

13.1.7 TSX Inc. (Formerly The Toronto Stock Exchange Inc.) Reorganization and Initial Public Offering

VIA EMAIL, FACSIMILE & DELIVERED

Ontario Securities Commission
20 Queen Street West, Suite 800
Toronto, Ontario
M5H 3S8

Attention: Cindy Petlock, Manager, Market Regulation

Dear Ms. Petlock:

Re: TSX Inc. (formerly The Toronto Stock Exchange Inc.) Reorganization and Initial Public Offering

We are counsel to TSX Inc. (formerly The Toronto Stock Exchange Inc.) ("TSX Inc.") in connection with the reorganization of TSX Inc. and initial public offering of TSX Group Inc. ("TSX Group"). In connection therewith, we hereby make application, on behalf of TSX Inc. and TSX Group, for the following: (i) an order of the Ontario Securities Commission (the "Commission") approving the ownership by TSX Group of all of the shares of TSX Inc.; (ii) a regulation made by the Commission pursuant to section 21.11(5) of the *Securities Act* (Ontario) (the "Act") changing the prescribed ownership percentage in section 21.11(1) of the Act from 5 per cent to 10 per cent, and (iii) an amended recognition order granting the continued recognition of TSX Inc. as a stock exchange and the recognition of TSX Group as a stock exchange, reflecting, among other things: (a) the reorganization of TSX Inc.; (b) the name change of The Toronto Stock Exchange Inc. to TSX Inc.; and (c) the terms and conditions to be followed by each of TSX Inc. and TSX Group as a result of the reorganization and in connection with the proposed listing of TSX Group shares and the listing of shares of its competitors on the Toronto Stock Exchange (a division of TSX Inc.).

We also make application hereby, on behalf of TSX Venture Exchange Inc. (formerly Canadian Venture Exchange Inc.), for an order amending and restating the Commission's amended exemption order of Canadian Venture Exchange Inc. dated July 31, 2001 (the "Existing Exemption Order") to reflect, among other things: (i) the reorganization of TSX Inc. and (ii) the name change of Canadian Venture Exchange Inc. to TSX Venture Exchange Inc. ("TSX Venture Exchange").

A. BACKGROUND

Name Changes

Effective July 10, 2002, "The Toronto Stock Exchange Inc./Bourse de Toronto Inc." changed its name to "TSX Inc.". The shareholders of The Toronto Stock Exchange Inc. approved the name change at the annual and special shareholders' meeting held on July 9, 2002. It is intended

that Canadian Venture Exchange Inc. will change its name to "TSX Venture Exchange Inc./Bourse de croissance TSX Inc." in the next few days. Canadian Venture Exchange Inc. has received approval of the name change from its sole shareholder, TSX Inc.

Reorganization and Share Ownership Restrictions

It is proposed that a reorganization of TSX Inc. will take place whereby a newly created company, TSX Group, will become the sole shareholder of TSX Inc. TSX Inc. will continue to own all of the shares of TSX Venture Exchange. Thus, immediately after the completion of the reorganization, TSX Inc. will be wholly-owned by TSX Group, and TSX Venture Exchange will continue to be wholly-owned by TSX Inc. As in the existing structure, the legal entity (TSX Inc.) that operates the Toronto Stock Exchange will continue to own the legal entity (TSX Venture Exchange) that operates the TSX Venture Exchange.

A pre-initial public offering reorganization of TSX Inc. is required to achieve this holding company structure. The reorganization will be accomplished by way of a court approved plan of arrangement. TSX Group will be initially incorporated as a subsidiary of TSX Inc. The plan of arrangement will involve: (i) shareholders of TSX Inc. exchanging their common shares of TSX Inc. for shares of TSX Group, with TSX Group thereby becoming the holding company for all shares of TSX Inc.; and (ii) the cancellation of the shares of TSX Group held by TSX Inc. As a result of the exchange, TSX Group will own 100% of TSX Inc. and the former shareholders of TSX Inc. become shareholders in TSX Group.

In connection with the reorganization of TSX Inc., it is necessary that any ownership restrictions applicable to TSX Inc. be applied instead to TSX Group. We propose that the Commission will grant an order under section 21.11(4) of the Act specifying that TSX Group own TSX Inc. subject to certain conditions. See "C. TSX Inc.: Submission/Legal Analysis: Section 21.11(4) Order".

In connection with the initial public offering, TSX Inc. is proposing that there be a change to the permitted limit on ownership of TSX Group shares from the existing ownership limits applied to TSX Inc. shares, whereby the restriction is increased from 5 per cent to 10 per cent. To effect this change, it is proposed that the Commission make a regulation as contemplated by section 21.11(5) of the Act. See "C. TSX Inc.: Submissions/Legal Analysis: Regulation".

Listing of TSX Group Shares

In connection with the initial public offering, it is contemplated that TSX Group will list its shares on the Toronto Stock Exchange. To address issues that may arise due to the listing of TSX Group on the Toronto Stock Exchange, TSX Inc. will establish a reporting structure whereby it notifies the Commission of conflicts of interest or potential conflicts of interest that arise or may arise. The Commission will have the opportunity to monitor TSX Inc. in

this respect and may make decisions with respect to conflict issues where it sees fit. The terms of this reporting and monitoring relationship are provided in Appendix I to the recognition order of TSX Inc. and TSX Group. Section 21(5) of the Act provides the Commission with overriding powers that allow it to make a decision, if it appears to be in the public interest, with respect to the manner in which the Toronto Stock Exchange carries on business, the trading of securities through the Toronto Stock Exchange's facilities, any security listed on the Toronto Stock Exchange, issuers whose securities are listed on the Toronto Stock Exchange, and any policy, procedure or practice of the Toronto Stock Exchange.

Under the terms of Appendix I to the recognition order, TSX Inc. will establish a conflicts committee that will review any matters brought before it and will provide to the Commission immediate notice of all such matters. These matters will include ongoing listing matters related to TSX Group, and initial or ongoing listing matters related to a competitor of TSX Group. The Commission, in accordance with the terms of Appendix I to the recognition order, will be in a position to approve or disapprove of the initial listing and of matters related to the continued listing of TSX Group on the Toronto Stock Exchange. See "C. TSX Inc.: Submissions/Legal Analysis: Recognition Order" for further details of the reporting procedures.

B. TSX VENTURE EXCHANGE: SUBMISSIONS

Corporate Structure, Recognition and Services in Ontario

TSX Venture Exchange was incorporated on October 29, 1999 pursuant to the Business Corporations Act (Alberta). By order made on November 26, 1999, as amended on July 31, 2001, TSX Venture Exchange was recognized by the Alberta Securities Commission (the "ASC") as an exchange in Alberta under subsection 52(2) of the Securities Act (S.A. 1981, c. S-6.1, as amended) and by the British Columbia Securities Commission (the "BCSC") as an exchange in British Columbia under subsection 24(2) of the Securities Act (British Columbia). TSX Venture Exchange has made application to the ASC and BCSC on July 5, 2002 to amend and restate these recognition orders to reflect the reorganization, the name changes and the provision of certain regulatory functions to TSX Venture Exchange by Market Regulation Services Inc. ("RS Inc.").

TSX Venture Exchange operates a national exchange for junior issuers which is separate from the Toronto Stock Exchange and which has a separate TSX Venture Exchange brand identity. TSX Venture Exchange presently maintains offices in Calgary, Vancouver, Winnipeg, Montreal and Toronto and receives applications from issuers for listings and performs continuous listing services for issuers through all of its offices.

Regulatory Oversight

TSX Venture Exchange is subject to joint regulatory oversight by both the ASC and the BCSC. TSX Venture Exchange is advised that the Commission, ASC and BCSC

have entered into a memorandum of understanding ("MOU") respecting the continued oversight of TSX Venture Exchange by the ASC and BCSC and that the existing MOU or any successor agreements, as amended from time to time, will continue to apply in respect of the regulatory oversight of TSX Venture Exchange. Under the terms of the MOU, the ASC and BCSC will continue to be responsible for conducting the regulatory oversight of TSX Venture Exchange and for conducting an oversight program of TSX Venture Exchange for the purpose of ensuring that TSX Venture Exchange meets appropriate standards for market operation and regulation.

