
2001/06/15 — TSE — Amendment to Rule No. 1.101

Issue: June 15, 2001

Citation: 24 O.S.C.B. 3573a

The Toronto Stock Exchange — Amendment to Rule No 1.101 Request for Comments

A request for comments on the amendment of Rule 1.101 of the Rule Book of The Toronto Stock Exchange is published in Chapter 13 of the Bulletin.

2001/06/15 — TSE Acquisition of CDNX

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Notice — The Toronto Stock Exchange Inc. Acquisition of Canadian Venture Exchange Inc.

The Toronto Stock Exchange Inc. (the “TSE”) is publishing a notice and submission regarding the TSE acquisition of the Canadian Venture Exchange Inc. (“CDNX”). Subject to comments received, Staff will recommend to the Commission that no changes are necessary to the TSE's current recognition order dated April 3, 2001 published at (2000) 23 OSCB 2495.

In connection with the TSE acquisition of CDNX, two by-law amendments are proposed. The by-law amendments propose that the following two provisions be added to TSE By-law No.1:

1. A requirement that the President of CDNX shall be deemed not to be associated with a TSE Participating Organization.
2. A requirement that at least 25% of the members of the TSE Board of Directors will have experience in , or an association with, the Canadian public venture capital market and that they shall collectively provide a broad geographic representation within Canada.

The by-law amendments are published for comment in Chapter 13 of this Bulletin.

The Commission requests comments regarding the TSE submission and Staff's proposed recommendation that no changes are necessary to the TSE's current recognition order. We will consider submissions received by July 13, 2001.

Please send your submission to the OSC:

c/o John Stevenson, Secretary

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

We request that you submit a diskette containing your submission (in DOS or Windows format, preferably WordPerfect). The confidentiality of submissions cannot be maintained because securities legislation in certain provinces requires that a summary of written comments received during the comment period be published.

June 15, 2001.

Delivered by Courier & E-mail

June 11, 2001

Ms. Randee Pavalow
Deputy Director of Capital Markets &
Manager, Market Regulation
Ontario Securities Commission
20 Queen Street West
P.O. Box 55
Suite 800
Toronto, Ontario
M5H 3S8

Dear Ms. Pavalow

Re: Notice of Change in Matters Concerning The Toronto Stock Exchange Inc. ("TSE")

By this letter, the TSE hereby gives the Ontario Securities Commission ("OSC") formal notice that the TSE proposes to acquire all of the outstanding shares of the Canadian Venture Exchange Inc. ("CDNX") and that, as a consequence, the TSE intends to make certain changes to its corporate governance structure and its operations.

Pursuant to an acquisition agreement dated April 30, 2001, the TSE and CDNX have agreed that the TSE will purchase all of the outstanding shares of CDNX for a purchase price of \$50,000,000 (the "Transaction"). After the completion of the Transaction, CDNX will become a separate wholly-owned subsidiary of the TSE. In order to complete the Transaction, the TSE is required to make certain changes to its corporate governance structure. In addition, the TSE expects to implement certain changes in its operations. A detailed discussion of these changes can be found in the TSE submission which accompanies this Notice. The submission also discusses the potential impact, if any, that the Transaction will have on the terms and conditions of the TSE's current recognition order.

As set out in the accompanying submission, the TSE believes that the changes contemplated as a result of the Transaction are not prejudicial to the public interest and should not require changes to

the existing terms and conditions of the TSE's current recognition order.

Yours truly,

LPP:ez

cc: Ms. Susan Greenglass, OSC.

