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OSC eyes Timminco dealings

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The adequacy of disclosure made by Timminco Ltd. is apparently occupying the minds of officials at the Ontario Securities Commission. OSC officials and about half a dozen market participants have met recently so the regulator can listen to concerns and gather information about the public disclosure of the company, which now has a market cap of \$2.6-billion.

"Disclosure is something [the OSC] has not really enforced before. So I am somewhat skeptical," said one market participant who doesn't have any stake in Timminco.

The concerns of the participants include:

-The extent to which the market has been informed of the names of the company's contracts. Timminco has signed six contracts to supply its high-quality silicon to solar-panel manufacturers. The first contract was announced on March 15, 2007. "The agreement anticipates shipments of high-purity silicon in excess of 4,000 tonnes over an initial term of 5 years and it represents [the company's] first commercial contract for the sale of high-purity silicon. [The company] currently has the capacity to produce 300 tonnes of high-purity silicon per year and is preparing to ramp up production towards the end of 2007," it said.

Timminco did not name the solar-cell manufacturer.

Indeed, it adopted that no-names approach for its next three contracts: the second contract (April, 2007); the third (September, 2007); and the fourth, (December, 2007). On the fifth contract (March, 2007), Timminco said it had entered into an agreement with Q-Cells AG, the world's largest manufacturer of solar cells. Last week, Timminco announced a new agreement with Solar Power, and Solar Power was the company with which it had signed the first contract.

-The extent to which the market has been informed of the prices the buyers will pay.

"There has been lots of comment with respect to their long-term contracts. The financial terms and conditions have been omitted. So it's hard to understand what they mean," noted one market participant, who has studied Timminco but has no financial interest.

Participants are relying on recently announced changes in so-called National Instrument 51-102 -- Continuous Disclosure Obligations to press their case. They argue that the new rules, which came into effect in March, 2008, mean more disclosure, especially of material contracts. A recent report from Oslers said "the changes clarify and restrict the use of the ordinary course of business exemption and impose some additional restrictions on the ability to redact [prepare for publication] information in material contracts that are filed."

-The extent to which insiders have traded shares. In an earlier column, mention was made that two executives, John Walsh, then chief executive, and John Fenger, then a vice-president, purchased 200,000 and 190,000 shares, respectively, on April 3, 2007. The next day, Timminco announced its second commercial contract and, a few days later, a \$26-million bought deal. In the final prospectus, Timminco made mention of the buying and said that it was conducting "an internal review in respect of such trades as well as of its internal policies." Timminco added "both employees have advised the corporation that they were not aware of any material undisclosed information at the time of the trades."

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