TSX Venture Exchange provides any proposed changes to its by-laws, rules, policies, and other regulatory instruments to the ASC and BCSC for review and approval in accordance with the review and approval procedures established by the ASC and BCSC from time to time. TSX Venture Exchange will concurrently provide the Commission with copies of all by-laws, rules, policies and other regulatory instruments that it files for review and approval with the ASC and BCSC. Copies of all final by-laws, rules, policies and other regulatory instruments will also be provided to the Commission. TSX Venture Exchange will be subject to the terms and conditions of the ASC and BCSC recognition orders.

CDN Business

Effective September 29, 2000, TSX Venture Exchange entered into an agreement with TSX Inc. and the Canadian Dealing Network ("CDN"), a wholly-owned subsidiary of TSX Inc., pursuant to which TSX Inc. and CDN agreed to cease operating the quoted market and the reported market by CDN.

Effective September 29, 2000 Canadian Unlisted Board, Inc. ("CUB"), a wholly-owned subsidiary of TSX Venture Exchange, TSX Venture Exchange and the Commission entered into an agreement, pursuant to which CUB will operate an internet web-based reporting system for the reporting by dealers of trading in unlisted and unquoted equity securities in Ontario.

Reporting Issuer Status and Incorporation of OSC Rule 61-501

TSX Venture Exchange has adopted certain amendments to its Corporate Finance Policies, as may be amended from time to time, which require that TSX Venture Exchange issuers that are not otherwise reporting issuers in Ontario and have a "significant connection to Ontario" make application to the Commission and become reporting issuers in Ontario. TSX Venture Exchange has adopted Corporate Finance Policy 5.9, entitled "Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions".

C. TSX INC.: SUBMISSIONS/LEGAL ANALYSIS

Section 21.11(4) Order

In conjunction with the proposed reorganization, we submit that the Commission should make an order under subsection 21.11(4) of the Act granting approval for TSX Group to own all of the voting shares of TSX Inc. Subsection 21.11(4) of the Act permits the Commission to impose terms and conditions on this approval. We propose that one of those terms and conditions provide for the application of the ownership restrictions to TSX Group. This is the logical consequence of permitting TSX Group to own all of the voting shares of TSX Inc. and it is required by the legislative policy underlying section 21.11 of the Act. We attach at Schedule "A" hereto, the draft order.

Regulation

We submit that the current share ownership restrictions provided under section 21.11(1) of the Act be increased from 5 per cent to 10 per cent. This increase is consistent with ownership restrictions on large financial institutions in Canada.

As the Toronto Stock Exchange is the primary stock exchange in Canada for senior issuers, and TSX Venture Exchange is the primary stock exchange for junior issuers, TSX Inc. believes that it is in the public interest that it not become controlled by any one person or company, whether domestic or foreign. It is our understanding, based on the fact that section 21.11(1) of the Act currently contains ownership limits on TSX Inc., that the Commission took a similar view regarding the merits of maintaining a widely-held Toronto Stock Exchange when, in 1999, it included in the Act the language provided in section 21.11(1). Continuing ownership restrictions, albeit at an increased limit, effectively maintain the widely-held status of the Toronto Stock Exchange, a cornerstone of the Canadian capital markets.

The Commission may change the permitted share ownership by way of a regulation. Under section 21.11(5) of the Act, the Commission may, by regulation, prescribe percentage ownership for the purposes of section 21.11(1) for different classes of persons or companies. A draft form of regulation is attached hereto as Schedule "B".

Recognition Order

The Toronto Stock Exchange Inc.'s original recognition order was obtained in the context of the demutualization of the Toronto Stock Exchange and has been amended and restated to reflect various subsequent events. In order to ensure that the Toronto Stock Exchange would continue to act in the public interest after its continuance under the *Business Corporations Act* (Ontario), the recognition order contained a number of terms and conditions. TSX Inc. has reviewed the terms and conditions of the recognition order to consider any changes to be made to reflect the reorganization and the initial public offering of TSX Group, and has determined that several changes to the existing terms and conditions of the recognition order should be

made to accurately reflect TSX Inc. post-reorganization and post-initial public offering. As well, terms and conditions relating to the listing of TSX Group and its competitors on TSX Inc. will be set out in the new Appendix I to the recognition order.

TSX Group will be recognized as a stock exchange, and certain terms and conditions in the recognition order will apply directly to TSX Group. The draft recognition order (with Appendix I) is attached at Schedule "C", hereto. The following is a discussion of the terms and conditions of the recognition order, which are set out in Schedule "A" to the recognition order.

PART I - TSX GROUP

The terms and conditions that have been added as being directly applicable to TSX Group are set out in the new Part I of Schedule "A" to the recognition order. One of the conditions, set out in paragraph 5 of Part I, is that TSX Group will carry out its activities as a stock exchange recognized under section 21 of the Act and that it will do everything within its control to cause TSX Inc. to carry out its activities as a stock exchange recognized under section 21 of the Act and to comply with the terms and conditions applicable to TSX Inc. set out in Part II of Schedule "A" to the recognition order.

1. Corporate Governance

TSX Group has inserted a new paragraph 1 of Part I of Schedule "A" to the recognition order that provides, among other things, a requirement that at least fifty per cent of its directors shall be independent. The definition of independent director is set out in this paragraph. Paragraph 1 also requires that TSX Group's corporate governance structure shall provide for, among other things, fair and meaningful representation on its board of directors and any governance committee thereof, having regard to, among other things, TSX Group's ownership of TSX Inc.

2. Fitness

TSX Group has inserted a new paragraph 2 in Part I of Schedule "A" to the recognition order that sets out a requirement regarding the fitness of officers and directors of TSX Group.

3. Allocation of Resources

TSX Group has inserted a new paragraph 3 in Part I of Schedule "A" to the recognition order that sets out the obligation of TSX Group to allocate sufficient resources to TSX Inc., so long as TSX Inc. carries on business as a stock exchange, to ensure that TSX Inc. can carry out its functions in a manner that is consistent with the public interest and the terms and conditions applicable to TSX Inc. in Part II of Schedule "A" to the recognition order.

4. Financial Information

Annual audited consolidated financial statements of TSX Group will be provided to the Commission within 90 days of

each year end and quarterly unaudited consolidated financial statements of TSX Group will be provided to the Commission within 60 days of each quarter end, or such shorter periods that may apply to reporting issuers.

5. Access to Information

TSX Group will, and will cause its subsidiaries to, permit the Commission to have access to all data and information in its or their possession that is required for the assessment by the Commission of the performance of TSX Inc. of its regulation functions and the compliance of TSX Inc. with the terms and conditions in Part II of Schedule "A" to the recognition order and it will permit the Commission to have the access required for the assessment by the Commission of the compliance of TSX Group with the terms and conditions in Part I of Schedule "A".

6. Share Ownership Restrictions

A new paragraph 7 of Part I of Schedule "A" to the recognition order has been added which requires that the restrictions on share ownership set out in section 21.11(1) of the Act apply to the voting shares of TSX Group, and that the articles of TSX Group contain the share ownership restrictions and provisions respecting the enforcement of such restrictions.

PART II - TSX INC.

7. Corporate Governance

Holding Company Structure

TSX Inc. is proposing a corporate structure creating a parent company which is well accepted and frequently utilized, and which includes housing head office functions in the parent company. The ability to consolidate certain corporate operations in TSX Group will allow for the cost-effective provision of those services within the TSX Group family of companies. TSX Inc. management has determined upon due consideration that the holding company structure, including the provision of certain corporate services to the TSX Group family of companies by TSX Group, is sensible in business terms. We submit that the provision of corporate services by TSX Group to other companies within the TSX Group family of companies will allow certain functional areas to be consolidated and streamlined, which should make provision of these services more cost-effective generally.

Dealings with Unregulated Entities

The holding company structure is used by many issuers (both regulated and unregulated). The ability of the Commission to regulate the appropriate entities in the TSX Group of companies is not circumscribed by the holding company structure. As provided in paragraph 13 of Part II of Schedule "A" to the recognition order, the regulation functions of TSX Inc. will be carried out only within TSX Inc. TSX Inc. and TSX Group will also cross-appoint the senior officers responsible for Corporate IT so that they are officers of TSX Inc. as well as TSX Group, and TSX Inc.

and TSX Group will cross-appoint the General Counsel and all lawyers who participate in the policymaking function for TSX Inc.