June 11, 2001

Ontario Securities Commission
20 Queen Street West
P.O. Box 55
Suite 800
Toronto, ON M5H 3S8

Attention: Randee Pavalow
Deputy Director of Capital Markets and Manager, Market Regulation

Dear Ms. Pavalow

Acquisition of Shares of Canadian Venture Exchange Inc. ("CDNX") by The Toronto Stock Exchange Inc. ("TSE")

On April 30, 2001, an acquisition agreement was entered into between the TSE and CDNX pursuant to which the TSE and CDNX have agreed that the TSE will acquire all of the outstanding shares of CDNX for an aggregate purchase price of \$50,000,000 (the "Transaction"). Following the closing of the Transaction, CDNX will become a separate wholly-owned subsidiary of the TSE that will be operated on a "for profit" basis. As a condition precedent to the closing of the Transaction, both the TSE and CDNX are required to obtain all necessary approvals from the applicable securities regulatory authorities.

Staff of the Ontario Securities Commission (the "OSC") have requested that the TSE review the terms and conditions of the TSE's April 3, 2000 recognition order (the "Recognition Order") and make a submission concerning the impact of the Transaction, if any, on those terms and conditions.

This letter represents the TSE's submission, including its responses to certain issues raised by OSC staff in connection with the OSC's review of the Transaction. For ease of reference, where applicable, the terms and conditions of the Recognition Order are set out in italics, as are specific questions posed by OSC staff to the TSE. The TSE's responses are set out immediately thereafter.

A. — Discussion of Terms and Conditions of the TSE's Recognition Order

The TSE's Recognition Order was obtained in the context of the TSE's demutualization. In order to ensure that the TSE 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. As mentioned above, the OSC has requested that the TSE review the terms and conditions of the Recognition Order given the potential impact of the Transaction on the structure and operations of the TSE.

Having reviewed the existing terms and conditions of the Recognition Order in light of the impact

of the Transaction on the structure and operations of the TSE, the TSE submits that, for the reasons outlined below, the Transaction will not give rise to public interest concerns so as to require changes to the existing terms and conditions of the TSE's Recognition Order.

1. — Corporate Governance

The TSE's Recognition Order outlines certain terms and conditions with respect to the TSE's corporate governance. These terms and conditions outline the OSC's concerns with respect to the TSE's corporate governance and represent the essential conditions which the OSC has determined are necessary for the protection of the public interest.

Corporate Governance

(a) The TSE's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the TSE, namely, the governing body, shall be such as to ensure a proper balance between the interests of the different entities desiring access to the facilities of the TSE (“Participating Organizations”), and, in recognition that the protection of the public interest is a primary goal of the TSE, a reasonable number and proportion of directors shall not be associated with Participating Organizations within the meaning of the TSE's by-laws in order to ensure diversity of representation on the Board. In particular, the TSE shall ensure that at least 50 per cent of its directors shall consist of individuals who are not associated with Participating Organizations within the meaning of the TSE's by-laws, and, in the event that at any time it fails to meet such requirement, it shall promptly remedy such situation.

(b) Without limiting the generality of the foregoing, the TSE's governance structure shall provide for:

(i) fair and meaningful representation on its governing body, in the context of the nature and structure of the TSE, and any governance committee thereto and in the approval of rules;

(ii) appropriate representation of persons not associated with Participating Organizations on TSE committees and on any executive committee or similar body within the meaning of the TSE's by-laws; and

(iii) appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of the TSE generally.

Changes in Governance Structure

As a consequence of the Transaction, the TSE is proposing to make the following changes to its corporate governance structure:

(a) Effective on closing, the TSE by-laws will be amended to provide that 25% of the TSE Board of Directors shall, in the opinion of the Governance Committee acting reasonably, be

made up of individuals who have expertise in, or an association with, the Canadian public venture capital market (the “Public Venture Capital Members”) and these Public Venture Capital Members will provide a broad geographic representation.

(b) To initially satisfy the 25% Public Venture Capital Member requirement, effective on closing, five current directors of the CDNIX will be proposed for election as additional directors of the TSE by the TSE shareholders. In particular, the current Chair of the CDNIX, Mr. Scott Paterson, will be elected or appointed to the TSE Board of Directors and, immediately upon closing, be appointed as a Vice-Chair of the TSE. As well, the current President and Chief Executive Officer of CDNIX, Mr. William Hess, will be elected or appointed to the TSE Board of Directors and, effective upon closing, will continue to be President of the CDNIX.

