Exchange;
 - (d) foster investor protection; and
 - (e) permit those seeking access to the listing, trading and other services of the Exchange to be granted access without unreasonable discrimination.
12. The Exchange will promptly notify the Commission upon becoming aware that a listed issuer, Exchange marketplace participant, or a director, officer or employee of a listed issuer or Exchange marketplace participant has:
- (a) committed a significant violation of securities legislation or of the Exchange's rules, policies or similar instruments; or
 - (b) engaged in conduct contrary to the public interest.

Reporting and approvals

13. The Exchange will report to the Commission:
- (a) at the times;
 - (b) in the form; and
 - (c) containing the information;
- that the Commission specifies from time to time.
14. The Exchange will not, without prior Commission approval, make any changes to its rules, policies or other similar instruments or introduce any new rules, policies or other similar instruments.
15. The Exchange will not, without prior Commission approval, make any change to its business or operations that:
- (a) is outside the ordinary course of its business or operations; or
 - (b) is inconsistent with its past business or operational practices and presents a risk of adverse consequences to investors, issuers listed on the Exchange or the Canadian public venture market.

2012 BCSECCOM 273

Industry advisory committees

16. The Exchange will establish regional industry advisory committees comprised of participants in the Canadian public venture capital market with mandates to provide advice and recommendations to the Exchange board on all policy, operational, and strategic issues that are likely to have a significant impact on the Canadian public venture market. The Exchange will also establish a national advisory committee made up of representatives from the regional advisory committees. The Exchange will allocate financial and other resources to these advisory committees that are sufficient to ensure the committees can meaningfully fulfil their mandates.
17. The national advisory committee will report to the board of the Exchange, at least quarterly, and to the Commission, at least annually. The reports will include the issues the regional and national advisory committees considered and information about what the committees recommended, including whether the national advisory committee rejected or only partially adopted a recommendation of a regional advisory committee.
18. In each case where the Exchange board has not followed or has only partially implemented the recommendation or advice of the national advisory committee, it will provide a report to the Commission as soon as practicable with a written explanation. The report will include a response from the national advisory committee and why it agrees or disagrees with the Exchange board's report.

Corporate governance

19. The Exchange will ensure:
 - (a) that its board composition provides a reasonable balance between the interests of the different entities using its services and facilities;
 - (b) fair and meaningful representation of stakeholders on the board and any board or advisory committee, having regard to the fact that it is a national public venture exchange; and
 - (c) that it has appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for its directors, officers and employees generally.

2012 BCSECCOM 273

20. At least 25% of the directors of the Exchange will, at all times, be persons who have currently relevant expertise in the Canadian public venture market whose expertise comes from experience acquired during a significant period:
 - (a) as a director or officer of an issuer in the Canadian public venture market;
 - (b) as a director or officer of an investment dealer, and in that capacity, engaged in underwriting, financing, or trading securities of Canadian public venture issuers;
 - (c) as a business adviser to issuers in the Canadian public venture market on financing, trading, or mergers and acquisitions;
 - (d) as a senior officer of an exchange or alternative trading system that lists or trades the securities of a significant number of issuers in the Canadian public venture market; or
 - (e) making or directing significant investments in the Canadian public venture market.
21. Upon the appointment of a person as a director to fulfill the requirement in section 20, the Exchange will promptly notify the Commission of the appointment, with an explanation about how the person's expertise satisfies the requirements in section 20.
22. The Exchange must require that the quorum for its board meetings include at least two directors appointed to satisfy the venture experience requirement in section 20.
23. The Exchange will:
 - (a) ensure that at least 50% of its directors are independent, as defined in this order; and
 - (b) ensure that as long any Maple nomination agreement is in effect, at least 50% of its directors are unrelated to original Maple shareholders.=
24. The Exchange must provide the Commission notice of and promptly remedy any instance where the thresholds in sections 20 or 23 are not met.
25. The standards for independence set out in this order will be made available on the Exchange's website.

2012 BCSECCOM 273

26. The Exchange will provide the Commission with prior written notice of any changes to its governance structure, including changes to the composition and terms of reference of its board committees and advisory committees, and will obtain Commission approval before implementing any substantive changes.
27. The Commission may approve the appointment of a director who does not meet the criteria set out in subsections 20(a) to (e), to satisfy the requirement for 25% venture representation set out in section 20.

Fitness

28. The Exchange must consider that the past conduct of a director or officer affords reasonable grounds to believe that the director or officer will perform his or her duties with integrity and in a manner that is consistent with the public interest responsibilities of the Exchange.

Conflicts of interest and confidentiality

29. The Exchange must:
 - (a) establish, maintain, comply with and require compliance with policies and procedures that:
 - (i) identify and manage any conflicts of interest or potential conflicts of interest arising from the management or operation of the Exchange or the services and products it provides;
 - (ii) ensure that a person who is a director, officer, employer or partner of a Maple shareholder does not have any involvement with oversight or management of the Exchange, except in the capacity of a director of the Exchange;
 - (iii) require that confidential information regarding the Exchange's operations or regulatory functions, or regarding an Exchange marketplace participant, or listed issuer, which is obtained by a director of the Exchange through their involvement in the management or oversight of the Exchange:
 - A. be kept separate and confidential from the business or other operations of the director, their employer or their business, except with respect to information regarding Exchange operations where disclosure is necessary to carry out the

2012 BCSECCOM 273

individual's responsibilities for the management or oversight of the Exchange and the individual exercises due care in disclosing the information; and

- B. not be used to provide an advantage to the director, their employer, their business or any of their affiliated entities;
- (b) review, at least annually, compliance with the policies and procedures established in accordance with paragraph (a) and document each such review, any deficiencies it identifies and how it remedied those deficiencies; and
- (c) make the policies established in accordance with paragraph (a) publicly available on the Exchange's website.