TSX Inc. is prepared to incorporate an industry best practices approach towards material outsourcing of its business functions to parties other than TSX Group or an affiliate or associate of TSX Group. The terms of this industry best practices approach will be set out in a new paragraph 23 of Part II of Schedule "A" to the recognition order, which terms include the requirement that any contract implementing a material outsourcing of TSX Inc.'s business functions to a party other than TSX Group or an affiliate or associate of TSX Group that impacts on TSX Inc.'s regulation functions shall provide for the Commission to have access to all data and information maintained by the service provider that TSX Inc. is required to share under the terms of the recognition order or that is required for the assessment by the Commission of the performance of TSX Inc. of its regulation functions.

Board of Directors

Each of TSX Inc., TSX Group and TSX Venture Exchange will have its own board of directors. Immediately following the initial public offering of TSX Group, the board of directors of each of TSX Group, TSX Inc. and TSX Venture Exchange will consist of the same individuals. This will not necessarily continue to be the case in the future.

To further provide for the independence of TSX Inc.'s board of directors, TSX Inc. has expanded the definition of an independent director in paragraph 8 of Part II of Schedule "A" to the recognition order. Paragraph 8 also requires that TSX Inc.'s corporate governance structure shall provide for, among other things, fair and meaningful representation of its board of directors and any governance committee thereof, in the context of the nature and structure of TSX Inc. Paragraph 8 also states that TSX Inc. will ensure that the composition of its board of directors provides a proper balance between the interests of the different entities using its services and facilities.

The reorganization and initial public offering will not give rise to any changes to the committee structure of the TSX Inc. board of directors or the mandate of any committee of the TSX Inc. board of directors.

8. Access and Fees

It is proposed that no change be made to these paragraphs in Schedule "A" to the recognition order. The process for setting fees is fair and appropriate. The right to access the trading facilities of the Toronto Stock Exchange will continue to be governed by a contractual relationship, and entities must continue to satisfy existing criteria in order to become and remain a Participating Organization.

9. Fitness

TSX Inc. has inserted a new paragraph 11 in Part II of Schedule "A" to the recognition order that sets out a

requirement regarding the fitness of officers and directors of TSX Inc.

10. Financial Viability and Financial Statements

Financial Viability

TSX Inc. has reviewed the financial tests set out in the existing recognition order and has revised the liquidity measurement, solvency test and financial leverage ratio upon such review in order to make them more meaningful measurements of financial viability. In addition, it is proposed that paragraph 12 of Part II of Schedule "A" to the recognition order be further revised with the insertion of a new sub-paragraph (f) that prohibits TSX Inc. from entering into transactions either outside the ordinary course of business or with related parties where, after giving effect to the transaction, it would not comply with the financial tests. This revised paragraph is augmented by other proposed changes to Schedule "A" to the recognition order, including provisions relating to outsourcing and related party transactions. The related party transactions terms and conditions set out as a new paragraph 24 in Part II of Schedule "A" to the recognition order provide that any material agreement or transaction entered into between TSX Inc. and TSX Group or any subsidiary or associate of TSX Group shall be on terms and conditions that are at least as favourable to TSX Inc. as market terms and conditions.

Financial Statements

Annual audited consolidated and unconsolidated financial statements of TSX Inc. will be provided to the Commission within 90 days of each year end. Quarterly unaudited consolidated and unconsolidated financial statements of TSX Inc. will be provided to the Commission within 60 days of each quarter end. Paragraph 17 in Part II of Schedule "A" to the recognition order will so provide. To the extent that periods for reporting issuers are shorter than 90 days or 60 days, respectively, the shorter periods will apply.

11. Regulation

As a result of the initial public offering, RS Inc. will be required to monitor TSX Group as an additional listed issuer. The supervisory function of RS Inc. will not change with the addition of TSX Group as a listed issuer; however, RS Inc. will be required to follow any procedures specific to TSX Group and its competitors, which procedures will be set out in the agreement between RS Inc. and TSX Inc. whereby RS Inc. provides certain market regulation services to TSX Inc. as a regulation services provider under the ATS rules (the "Regulation Services Agreement"). In connection with monitoring TSX Group, RS Inc. will also be required to co-operate with the Commission in setting up alert parameters specific to TSX Group, which requirement will also be set out in the Regulation Services Agreement. No changes are necessary to this paragraph 13 in Part II of Schedule "A" to the recognition order.

12. Systems

The terms and conditions in the recognition order regarding systems capacity and integrity will continue to be applied at the TSX Inc. level. As the current terms and conditions respecting the capacity and integrity of the TSX Inc. systems continue to adequately address concerns regarding potential trading stoppages, only minor changes are being made to this paragraph.

13. Rules and Rule-Making

TSX Inc. will continue to establish rules, policies and other similar instruments ("Rules") necessary to effectively govern and regulate all aspects of TSX Inc.'s businesses and will ensure that any such Rule is designed to, among other things, ensure compliance with securities legislation, prevent fraudulent and manipulative acts and practices, provide for appropriate discipline, and ensure that TSX Inc.'s business is conducted in a manner so as to afford protection to investors. This rule-making function of TSX Inc. will continue to be subject to the jurisdiction and oversight of the Commission.

14. Sanction Rules

TSX Inc. will ensure, through RS Inc. and otherwise, that Participating Organizations and listed issuers are appropriately sanctioned for violations of the Rules. This paragraph 18 in Part II of Schedule "A" to the recognition order has been expanded to confirm that TSX Inc. will sanction issuers for violations of the Rules. In addition, a related paragraph 21 in Part II of Schedule "A" to the recognition order has been inserted to deal with monitoring and enforcement of issuer compliance with the Rules.

15. Due Process

TSX Inc. has agreed that the due process provision in the recognition order will be revised to include access to the listing facilities of TSX Inc. See revised paragraph 19 in Part II of Schedule "A" to the recognition order.

16. Outsourcing

Provisions relating to material outsourcing of business functions by TSX Inc. to third parties have been inserted as paragraph 23 in Part II of Schedule "A" to the recognition order. TSX Inc. is required to proceed in accordance with industry best practices.

17. Related Party Transactions

TSX Inc. has agreed that Schedule "A" to the recognition order contain a new provision regarding related party transactions, to further ensure the ongoing financial soundness of TSX Inc. Such new paragraph (paragraph 24 in Part II of Schedule "A" to the recognition order) will require that any material agreement or transaction entered into between TSX Inc. and TSX Group or any subsidiary or associate of TSX Group is on terms and conditions that are at least as favourable to TSX Inc. as market terms and conditions. Through these terms and

conditions, TSX Inc. has effectively adopted the core principle of the *Bank Act* with respect to related party rules.

18. Self-Listing Conditions

A new paragraph 22 in Part II of Schedule "A" will be added to the recognition order, which requires that TSX Inc. shall be subject to the terms and conditions relating to the listing on TSX Inc. of TSX Group, as set out in Appendix I attached thereto.

The proposal has been established in order to set out the terms of the reporting and monitoring process for TSX Inc. in connection with the initial and continued listing of TSX Group and its competitors on the Toronto Stock Exchange. Appendix I to the recognition order outlines the reporting process for TSX Inc. in connection with the initial and continued listing of TSX Group and its competitors on the Toronto Stock Exchange in order that such processes are transparent for the Toronto Stock Exchange, TSX Group and the Commission, as well as to TSX Group competitors listed, or applying to be listed, on the Toronto Stock Exchange. Appendix I outlines the functions that will be undertaken by TSX Inc. with respect to certain listing matters, and confirms that, with respect to any issues brought before the TSX Inc. conflicts committee, the Commission's Manager of Market Regulation will be notified immediately of such matter and will have the ability to approve or disapprove of any recommendation made to it by the conflicts committee.

Competitors of TSX Group will be made aware of any applicable procedures addressed in Appendix I because these procedures will be set out in TSX Inc.'s website and in the TSX Company Manual. Appendix I provides that a competitor may request that TSX Inc. refers a matter to the Director for review by the Director of specific issues where the competitor believes that the information to be provided in connection with the consideration of the matter is competitively sensitive and the disclosure of the information to TSX Inc. would, in the competitor's reasonable view, put it at a competitive disadvantage with respect to TSX Group. Appendix I also provides that a competitor may elect to waive the application of the terms of Appendix I and have TSX Inc. deal with the matter in the ordinary course as if no conflict of interest exists.