(c) To accommodate the appointment of the President and Chief Executive Officer of CDNIX to the TSE Board of Directors while continuing to ensure that at least 50% of the members of the TSE Board are unaffiliated with a Participating Organization, effective on closing the TSE by-laws will be amended to provide that the President of CDNIX shall be deemed not to be associated with a TSE Participating Organization. This treatment of the CDNIX President will be similar to the treatment currently accorded to the President of the TSE under the TSE's by-laws. This by-law amendment is considered to be an interim measure that will permit the TSE to avoid making other changes to the TSE Board to comply with the by-law requirement for independent directors. Accordingly, the TSE has agreed to seek shareholder approval to reverse this by-law amendment not later than the time of its next annual and general meeting of shareholders.

(d) The President and Chief Executive Officer of the TSE will be the new Chief Executive Officer of CDNIX.

(e) The initial Public Venture Capital Members are eligible under the TSE's directorship practices to be re-elected and to serve as directors on the TSE Board of Directors, subject to annual re-election, for a maximum of six years.

(f) On or before closing, an Advisory Board comprised of 8 to 15 people will be established to advise the TSE on policy matters relating to the public venture capital market and the role of CDNIX in respect of that market. The initial members of the Advisory Board will be recommended by the current Board of Directors of the CDNIX, with subsequent members to be determined by the TSE's Governance Committee on the recommendation of the Public Venture Capital Members.

(g) The Chair of the TSE, the President and Chief Executive Officer of the TSE, and the President of CDNIX shall be ex-officio members of the Advisory Board.

Discussion of Recognition Order Terms and Conditions

The TSE and CDNIX have structured the terms of the Transaction to ensure continued compliance with the corporate governance terms and conditions of the Recognition Order.

Proper Balance & Fair and Meaningful Representation

The TSE's governing structure after the completion of the Transaction has been organized to ensure that there is a proper balance between the different entities desiring access to the TSE's facilities and that there is fair and meaningful representation on the Board given its new structure.

The post-Transaction TSE will be the sole shareholder of CDNX. Because CDNX is a public venture capital market, a number of changes to the TSE's governing structure were believed to be necessary to ensure that the interests of participants in the Canadian public venture capital market were properly represented. The TSE and CDNX have therefore sought to balance the interests of public venture capitalists and the junior companies who require access to venture capital funding with the interests of current TSE participants and companies and to ensure that venture capital participants' interests are fairly and meaningfully represented on the TSE's governing body. As is evident from terms of the Transaction, the Transaction was specifically negotiated to ensure that the TSE continues to meet its recognition obligations by providing a governing structure that meaningfully represents the interests of venture capital participants who will now have access to some TSE facilities.

Many of the companies currently listed on CDNX are from Western Canada. In order to balance the interests of all the regions of Canada that will utilize the facilities of the TSE and CDNX after the closing of the Transaction, the parties to the Transaction believed that it was necessary to ensure that the TSE's governing body reflected this geographic diversity. To accomplish this, it will be a requirement for membership on the TSE Board of Directors that the Public Venture Capital Members be selected so as to provide for a broad geographic representation.

Independent Directors

The TSE's Recognition Order requires that at least 50% of the TSE's Board of Directors consist of individuals who have no affiliation with a Participating Organization. This requirement for independent directors is designed to foster diversity of representation on the governing bodies and to ensure that the protection of the public interest is a primary goal of the exchanges.