Due process

30. The Exchange will ensure that:

- (a) a party to any of its decisions to deny access to its trading and listing facilities is given notice and an opportunity to be heard or make representations; and
- (b) it keeps a record, gives reasons and provides for reviews of its decisions.

Fees

31. The Exchange will have a fair and appropriate process for setting fees and incentives.

32. These fees and incentives will:

- (a) be allocated on an equitable basis among the Exchange's listed issuers and applicants for listing, Exchange marketplace participants, and other marketplace participants;
- (b) not have the effect of creating barriers to access;
- (c) be balanced with the Exchange's need to have sufficient revenues to satisfy its responsibilities; and
- (d) be fair, reasonable and appropriate.

2012 BCSECCOM 273

33. The Exchange will not, without prior approval of the Commission, make any changes to its fees or incentives.
34. The Exchange must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any Exchange marketplace participant or any other person, provide:
 - (a) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by the Exchange that is conditional upon the purchase of any other service or product provided by the Exchange or any affiliated entity;
 - (b) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person; or
 - (c) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by the Exchange that is conditional upon an Exchange marketplace participant:
 - (i) routing trades to a Maple marketplace as the default or first marketplace to which a marketplace routes; or
 - (ii) using a Maple marketplace router as its primary router.
35. Except with the prior approval of the Commission, the Exchange must not, through any fee schedule, fee model or contract, agreement or other arrangement with any marketplace participant or any other person, provide any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons.
36. The Exchange must obtain prior Commission approval before implementing or amending any fees or fee models, including any new or amended incentives, relating to arrangements that provide for equity ownership in Maple for Exchange marketplace participants or their affiliated entities based on trading volumes or values on the Exchange.
37. The Exchange must not require another person to purchase or otherwise obtain products or services from any Maple clearing agency as a condition of the Exchange supplying or continuing to supply a product or service.

2012 BCSECCOM 273

38. The Exchange must not, without prior Commission approval, require another person to purchase or otherwise obtain products or services from the Exchange, any Maple marketplace, or a significant Maple shareholder as a condition of the Exchange supplying or continuing to supply a product or service.

Order Routing

39. The Exchange must not support or encourage, either through fee incentives or otherwise, Exchange marketplace participants to coordinate the routing of any of their orders to a particular Maple marketplace or trading facility owned by Maple or using a particular Maple clearing agency.

Financial viability

40. The Exchange will notify the Commission immediately upon becoming aware that it does not or will not have sufficient financial and other resources to perform its functions in a manner that is consistent with its mission statement, the public interest or the terms and conditions of this order.

Outsourcing

41. The Exchange will obtain prior Commission approval for any outsourcing arrangements related to any of its key services or systems with any third party, including entities affiliated or associated with the Exchange.

Related party transactions

42. Any agreement or transaction entered into between the Exchange and:

- (a) Maple, TMX Group, TSX; or
- (b) any affiliate or associate of Maple, TMX Group or TSX;

will be on terms and conditions that an independent third party would negotiate, acting at arm's length.

Change in operations or ownership

43. The Exchange must, before ceasing to operate; before suspending, discontinuing or winding up all or a significant portion of its operations; or before disposing of all or substantially all of its assets:

2012 BCSECCOM 273

- (a) provide the Commission at least six months' prior written notice; and
 - (b) comply with any requirements the Commission may impose.
44. The Exchange will not cease to be wholly owned by TSX or indirectly wholly owned by TMX Group or Maple without:
- (a) providing the Commission at least three months' prior notice; and
 - (b) complying with any requirements the Commission may impose.

Records and information sharing

45. The Exchange will ensure the Commission can promptly access the information and records, or a copy of the information and records, the Exchange is required to create, maintain, collect or keep under securities legislation or that it otherwise creates, maintains, collects or keeps in the course of its business. The Exchange will ensure the Commission can promptly access information and records obtained by a person to whom the Exchange has outsourced a function.
46. The Exchange will provide the Commission all information the Commission requests, in the form and within the times it specifies, and will otherwise cooperate with the Commission and its staff.
47. The Exchange will disclose or share information of a regulatory nature and will otherwise cooperate with other Canadian recognized or exempt exchanges, quotation and trade reporting systems, clearing agencies and self-regulatory organizations, and Canadian regulatory authorities responsible for the supervision or regulation of securities

Clearing and settlement

48. The Exchange will impose a requirement on Exchange marketplace participants to have appropriate arrangements in place for clearing and settlement.
49. The Exchange will not establish requirements relating to clearing and settlement of trades that would result in:
- (a) unfair discrimination of or between Exchange marketplace participants based on the clearing agency used;

2012 BCSECCOM 273

- (b) an imposition of any burden on competition among clearing agencies or back-office or post-trade service providers that is not reasonably necessary or appropriate; or
- (c) an unreasonable prohibition, condition or limitation relating to access by a person to services offered by the Exchange or a Maple clearing agency.

Commission approval

50. When seeking the approval of the Commission under these terms and conditions, the Exchange will comply with the procedures established from time to time by the Commission for the regulatory oversight of the Exchange.