With respect to the conflicts committee, we submit that it is necessary first and foremost that the members of the committee have a requisite level of expertise in, and understanding of, TSX Inc.'s business and that the members are able to respond in an expedited manner to any time-sensitive conflicts or potential conflicts. In practice, the conflicts committee must act promptly and it is not practical to recruit members who cannot participate in the formulation of a quick response. These factors are important for TSX Group as well as for any of its competitors who may need to have an issue considered by the conflicts committee. The conflicts committee shall be composed of: the chief executive officer of TSX Inc., the general counsel of TSX Inc., the senior financial officer of TSX Inc., the president of RS Inc., a second senior management representative of RS Inc., and the senior

officer responsible for listings of each of TSX Inc., TSX Venture Exchange Inc. and the senior officer responsible for trading operations of TSX Inc. In order for the conflicts committee to have quorum, at least one RS representative will participate in the meeting.

The composition of the conflicts committee as proposed by TSX Inc. has the highest degree of independence of any conflicts committee of any publicly-traded stock exchange, to the best of our knowledge. The inclusion of two members on the conflicts committee who are external to, and independent from, TSX Inc., and the requirement that at least one such individual must attend a meeting in order to achieve quorum, provides independent representation on this committee in both fact and appearance. In addition, the Commission oversees and may make a decision on any conflict matter at any time on its own initiative or on application by a competitor, which also ensures that independence is provided.

Appendix I sets out that the conflicts committee will report to the Manager of Market Regulation as soon as a matter is brought before it. After this initial notice, there will be a regular flow of information to the Commission by the conflicts committee that will allow the Commission to review the matter and any recommendations of the conflicts committee on an independent and fully informed basis. The Commission will have final, independent, decision-making power over every matter that is brought before it by the conflicts committee, and will have the ability to intervene in TSX Inc.'s disposition of a matter at any time during the process.

D. RELIEF REQUESTED

For the foregoing reasons, it is submitted that it would not be prejudicial to the public interest for the Commission to:

- (i) grant an order under section 21.11(4) of the Act permitting TSX Group to own 100% of TSX Inc.;
- (ii) make a regulation under section 21.11(5) of the Act changing the ownership restriction in section 21.11(1) of the Act from 5 per cent to 10 per cent;
- (iii) grant an amended recognition order that continues the recognition of TSX Inc. as a stock exchange and recognizes TSX Group as a stock exchange and reflects, among other things: (a) the reorganization of TSX Inc.; (b) the name change of The Toronto Stock Exchange Inc. to TSX Inc.; and (c) the terms and conditions to be followed by each of TSX Inc. and TSX Group as a result of the reorganization and in connection with the listing of TSX Group shares and the shares of its competitors on the Toronto Stock Exchange; and

- (iv) amend the Existing Exemption Order to reflect, among other things, (a) the reorganization of TSX Inc.; and (b) the name change of Canadian Venture Exchange Inc. to TSX Venture Exchange.

Susan Greenglass, *OSC*
George Gunn, *OSC*
Patricia Johnston, *ASC*
Denise Hendrickson, *ASC*
Louyse Gauvin, *BCSC*
Richard Balfour, *Torys*
Deanna Dobrowsky, *Torys*

E. ENCLOSURES

In support of this application, we are enclosing the following:

1. a verification from each of TSX Inc. and TSX Venture Exchange Inc. confirming our authority to prepare and file this application and confirming the truth of the facts contained herein;
2. a draft order of the Commission to be made under section 21.11(4) of the Act confirming the ownership of TSX Inc. by TSX Group, attached as Schedule "A";
3. a draft regulation to be made by the Commission under section 21.11(5) of the Act changing the percentage ownership restriction in section 21.11(1) from 5 to 10 per cent, attached as Schedule "B";
4. a draft amended recognition order of TSX Inc. and TSX Group, including Appendix I thereto, attached as Schedule "C"; and
5. a draft amended and restated exemption order of TSX Venture Exchange, attached as Schedule "D".

If you have any questions regarding this matter, please contact the undersigned at 416.865.7516 or Richard Balfour at 416.865.7339.

Yours very truly,

Sharon C. Pel

SCP/sb/hc
Enclosures

cc: Leonard Petrillo, *TSX*
Michael Ptasznik, *TSX*
Kathleen Traynor, *TSX*
David Brown, *OSC*
Stephen Sibold, *ASC*
Douglas Hyndman, *BCSC*
Don Murray, *MSC*
Carmen Crepin, *CVMQ*
Ranee Pavalow, *OSC*
David Linder, *ASC*
Margo Paul, *OSC*
Rick Whiler, *OSC*
Joan Beck, *OSC*
John Hughes, *OSC*

SCHEDULE "A"

Draft Order Pursuant to Section 21.11(4)

DRAFT FORM OF ORDER

**IN THE MATTER OF
THE SECURITIES ACT**

R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act")

AND

**IN THE MATTER OF
TSX INC. AND TSX GROUP INC.**

**ORDER
(Section 21)**

to time by regulation, shall apply to the voting shares of TSX Group, and the articles of TSX Group shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of the net proceeds of the sale or redemption to the person entitled thereto.

DATED ■, 2002.

WHEREAS The Toronto Stock Exchange Inc. (the "TSE") proposes to effect a reorganization whereby a newly incorporated company, TSX Group Inc. ("TSX Group"), will own all of the issued and outstanding voting shares of the TSE, being the entity which currently operates the Toronto Stock Exchange;

AND WHEREAS the TSE has changed its name to TSX Inc. ("TSX");

AND WHEREAS the Commission's approval is required, pursuant to section 21.11(1) of the Act, as amended by regulation pursuant to section 21.11(5) of the Act, in order for any person, company or combination of persons or companies acting jointly or in concert to beneficially own or exercise control or direction over more than 10 per cent of any class or series of voting shares of TSX;

AND WHEREAS the Commission may by order, pursuant to section 21.11(4) of the Act, grant the required approval on such terms and conditions as the Commission considers appropriate;

AND UPON considering the submissions of TSX and TSX Group and based upon the representations and undertakings made and given by TSX and TSX Group to the Commission;

AND UPON the Commission being satisfied that the ownership by TSX Group of the entity which operates the Toronto Stock Exchange would not be contrary to the public interest;

THE COMMISSION orders that the acquisition by TSX Group of all of the issued and outstanding voting shares of TSX is approved, subject to the following terms and conditions:

1. TSX Group shall continue to own, directly or indirectly, all of the issued and outstanding voting shares of TSX; and
2. the restrictions on share ownership set out in section 21.11(1) of the Act, as amended from time

SCHEDULE "B"

Regulation

ONTARIO REGULATION

made under the

SECURITIES ACT

THE TORONTO STOCK EXCHANGE INC.

Restriction on shareholdings

1. Ten per cent is prescribed, for the purposes of subsection 21.11 (1) of the Act, as the maximum percentage of any class or series of voting shares of The Toronto Stock Exchange Inc. that any person or company or combination of persons or companies acting jointly or in concert is permitted to beneficially own or exercise control or direction over, without the prior approval of the Commission.

SCHEDULE "C"

**RECOGNITION ORDER OF TSX GROUP INC. AND
TSX INC.**

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
TSX GROUP INC. AND TSX INC.**

**AMENDMENT TO RECOGNITION ORDER
(Section 144)**

WHEREAS the Commission issued an order dated April 3, 2000 granting and continuing the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange pursuant to section 21 of the Act;

AND WHEREAS the Commission issued an amended and restated order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. ("RS Inc.") to perform its market regulation functions ("Previous Order");

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect the name change of TSE to TSX Inc. ("TSX") and a reorganization under which TSX will become a wholly-owned subsidiary of TSX Group Inc., a newly-formed holding company ("TSX Group");

IT IS ORDERED, pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990
CHAPTER S. 5, AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
TSX GROUP INC. AND TSX INC.**

**RECOGNITION ORDER
(Section 21)**

WHEREAS the Commission granted and continued the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange on April 3, 2000 following the continuance of the TSE under the Business Corporations Act (Ontario);

AND WHEREAS the Commission granted the TSE an amended and restated recognition order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. ("RS Inc.") as a regulation services provider ("RSP") under National Instrument 21-101

Marketplace Operation and National Instrument 23-101
Trading Rules ("ATS Rules");

AND WHEREAS the TSE has changed its name to TSX Inc. ("TSX");

AND WHEREAS TSX will complete a reorganization under which TSX will become a wholly-owned subsidiary of TSX Group Inc., a newly-formed holding company ("TSX Group");

AND WHEREAS following the reorganization, TSX Group intends to conduct an initial public offering;

AND WHEREAS the Commission has received certain representations and acknowledgements from TSX and TSX Group in connection with TSX's application for continued recognition as a stock exchange and TSX Group's application for recognition as a stock exchange;

AND WHEREAS the Commission considers it appropriate to set out in an order the terms and conditions of TSX's continued recognition as a stock exchange and TSX Group's recognition as a stock exchange, which terms and conditions are set out in Schedule "A" attached;

AND WHEREAS TSX and TSX Group have agreed to the terms and conditions applicable to each of them set out in Schedule "A";

AND WHEREAS the Commission has determined that continuing to recognize TSX and recognizing TSX Group are not prejudicial to the public interest;

THE COMMISSION hereby amends the TSE's recognition as a stock exchange so that the recognition pursuant to section 21 of the Act continues with respect to TSX and grants TSX Group recognition as a stock exchange pursuant to section 21 of the Act, in each case effective on the closing of the reorganization, subject to the terms and conditions attached as Schedule "A".