At all times before, during and after the completion of the Transaction, this corporate governance requirement will continue to be met. The TSE Board of Directors currently has 15 members, 8 of whom are unaffiliated with a Participating Organization (including Barbara Stymiest, President and Chief Executive Officer of the TSE, who is deemed by the TSE by-laws not to be affiliated with a Participating Organization). After completion of the Transaction, it is expected that there will be 20 members on the TSE Board of Directors, 9 of whom will be unaffiliated with a Participating Organization and 2 of whom will be deemed to be unaffiliated with a Participating Organization (after giving effect to the amendment to the TSE by-laws to provide that the President of CDNX will be deemed to be unaffiliated with a TSE Participating Organization). As mentioned in the discussion of the changes to the TSE's governance structure above, the TSE has agreed to seek shareholder approval to reverse this by-law amendment not later than the time of its next annual and general meeting of shareholders.

Other Rules Relating to Directors

Except as outlined above, there are no contemplated changes to any other rules relating to the existing directorship practices of the TSE. Specifically, members of the TSE Board of Directors will continue to be subject to annual re-election and will continue to have a maximum tenure of 6 years. As such, completion of the Transaction will have no effect on the TSE's ability to comply with the terms of the Recognition Order regarding qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and others.

Will there be any changes to the committee structure of the TSE Board or the mandate of any committee of the TSE Board?

The Transaction will not give rise to any changes to the committee structure of the TSE Board or the mandate of any committee of the TSE Board.

Will there be any changes to the role/status of the TSE's Chief Executive Officer or its Vice-Chairs?

The offices of the Chief Executive Officer and any Vice-Chairs appointed by the TSE are established under the TSE by-laws. No changes to these by-law provisions are required in connection with the Transaction. Following the Transaction, there will be two Vice-Chairs appointed, one of whom will be an independent director.

What are the details of the proposed Advisory Board and its mandate?

As outlined above, following completion of the Transaction there will be an Advisory Board, initially composed of 12 individuals, established to advise the TSE on policy matters relating to the public venture capital market and the role of CDNX in respect of that market. The initial constitution of the Advisory Board and the process for appointing replacement members is discussed in some detail above under "Corporate Governance — Transaction Structure". The Terms of Reference for the Advisory Board are attached as Schedule "A".

Will there be any changes to the quorum requirements for the TSE Board of Directors or any committee of the Board?

The Transaction will not give rise to any changes to the quorum requirements for the TSE Board or any of the TSE committees. The quorum requirements will continue to be governed by the current provisions set out in the TSE by-laws. As the Transaction will result in the creation of an Advisory Board made up of experienced public venture capital members, the Terms of Reference for the Advisory Board provide that a quorum at any meeting of the Advisory Board shall be a majority of the members of the Advisory Board.

In conclusion, we submit that complying with the terms and conditions of the TSE's Recognition Order was a central objective underlying the design of the proposed governance structure and that these terms and conditions continue to be fully reflected in the principles that will govern that structure in the future. We believe that the current terms and conditions continue to fully protect the public interest.

2. — Access and Fees

The TSE's Recognition Order outlines certain terms and conditions regarding access to the TSE's facilities and the fees to be charged for use of the TSE's facilities.

Access

(a) *The requirements of the TSE shall permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy the TSE's criteria to access the trading facilities of the TSE.*

(b) *Without limiting the generality of the foregoing, the TSE 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.*

Fees

(a) *Any and all fees imposed by the TSE 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 the TSE have sufficient revenues to satisfy its responsibilities.*

(b) *The TSE's process for setting fees shall be fair and appropriate.*

The Transaction does not contemplate any changes to the way in which access to the facilities of the TSE is granted or denied or to the manner in which fees for such access are set. The right to access the TSE market will be governed by a contractual relationship. All other existing criteria which must be satisfied before an entity can become a Participating Organization will also remain unchanged.

After the completion of the Transaction, current members and participants of CDNX will maintain their status with CDNX and will have the opportunity to become Participating Organizations of the TSE. However, Participating Organization status with the TSE will not be granted until the CDNX member or participant properly applies and satisfies all existing TSE requirements.