DATED April 3, 2000, as amended on January 29, 2002 and on ■ 2002.

SCHEDULE "A"

TERMS AND CONDITIONS

PART I--TSX GROUP

1. CORPORATE GOVERNANCE

- (a) TSX Group's governance structure shall provide for:
 - (i) Fair and meaningful representation on its board of directors and any governance committee thereof, having regard to, among other things, TSX Group's ownership of TSX;
 - (ii) Appropriate representation of independent directors on TSX Group's committees; and
 - (iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of TSX Group generally.

- (b) TSX Group shall ensure that at least fifty per cent (50%) of its directors shall be independent. An independent director is a director that is not:
 - (i) associated with an entity desiring access to the trading facilities of TSX whose application is accepted by TSX ("Participating Organization") within the meaning of TSX Group's by-laws;
 - (ii) an officer or employee of TSX Group or its affiliates or an associate of such officer or employee;
 - (iii) a person who owns or controls, directly or indirectly, over 10% of TSX Group; or
 - (iv) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of TSX Group.

In the event that at any time TSX Group fails to meet such requirement, it shall promptly remedy such situation.

2. FITNESS

TSX Group will take reasonable steps to ensure that each officer or director of TSX Group is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

3. ALLOCATION OF RESOURCES

- (a) TSX Group will, subject to paragraph 3(b) hereof and for so long as TSX carries on business as a stock exchange, allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part II of this Schedule "A".
- (b) TSX Group will notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TSX to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part II of this Schedule "A".

4. FINANCIAL INFORMATION

TSX Group will file with the Commission unaudited quarterly consolidated financial statements of TSX Group within 60 days of each quarter end and audited annual consolidated financial statements of TSX Group within 90 days of each year, or such shorter periods as are mandated for reporting issuers to file such financial statements under the Act.

5. COMPLIANCE

TSX Group will carry out its activities as a stock exchange recognized under section 21 of the Act. TSX Group will do everything within its control to cause TSX to carry out its activities as a stock exchange recognized under section 21 of the Act and to comply with the terms and conditions in Part II of this Schedule "A".

6. ACCESS TO INFORMATION

- (a) TSX Group will and will cause its subsidiaries to permit the Commission to have access to and to inspect all data and information in its or their possession that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of TSX with the terms and conditions in Part II of this Schedule "A".
- (b) TSX Group will permit the Commission to have access to and to inspect all data and information in its possession that is required for the assessment by the

Commission of the compliance of TSX Group with the terms and conditions in Part I of this Schedule "A".

7. SHARE OWNERSHIP RESTRICTIONS

The restrictions on share ownership set out in section 21.11(1) of the Act, as amended from time to time by regulation, shall apply to the voting shares of TSX Group, and the articles of TSX Group shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of the net proceeds of the sale or redemption to the person entitled thereto.

PART II--TSX

8. CORPORATE GOVERNANCE

- (a) To ensure diversity of representation, TSX will ensure that the composition of its board of directors provides a proper balance between the interests of the different entities using its services and facilities.
- (b) TSX's governance structure shall provide for:
 - (i) Fair and meaningful representation on its board of directors and any governance committee thereof, in the context of the nature and structure of TSX;
 - (ii) Appropriate representation of independent directors on TSX's committees; and
 - (iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of TSX generally.
- (c) In recognition that the protection of the public interest is a primary goal of TSX, TSX shall ensure that at least fifty per cent (50%) of its directors shall be independent. An independent director is a director that is not:
 - (i) associated with a Participating Organization within the meaning of TSX's by-laws;

- (ii) an officer or employee of TSX or its affiliates or an associate of such officer or employee;
- (iii) a person who owns or controls, directly or indirectly, over 10% of TSX; or
- (iv) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of TSX (other than a director of TSX Group).

In the event that at any time TSX fails to meet such requirement, it shall promptly remedy such situation.

9. FEES

- (a) Any and all fees imposed by TSX on its Participating Organizations shall be equitably allocated. Fees shall not have the effect of creating barriers to access and shall be balanced with the criteria that TSX have sufficient revenues to satisfy its responsibilities.
- (b) TSX's process for setting fees shall be fair and appropriate.

10. ACCESS

- (a) The requirements of TSX shall permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy TSX's criteria to access the trading facilities of TSX.
- (b) Without limiting the generality of the foregoing, TSX shall:
 - (i) establish written standards for granting access to trading on its facilities;
 - (ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and
 - (iii) keep records of:
 - (A) each grant of access including, for each entity granted access to its trading facilities, the reasons for granting such access; and

- (B) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

11. FITNESS

TSX will take reasonable steps to ensure that each officer or director of TSX is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

12. FINANCIAL VIABILITY

- (a) TSX shall maintain sufficient financial resources for the proper performance of its functions.
- (b) TSX shall maintain: (i) a liquidity measure greater than or equal to zero; (ii) a debt to cash flow ratio less than or equal to 4.0/1; and (iii) a financial leverage ratio less than or equal to 4.0/1. For this purpose:
 - (i) liquidity measure is:

(working capital + borrowing capacity)

- 2 (adjusted budgeted expenses + adjusted capital expenditures - adjusted revenues)

where:
 - (A) working capital is current assets minus current liabilities,
 - (B) borrowing capacity is the principal amount of long term debt available to be borrowed under loan or credit agreements that are in force,
 - (C) adjusted budgeted expenses are 95% of the expenses (other than depreciation and other non-cash items) provided for in the budget for the current fiscal year,
 - (D) adjusted capital expenditures are 50%

of average capital expenditures for the previous three fiscal years, and

(E) adjusted revenues are 80% of revenues plus 80% of investment income for the previous fiscal year,

(ii) debt to cash flow ratio is the ratio of total debt to EBITDA (or earnings before interest, taxes, depreciation and amortization) for the most recent 12 months, and

(iii) financial leverage ratio is the ratio of total assets to shareholders' equity,

in each case as calculated on a consolidated basis and consistently with the consolidated financial statements of TSX.

(c) On a quarterly basis (along with the financial statements required to be filed pursuant to paragraph 17), TSX shall report to the Commission the monthly calculation of the liquidity measure and debt to cash flow and financial leverage ratios, the appropriateness of the calculations and whether any alternative calculations should be considered.

(d) If TSX fails to maintain any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio in any month, it shall immediately report to the Commission or its staff.

(e) If TSX fails to maintain any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will immediately deliver a letter advising the Commission or its staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the problem, and TSX will not, without the prior approval of the Director, make any capital expenditures not already reflected in the financial statements, or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been eliminated for at least six months.

(f) TSX shall not enter into any agreement or transaction either (i) outside the

ordinary course of business or (ii) with TSX Group or any subsidiary or associate of TSX Group if it expects that, after giving effect to the agreement or transaction, TSX is likely to fail to maintain the liquidity measure, the debt to cash flow ratio or the financial leverage ratio.

13. REGULATION

(a) TSX shall continue to retain RS Inc. as an RSP to provide, as agent for TSX, certain regulation services which have been approved by the Commission. TSX shall provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS Inc. and the regulation services performed by TSX. All amendments to those listed services are subject to the prior approval of the Commission.

(b) In providing the regulation services, as set out in the agreement between RS Inc. and TSX (Regulation Services Agreement), RS Inc. provides certain regulation services to TSX as the agent of TSX pursuant to a delegation of TSX's authority in accordance with Section 13.0.8(4) of the Toronto Stock Exchange Act and will be entitled to exercise all the authority of TSX with respect to the administration and enforcement of certain market integrity rules and other related rules, policies and by-laws.

(c) TSX shall provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report shall be in such form as may be specified by the Commission from time to time.