At this time, 55 of 63, or 87%, of CDNX members are also Participating Organizations of the TSE. As such, the TSE would experience a maximum increase of 8 Participating Organizations if all of the current CDNX members that are not TSE Participating Organizations applied and received approval. Given that the TSE annually approves approximately 6 to 10 applications for

Participating Organization status, the TSE does not anticipate any difficulties accommodating additional applications for access to its facilities from CDNX members or participants.

Will access to trading facilities continue to be dealt with separately by the TSE and CDNX?

In order to maximize efficiency, it is proposed that the trading operations of CDNX will be transferred to the TSE's trading platform as soon as practicable following the completion of the Transaction. Until such time, the trading facilities of each exchange will continue to be operated and supported separately by the TSE and CDNX. After trading in CDNX listings has been transferred to the TSE's platform, operation and support of the trading facilities will be centralized to some extent within the TSE. It is expected that applications for access as exchange participants will continue to be handled separately by the TSE and CDNX but that technical operations and support in relation to trading facilities will be handled by TSE personnel.

3. — Financial Viability and Financial Statements

The TSE's Recognition Order outlines certain terms and conditions designed to ensure the TSE's financial viability.

Financial Viability

- (a) The TSE shall maintain sufficient financial resources for the proper performance of its functions.*
- (b) The TSE shall file quarterly financial statements within 60 days of each quarter end and audited annual financial statements within 90 days of year-end.*
- (c) The TSE shall report to the Commission when: (1) its liquidity measure is equal to or less than zero [working capital plus borrowing capacity: two years each of net operating income (less depreciation which is a non-cash item), capital investment and debt repayment requirements]; (2) its solvency ratio is equal to or less than 1.3:1 (total assets: total liabilities); or (3) its financial leverage ratio is equal to or greater than 4.0 (total assets: total capital).*
- (d) If the TSE fails to satisfy any of the above acceptable liquidity measure, solvency or financial leverage ratios for a period of more than three months, its President will deliver a letter advising the Commission of the reasons for the continued ratio deficiencies and the steps being taken to rectify the problem, and the TSE 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.*
- (e) The TSE shall provide a report annually of the monthly calculation of the measure and ratios, the appropriateness of the calculations and whether any alternative calculations should be considered.*

Considering the acquisition of CDNX, does the TSE continue to have sufficient financial

resources for the proper performance of its functions?

The TSE currently has a substantial cash position that it intends to use to finance the acquisition of CDNX. For the first quarter ended March 31, 2001, the TSE had cash and marketable securities of \$231.5 million which substantially exceeds the \$50 million purchase price. Accordingly, the TSE believes that it will continue to have sufficient financial resources for the proper performance of its functions.

Are the financial ratios set out in the terms and conditions of the TSE Recognition Order still appropriate?

The TSE believes that the measures and ratios currently used to assess the TSE's financial viability will continue to be appropriate following the TSE's acquisition of CDNX. Any financial resources that the TSE deploys in making its acquisition of CDNX or in providing ongoing services to CDNX will be reflected in the TSE's own financial statements and, therefore, will have an impact on the calculation of the financial measures and ratios currently in place. As such, it is submitted that there is no need to change the existing financial measures and ratios used by the OSC to assess the ongoing financial viability of the TSE.

4. — Capacity and Integrity of Systems

The TSE's Recognition Order outlines certain terms and conditions concerning the capacity and integrity of the TSE's trading systems designed to protect against any unnecessary interruption in securities trading.

Systems

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

- (a) make reasonable current and future capacity estimates;*
- (b) 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;*
- (c) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;*
- (d) review the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards and natural disasters;*
- (e) establish reasonable contingency and business continuity plans;*
- (f) on an annual basis, perform an independent review, 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 change in technology on the exchange and parties interfacing with exchange systems. This will include an assessment of the TSE's controls for ensuring that each of its systems that support order entry, order*

routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements is in compliance with paragraphs (a) through (e) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and

(g) promptly notify the Commission of material systems failures and changes.

The Transaction will not result in any deviation from any of the above initiatives regarding the capacity and integrity of the TSE's systems. The TSE has just successfully completed its own migration of trading in all TSE listings from its legacy trading system, CATS, to its new trading engine ("NTE"). All capacity stress tests, system audits, contingency and business continuity plans, guideline and procedures development, annual reviews and commission notifications will continue to be carried out in accordance with the above terms and conditions. The TSE feels that these mechanisms are essential to protect against any unnecessary interruption in securities trading.

The TSE believes that the terms and conditions of the Recognition Order respecting the capacity and integrity of systems will continue to adequately address concerns regarding potential trading stoppages after the TSE and CDNX trading systems are fully operating on the NTE.

What, if any, changes will be made to the systems of the TSE? What is the schedule for moving to a common trading platform?

It is not contemplated that any changes will be made to the TSE systems as a consequence of completion of the Transaction until such time as the CDNX trading systems are transferred to the NTE. It is currently anticipated that this will be implemented by the end of 2001. In order to facilitate the transfer of the CDNX trading systems to the TSE trading platform, it may be necessary to rationalize the trading rules and to make certain consequential programming changes to accommodate this.

In accordance with the terms and conditions of the TSE's Recognition Order, the TSE has considered the capacity of its NTE to accommodate the additional trading volumes that would result from the transfer of the CDNX trading systems to NTE. Capacity tests have illustrated that NTE provides the TSE with considerably increased capacity to deal with additional orders and trades. We note that during 2000, the total number of trades executed through CDNX was approximately 4,382,741 trades, reflecting a daily average of 12,008 trades. As this is a relatively insignificant amount in the context of NTE's daily capacity, the TSE believes that NTE will be more than adequate to handle any additional trading activity resulting from the migration of CDNX trading to the TSE trading platform.

5. — Rules And Rule Making

Purpose of Rules

The TSE 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 Regulatory Services and otherwise, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern

and regulate all aspects of its business and affairs and shall in so doing specifically govern and regulate so as to:

- (a) seek to ensure compliance with securities legislation;*
- (b) seek to prevent fraudulent and manipulative acts and practices;*
- (c) seek to promote just and equitable principles of trade;*
- (d) seek to 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) seek to provide for appropriate discipline.*

After the completion of the Transaction, the TSE will continue to establish rules, regulations or other instruments necessary to effectively govern and regulate all aspects of the TSE's business and will ensure that any such rule, regulation or instrument will further the above noted objectives.

6. — Business and Operations Impact

The acquisition of CDNX by the TSE will have some impact on the business practices and operations of the TSE. However, in the TSE's opinion, any contemplated change to the TSE's business practices and operations will have a positive impact on the TSE, as the terms of the Transaction were designed to reduce the costs associated with operating an exchange, to eliminate unnecessary bureaucracy, and to facilitate the graduation and maturation of Canadian public companies.

After the completion of the Transaction, the TSE will preserve the CDNX brand identity and will take all initiatives and provide all commercially reasonable resources to promote, support, and enhance the CDNX as a unique and identifiable operation. In so doing, the TSE will augment its services to CDNX listed companies which will best serve the interests of the CDNX venture capital market. In addition, while the CDNX will continue to provide a separate web interface for its listed companies and market participants, the Transaction contemplates that the TSE and CDNX will explore common opportunities. The TSE believes that these initiatives are essential to the continued success of the Canadian capital markets.

In addition, as soon as possible after the completion of the Transaction, the TSE intends to implement a regulatory process that will provide for a simple and orderly graduation of CDNX-listed companies from early stage public companies to TSE-listed senior market companies. The TSE believes that such amendments are essential to ensure the continued strength and expansion of the CDNX venture market and the TSE.