(d) TSX shall continue to perform all other regulation functions not performed by RS Inc. TSX shall not perform such regulation functions through any other party, including its affiliates or associates. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 23 does not contravene this paragraph.

(e) Management of TSX (including the Chief Executive Officer) shall at least annually assess the performance by RS Inc. of its regulation functions and report thereon to the Board of TSX, together with any recommendations for improvements. TSX shall provide the Commission with copies of such reports and shall advise the Commission of any proposed actions

arising therefrom.

14. **SYSTEMS**

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, TSX shall:

- (a) on a reasonably frequent basis, and in any event, at least annually,
 - (i) make reasonable current and future capacity estimates;
 - (ii) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
 - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
 - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards and natural disasters;
 - (v) establish reasonable contingency and business continuity plans;
- (b) annually, cause to be performed an independent review and written report, in accordance with established audit procedures and standards, of its current systems technology plans and whether there are appropriate processes in place to manage the impact of changes in technology on the exchange and parties interfacing with exchange systems. This will include an assessment of TSX's controls for ensuring that each of its systems that support order entry, order routing, execution, data fees, trade reporting and trade comparisons, capacity and integrity requirements is in compliance with paragraph (a) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and
- (c) promptly notify the Commission of material systems failures and changes.

15. **PURPOSE OF RULES**

- (a) TSX shall, subject to the terms and conditions of this Recognition Order and the jurisdiction and oversight of the Commission in accordance with Ontario securities laws, through RS Inc. and otherwise, establish such rules, policies and other similar instruments ("Rules") that are necessary or appropriate to govern and regulate all aspects of its business and affairs.
- (b) In particular, TSX shall ensure that:
 - (i) the Rules are designed to:
 - (A) ensure compliance with securities legislation;
 - (B) prevent fraudulent and manipulative acts and practices;
 - (C) promote just and equitable principles of trade;
 - (D) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and
 - (E) provide for appropriate discipline;
 - (ii) the Rules do not:
 - (A) permit unreasonable discrimination among clients, issuers and Participating Organizations; or
 - (B) impose any burden on competition that is not reasonably necessary or appropriate; and
 - (iii) the Rules are designed to ensure that TSX's business is conducted in a manner so as to afford protection to investors.

16. RULES AND RULE-MAKING

- (a) TSX shall comply with the existing protocol between TSX and the Commission, as it may be amended from time to time, concerning Commission approval of changes in its Rules.
- (b) All Rules of general application, and amendments thereto, adopted by TSX must be filed with the Commission.

17. FINANCIAL STATEMENTS

TSX shall file unaudited quarterly financial statements (consolidated and unconsolidated) within 60 days of each quarter end and audited annual financial statements (consolidated and unconsolidated) within 90 days of each year end or such shorter period as is mandated for reporting issuers to file such financial statements under the Act.

18. SANCTION RULES

TSX shall ensure, through RS Inc. and otherwise, that its Participating Organizations and its listed issuers are appropriately sanctioned for violations of the Rules. In addition, TSX will provide notice to the Commission of any violations of securities legislation of which it becomes aware in the ordinary course operation of its business.

19. DUE PROCESS

TSX shall ensure that the requirements of TSX relating to access to the trading and listing facilities of TSX, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions for appeals.

20. INFORMATION SHARING

TSX shall co-operate by the sharing of information and otherwise, with the Commission and its staff, the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

21. LISTED COMPANY RULES

TSX shall ensure, through RS Inc. and otherwise, that it has appropriate review procedures in place to monitor and enforce issuer compliance with the Rules.

22. SELF-LISTING CONDITIONS

TSX shall be subject to the terms and conditions relating to the listing on TSX of TSX Group as are set out in the attached Appendix I, as amended from time to time.

23. OUTSOURCING

In any material outsourcing of any of its business functions with parties other than TSX Group or an affiliate or associate of TSX Group, TSX shall proceed in accordance with industry best practices. Without limiting the generality of the foregoing, TSX shall:

- (a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such material outsourcing arrangements;
- (b) in entering into any such material outsourcing arrangement:
 - (i) assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX; and
 - (ii) execute a contract with the service provider addressing all significant elements of such arrangement, including service levels and performance standards;
- (c) ensure that any contract implementing such material outsourcing arrangement that is likely to impact on TSX's regulation functions provide in effect for TSX, its agents and the Commission to be permitted to have access to and to inspect all data and information maintained by the service provider that TSX is required to share under paragraph 20 or that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of TSX with the terms and conditions in Part II of this Schedule "A"; and
- (d) monitor the performance of the service provided under any such material outsourcing arrangement.

24. RELATED PARTY TRANSACTIONS

Any material agreement or transaction entered into between TSX and TSX Group or any subsidiary or associate of TSX Group shall be on terms and conditions that are at least as favourable to TSX as market terms and conditions.

25. CLEARING AND SETTLEMENT

The Rules impose a requirement on Participating Organizations to have appropriate arrangements in place for clearing and settlement through a clearing agency recognized by the Commission.

APPENDIX I

Listing-Related Conditions

- 1. UNDERLYING PRINCIPLES**
 - 1.1. TSX carries on the business of the Toronto Stock Exchange.
 - 1.2. TSX Group proposes to become a listed company on TSX, which will be wholly-owned by TSX Group.
 - 1.3. TSX will report to the Director (the "Director") of the Ontario Securities Commission ("OSC") or other members of the staff of the OSC certain matters provided for in this Appendix I (the "Listing-Related Procedures") with respect to TSX Group or certain other TSX-listed issuers that raise issues of conflict of interest or potential conflict of interest for TSX.
 - 1.4. The purpose of this reporting process is to ensure that TSX follows appropriate standards and procedures with respect to the initial and continued listing of TSX Group and Competitors, to ensure that TSX Group is dealt with appropriately in relation to, and Competitors are treated fairly and not disadvantaged by, TSX Group's listing on TSX. For purposes of these Listing-Related Procedures, "Competitor" means any person, the consolidated business and operations or the disclosed business plans of which are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material line of business of TSX Group or its affiliates.
- 2. INITIAL LISTING ARRANGEMENTS**
 - 2.1. TSX will review, in accordance with its procedures, the TSX Group initial listing application. A copy of the application will be provided by TSX to the OSC's Director, Corporate Finance at the same time that the application is filed with TSX.
 - 2.2. Upon completing its review of the application and after allowing TSX Group to address any deficiencies noted by TSX, TSX will provide a summary report to the OSC's Director, Corporate Finance, with its recommendation for listing approval, if made. The summary report will provide details of any aspects of the application that were atypical as well as any issues raised in the process that required the exercise of discretion by TSX. Any related staff memoranda, analysis, recommendations and decisions not included in the summary report will be attached for review by the OSC's Director, Corporate Finance. A copy of TSX's current listing manual will also be provided to the OSC's Director, Corporate Finance.

2.3. The OSC's Director, Corporate Finance will have the right to approve or disapprove the listing of the TSX Group shares. In the event of disapproval, TSX Group will have the opportunity to address the concerns of the OSC's Director, Corporate Finance and may resubmit an amended application for listing, or amended parts thereof, to TSX, which will provide a revised summary report and any new materials to the OSC's Director, Corporate Finance in accordance with section 2.2, along with a copy of the amended application.

3. CONFLICTS COMMITTEE

3.1. TSX will establish a committee (the "Conflicts Committee") that will review any matters brought before it regarding a conflict of interest or potential conflict of interest relating to the continued listing on TSX of TSX Group or the initial listing or continued listing of Competitors (each, a "Conflict of Interest"). Without limiting the generality of the above sentence, continued listing matters include the following:

- (a) matters relating to the continued listing of TSX Group or a Competitor or of a listing of a different class or series of securities of TSX Group or a Competitor than a class or series already listed;
- (b) any exemptive relief applications of, or approvals applied for by, TSX Group or a Competitor;
- (c) any other requests made by TSX Group or a Competitor that require discretionary involvement by TSX; and
- (d) any listings matter related to a TSX-listed issuer or listing applicant that asserts that it is a Competitor.

3.2. Notwithstanding section 3.1, where a Competitor certifies to TSX that information required to be disclosed to the Conflicts Committee or TSX in connection with an initial listing or continued listing matter of the Competitor is competitively sensitive and the disclosure of that information would in its reasonable view put it at a competitive disadvantage with respect to TSX Group, TSX will refer the matter to the Director, requesting that the Director review issues relating to the competitively sensitive information. The Conflicts Committee shall consider all other aspects of the matter in accordance with the procedures set out in section 3.8. In addition, at any time that a Competitor believes that it is not being treated fairly by TSX as a result of TSX being in a conflict of interest position, TSX will refer the matter to the Director.

3.3. In any initial listing or continued listing matter of a Competitor, the Competitor may waive the application of these Listing-Related Procedures by

providing a written waiver to TSX and the Director. Where a waiver is provided, TSX will deal with the initial listing or continued listing matter in the ordinary course as if no Conflict of Interest exists.

3.4. The Conflicts Committee will be composed of: the Chief Executive Officer of TSX, the general counsel of TSX (the "Committee Secretary"), the senior financial officer of TSX, the president or general counsel of Market Regulation Services Inc. ("RS"), a second senior management representative of RS, the senior officer responsible for listings of each of TSX and TSX Venture Exchange Inc. and the senior officer responsible for trading operations of TSX. At least one representative of RS must participate in meetings of the Conflicts Committee, in order for there to be a quorum.

3.5. TSX shall use its best efforts to instruct senior management and relevant staff at TSX, and relevant senior management and staff at RS, in order that they are alerted to, and are able to identify, Conflicts of Interest which may exist or arise in the course of the performance of their functions. Without limiting the generality of the foregoing:

3.5.1. TSX shall provide instruction that any matter concerning TSX Group that is brought to the attention of staff at TSX must be immediately brought to the attention of the Committee Secretary.

3.5.2. TSX shall maintain a list in an electronic format, to be updated regularly and in any event at least monthly and reviewed and approved by the Conflicts Committee at least monthly, of all Competitors that are TSX-listed issuers, and shall promptly after the above-noted approval by the Conflicts Committee provide the current list to managers at TSX and RS who supervise departments that (i) review continuous disclosure; (ii) review requests/applications for exemptive relief; (iii) perform timely disclosure and monitoring functions relating to TSX-listed issuers; and (iv) otherwise perform tasks and/or make decisions of a discretionary nature. In maintaining this list, TSX shall ensure that senior executives in the issuer services division of TSX regularly prepare and review and update the list and provide it promptly to the Conflicts Committee.

3.5.3. TSX shall provide instruction to staff at TSX that any initial listing or continued listing matter or a complaint of a Competitor or of any TSX-listed issuer or listing applicant that asserts that it is a Competitor must be immediately brought

- to the attention of the Committee Secretary.
- 3.5.4. TSX shall provide to staff who review initial listing applications and to senior executives in the issuer services division of TSX a summary of the types of businesses undertaken to a significant degree by TSX Group or its affiliates and shall update the list as these businesses change, in order that initial listings staff and senior executives in the issuer services division of TSX may recognize a Competitor.
- 3.6. The Committee Secretary shall convene a meeting of the Conflicts Committee to be held no later than one business day after a Conflict of Interest has been brought to his or her attention. The Committee Secretary or any member of the Conflicts Committee may also convene a meeting of the Conflicts Committee whenever he or she sees fit, in order to address any conflict issues that may not be related to any one specific matter or issuer.
- 3.7. TSX shall, at the time a Conflicts Committee meeting is called in response to a Conflict of Interest, immediately notify the OSC's Manager of Market Regulation that it has received notice of a Conflict of Interest and shall provide with such notice: (i) a written summary of the relevant facts; and (ii) an indication of the required timing for dealing with the matter.
- 3.8. The Conflicts Committee will consider the facts and form an initial determination with respect to the matter. The Conflicts Committee will then proceed as follows depending on the circumstances:
- 3.8.1. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group or the initial or continued listing of a Competitor on TSX does not exist and is unlikely to arise, it will notify the OSC's Manager of Market Regulation of this determination. If the OSC's Manager of Market Regulation approves such determination, TSX will deal with the matter in its usual course. When it has dealt with the matter, a brief written record of such determination with details of the analysis undertaken, and the manner in which the matter was disposed of, will be made by TSX and provided to the OSC's Manager of Market Regulation. If the OSC's Manager of Market Regulation does not approve the determination and provides notice of such non-approval to TSX, TSX will follow the procedures set out in section
- 3.8.2. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group or the initial or continued listing of a Competitor on TSX does exist or is likely to arise or if TSX is provided non-approval notice from the OSC's Manager of Market Regulation under section 3.8.1, TSX shall: (i) formulate a written recommendation of how to deal with the matter; and (ii) provide its recommendation to the OSC's Manager of Market Regulation for his or her approval, together with a summary of the issues raised and details of any analysis undertaken. If the OSC's Manager of Market Regulation approves the recommendation, TSX will take steps to implement the terms of its recommendation.
- 3.9. Where the OSC's Manager of Market Regulation has considered the circumstances of an issue based on the information provided to him or her by the Conflicts Committee under section 3.8.2, and has determined that he or she does not agree with TSX's recommendation (i) and has requested that TSX reformulate its recommendation, TSX shall do so; or (ii) the OSC's Manager of Market Regulation may direct TSX to take such other action as he or she considers appropriate in the circumstances.
- 3.10. Where the OSC's Manager of Market Regulation or the Director is requested to review a matter pursuant to section 3.9 or 3.2, respectively, TSX shall provide to the OSC's Manager of Market Regulation or the Director any relevant information in its possession and, if requested by the OSC's Manager of Market Regulation or the Director, any other information in its possession, in order for the OSC's Manager of Market Regulation or the Director to review or, if appropriate, make a determination regarding the matter, including any notes, reports or information of TSX regarding the issue, any materials filed by the issuer or issuers involved, any precedent materials of TSX, and any internal guidelines of TSX. TSX shall provide its services to assist the matter, if so requested by the OSC's Manager of Market Regulation or by the Director.
- 3.11. TSX will provide to the OSC's Manager of Continuous Disclosure a copy of TSX Group's annual questionnaire and any other TSX Group disclosure documents that are filed with TSX but not with the OSC's Continuous Disclosure department. TSX will conduct its usual review process in connection with TSX Group's annual questionnaire and all prescribed periodic filings of TSX Group. Any deficiencies or irregularities in TSX Group's annual questionnaire or other TSX-issuer prescribed filings will be communicated to

the OSC's Manager of Continuous Disclosure and brought to the attention of the Conflicts Committee which shall follow the procedures outlined in this section 3.

4. TIMELY DISCLOSURE AND MONITORING OF TRADING

4.1. TSX shall use its best efforts to ensure that RS at all times is provided with the current list of the TSX-listed issuers that are Competitors.

5. MISCELLANEOUS

5.1. Information provided by a Competitor in connection with an initial listing or continued listing matter to the Conflicts Committee will not be used by TSX for any purpose other than addressing Conflicts of Interest. TSX will not disclose any confidential information obtained under these Listing-Related Procedures to a third party other than the OSC unless:

- (a) prior written consent of the other parties is obtained;
- (b) it is required or authorized by law to disclose the information; or
- (c) the information has come into the public domain otherwise than as a result of its breach of this clause.

5.2. TSX will provide disclosure on its website and in the TSX Company Manual to the effect that an issuer can assert that it is a Competitor and will outline the procedures for making such an assertion, including appeal procedures.

SCHEDULE "D"

Exemption Order of TSX Venture Exchange Inc.

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
TSX VENTURE EXCHANGE INC.**

**AMENDED EXEMPTION ORDER
(Section 144)**

WHEREAS Canadian Venture Exchange Inc. ("CDNX Inc.") applied to the Ontario Securities Commission (the "Commission") for and was granted on December 5, 2000 an order pursuant to section 147 of the Act (the "Initial Order") exempting CDNX Inc. from recognition under section 21 of the Act for the purposes of carrying on business as a stock exchange in Ontario;

AND WHEREAS, pursuant to section 144 of the Act, the Initial Order was revoked and another order (the "Existing Order") was substituted therefore on July 31, 2001, pursuant to section 147 of the Act in connection with the transaction whereby CDNX Inc. became a wholly-owned subsidiary of The Toronto Stock Exchange Inc. ("TSE Inc.") and CDNX Inc. became a for-profit corporation;

AND WHEREAS TSE Inc. intends to reorganize to insert a company above it to own 100% of its shares (the "Reorganization");

AND WHEREAS TSE Inc. has changed its name to TSX Inc. and CDNX Inc. has changed its name to TSX Venture Exchange Inc. ("TSX Venture Exchange");

AND WHEREAS the Commission considers it appropriate to amend the Existing Order to reflect the continued recognition of TSX Venture Exchange as an exchange by the Alberta Securities Commission and the British Columbia Securities Commission following the Reorganization and the name changes of the exchanges.