The acquisition of CDNX by the TSE poses a unique opportunity for both exchanges to reduce costs by removing unnecessary duplication. The business of the TSE will be positively impacted by the centralization of some of its operations with those of CDNX namely, trading systems, technology development and operations, market information services, internal and external communications, human resources and administration, finance and payroll, and the provision of corporate secretary and legal services.

B. — By-law Approval

In order to complete the Transaction, the TSE agreed with CDNX that it would seek to make two amendments to the TSE by-laws. One proposed amendment to the TSE by-laws provides for the requirement that at least 25% of the members of the TSE Board of Directors will have experience in, or an association with, the Canadian public venture capital market and that they shall collectively provide a broad geographic representation within Canada. The second proposed by-law amendment provides that the President of CDNX shall be deemed not to be associated with a Participating Organization for the purposes of the TSE by-laws.

OSC staff have asked the TSE to submit the by-law amendments for OSC approval in accordance with the protocol established in the Memorandum of Understanding between the TSE and the OSC dated November 7, 1997 (the "Rules MOU"). Contemporaneous with this submission, the TSE has submitted the above mentioned by-law amendments for OSC approval in accordance with the Rules MOU.

Any other consequential changes to the by-laws, rules, regulations and policy statements of general application that may be required following completion of the Transaction will be submitted for review and approval by the OSC, where required, in accordance with the procedures outlined in the Rules MOU.

C. — Conclusion

It is the TSE's submission, as outlined in detail herein, that the Transaction will not give rise to public interest concerns so as to require changes to the existing terms and conditions of the TSE's Recognition Order. Accordingly, if the OSC is satisfied with this submission, it is the TSE's intention to proceed with the Transaction, subject to receiving approval to amend its by-laws in the manner discussed above.

We hope that you will find this submission responsive to the issues that OSC staff have identified in connection with the Transaction. Should you have any questions concerning the contents of this submission or require any further information, please contact the undersigned.

Thank you for your prompt attention to this matter.

Yours truly,

The Toronto Stock Exchange Inc.

Leonard Petrillo

Vice President, General Counsel and Secretary

Schedule "A"

The Toronto Stock Exchange Inc.'s CDNX Advisory Board Terms of Reference

Composition

7. The CDNX Advisory Board (the “Advisory Board”) shall be composed of:

- (a) between 8 and 15 individuals having expertise on matters relating to the Canadian public venture capital market. The initial members will be those recommended by the current CDNX Board of Directors prior to the closing of the Transaction between CDNX and the TSE. The Chair of the TSE and the President and Chief Executive Officer of the TSE and President of CDNX shall be ex-officio members;
- (b) The first chair of the Advisory Board shall be recommended by the current CDNX Board of Directors prior to the closing of the Transaction between CDNX and the TSE and shall be one of the current directors on the CDNX Board of Directors immediately prior to the closing of the Transaction; and
- (c) In subsequent years, the composition of the Advisory Board, including its chair (who shall be one of the directors on the Board having expertise in or an association with the Canadian public venture capital market (the “Public Venture Capital Members”), shall be determined by the Governance Committee in the same manner as all TSE committee members are chosen. The Public Venture Capital Members shall make recommendations to the Governance Committee with respect to Advisory Board nominees.

Quorum

The quorum at any meeting of the CDNX Advisory Board shall be a majority of the members of the Advisory Board, present in person or by telephone, unless otherwise fixed by the Board. Subject to any resolution of the Board, the Advisory Board may from time to time regulate the manner in which it may act and its procedures generally.

Frequency of Meetings

The Advisory Board may meet up to once a month by telecommunication as determined by the Chair. The Board shall provide sufficient resources such that the Advisory Board may meet not less than twice per year in person.

Terms of Reference

1. The Advisory Board shall have the responsibility for advising or making recommendations to the Board on policy matters relating to the public venture capital market and the role of CDNX in relation to such matters.
2. Recommend to the Governance Committee nominees for appointment to the Board who have expertise in or an association with the Canadian public venture capital market (the “Public Venture Capital Members”) and who provide broad geographic representation.