IT IS ORDERED, pursuant to section 144 of the Act that the Existing Order be revoked and it is ordered, pursuant to section 147 of the Act, that the following be substituted therefor:

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
TSX VENTURE EXCHANGE INC.**

**AMENDED EXEMPTION ORDER
(Section 147)**

WHEREAS TSX Venture Exchange Inc. ("TSX Venture Exchange") applied to the Ontario Securities Commission (the "Commission") for an order pursuant to section 147 of the Act exempting TSX Venture Exchange from recognition under section 21 of the Act for the purposes of carrying on business as a stock exchange in Ontario.

AND WHEREAS TSX Venture Exchange has represented to the Commission that:

Corporate Structure, Recognition and Services in Ontario

- 2.1. TSX Venture Exchange was incorporated on October 29, 1999 pursuant to the Business Corporations Act (Alberta).
- 2.2. On November 26, 1999, as amended on July 31, 2001, TSX Venture Exchange, formerly named Canadian Venture Exchange Inc., was recognized by the Alberta Securities Commission (the "ASC") as an exchange in Alberta under subsection 52(2) of the Securities Act (S.A. 1981, c. S-6.1, as amended) and by the British Columbia Securities Commission (the "BCSC") as an exchange in British Columbia under subsection 24(2) of the Securities Act (British Columbia) and the ASC and BCSC will continue the recognition of TSX Venture Exchange effective on the closing of the Reorganization (together, the "Recognition Orders", which are attached as Schedules "A" and "B").
- 2.3. TSX Venture Exchange will operate a national exchange for junior issuers which is separate from the Toronto Stock Exchange, a division of TSX Inc. (formerly called The Toronto Stock Exchange Inc.) and which has a separate TSX Venture Exchange brand identity. TSX Venture Exchange presently maintains offices in Calgary, Vancouver, Winnipeg, Montreal and Toronto and receives applications from issuers for listings and performs continuous listing services for issuers through all of its offices.

Regulatory Oversight

- 2.4. TSX Venture Exchange is subject to joint regulatory oversight by both the ASC and the BCSC.
- 2.5. TSX Venture Exchange is advised that the Commission, ASC and BCSC have entered into a memorandum of understanding ("MOU") respecting the continued oversight of TSX Venture Exchange by the ASC and BCSC and that the existing MOU or any successor agreements, as amended from time to time, will continue to apply in respect of the regulatory oversight of TSX Venture Exchange. Under the terms of the MOU, the ASC and BCSC will continue to be responsible for conducting the regulatory oversight of TSX

Venture Exchange and for conducting an oversight program of TSX Venture Exchange for the purpose of ensuring that TSX Venture Exchange meets appropriate standards for market operation and regulation.

- 2.6. TSX Venture Exchange provides any proposed changes to its by-laws, rules, policies, and other regulatory instruments to the ASC and BCSC for review and approval in accordance with the review and approval procedures established by the ASC and BCSC from time to time. TSX Venture Exchange will concurrently provide the Commission with copies of all by-laws, rules, policies and other regulatory instruments that it files for review and approval with the ASC and BCSC. Copies of all final by-laws, rules, policies and other regulatory instruments will also be provided to the Commission.
- 2.7. TSX Venture Exchange has represented to the ASC and BCSC that it will operate its exchange in accordance with the representations set forth in Schedules "A" and "B".

CDN Business

- 2.8. Effective September 29, 2000, TSX Venture Exchange entered into an agreement (the "Agreement") with TSX Inc. and the Canadian Dealing Network Inc. ("CDN"), a wholly-owned subsidiary of TSX Inc., pursuant to which TSX Inc. and CDN agreed to cease operating the quoted market and the reported market operated by CDN.
- 2.9. CDN ceased to operate the CDN quoted market in Ontario at the close of business on September 29, 2000 and TSX Venture Exchange commenced operating CDNX Tier 3 on October 2, 2000. Issuers that were quoted on CDN on September 1, 2000 or that had made a complete application to be quoted on CDN by September 1, 2000, which was subsequently approved, were eligible to be listed CDNX Tier 3.
- 2.10. Effective September 29, 2000 Canadian Unlisted Board, Inc. ("CUB"), a wholly-owned subsidiary of TSX Venture Exchange, TSX Venture Exchange and the Commission entered into an agreement which is attached as Schedule "D", pursuant to which CUB will operate an internet web-based reporting system for the reporting by dealers of trading in unlisted and unquoted equity securities in Ontario.

Reporting Issuer Status and Incorporation of OSC Rule 61-501

- 2.11. TSX Venture Exchange has adopted certain amendments to its Corporate Finance Policies in the form attached as Schedule "E", as may be amended from time to time, which require that TSX Venture Exchange issuers that are not

otherwise reporting issuers in Ontario and have a "significant connection to Ontario" make application to the Commission and become reporting issuers in Ontario.

- 2.12. TSX Venture Exchange has adopted Corporate Finance Policy 5.9, entitled "Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions" in the form attached as Schedule "F".

AND UPON the Commission being satisfied that the amendment of the order granting an exemption from recognition to TSX Venture Exchange would not be contrary to the public interest.

IT IS HEREBY ORDERED that pursuant to section 147 of the Act, TSX Venture Exchange is exempt from recognition under section 21 of the Act provided that:

- 4.1. TSX Venture Exchange continues to be recognized as an exchange by the ASC and the BCSC in accordance with the terms and conditions set out in the Recognition Orders attached as Schedules "A" and "B".
- 4.2. TSX Venture Exchange continues to be subject to such joint regulatory oversight as may be established and prescribed by the ASC and BCSC from time to time;
- 4.3. The MOU referred to in clause 2.5 above, as may be amended from time to time, has not been terminated;
- 4.4. TSX Venture Exchange will not make any changes to the amendments to its Corporate Finance Policies referred to in clause 2.11 or to the Corporate Finance Policy referred to in clause 2.12 above without the prior consent of the Commission;
- 4.5. CUB will continue to be in compliance with the agreement referred to in clause 2.10 above until the Commission implements a local rule relating to Ontario over-the-counter trading;
- 4.6. TSX Venture Exchange concurrently provides to the Commission copies of all by-laws, rules, policies and other regulatory instruments that it files for review and approval with the ASC and BCSC. TSX Venture Exchange also provides to the Commission copies of all final by-laws, rules, policies and other regulatory instruments; and
- 4.7. TSX Venture Exchange provides to the Commission, where requested by the Commission through the ASC and the BCSC, any information in the possession of TSX Venture Exchange relating to members, shareholders and the market operations of TSX Venture Exchange, including, but not limited to, shareholder and participating

organization lists, products, trading information and disciplinary decisions.

IT IS HEREBY FURTHER ORDERED that:

- 5.1. CUB is deemed to be in compliance with the agreement referred to in clause 4.5 above unless CUB has been provided with written notice of non-compliance and has failed to remedy the alleged non-compliance in accordance with the terms of the agreement; and
- 5.2. TSX Venture Exchange is deemed to be in compliance with clause 4.6 and 4.7 unless TSX Venture Exchange has been provided with written notice of non-compliance and failed to provide the documents or information within 10 business days of receipt of such written notice.

SCHEDULE "A"

Alberta Recognition Order of TSX Venture Exchange

Please refer to the Alberta Securities Commission website at: www.albertasecurities.com

SCHEDULE "B"

BC Recognition Order of TSX Venture Exchange

Please refer to the British Columbia Securities Commission website at: www.bcsc.bc.ca

SCHEDULE "C"

MEMORANDUM OF UNDERSTANDING

Please refer to August 10, 2001 OSC Bulletin at: (2001) 24 OSCB 4834

SCHEDULE "D"

OTC AGREEMENT

Please refer to August 10, 2001 OSC Bulletin at: (2001) 24 OSCB 4838

SCHEDULE "E"

**REVISIONS TO CORPORATE FINANCE MANUAL
RE: REPORTING ISSUER STATUS OF EXCHANGE
LISTED ISSUERS**

Please refer to August 10, 2001 OSC Bulletin at: (2001) 24 OSCB 4851

SCHEDULE F

POLICY 5.9

**INSIDER BIDS, ISSUER BIDS, GOING PRIVATE
TRANSACTIONS
AND RELATED PARTY TRANSACTIONS**

Please refer to August 10, 2001 OSC Bulletin at: (2001) 24 OSCB 4852