

**Notice Commission Approval of  
The Toronto Stock Exchange Inc. Acquisition of Canadian Venture Exchange Inc.**

On July 31, 2001, the Commission approved The Toronto Stock Exchange Inc. ("TSE") acquisition of Canadian Venture Exchange Inc. ("CDNX") (the "Transaction").

The Toronto Stock Exchange Inc.

(A) TSE Recognition Order

The TSE's current recognition order ("TSE Recognition Order") dated April 3, 2000 was issued in connection with the demutualization of the TSE (published at (2000) 23 OSCB 2495).

As part of the review of this Transaction, the TSE published a notice and submission discussing the potential impact, if any, that the Transaction would have on the terms and conditions of the TSE's Recognition Order (published on June 15, 2001 at (2001) 24 OSCB 3573). At that time, Staff indicated that, subject to comments received, Staff would recommend to the Commission that no changes were necessary to the TSE's Recognition Order. No comments were received.

On July 31, 2001, the Commission agreed that no changes were necessary to the TSE Recognition Order as a result of the Transaction.

(B) By-law amendments

On July 31, 2001, the Commission approved two by-law amendments in connection with the Transaction:

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 were published for comment on June 15, 2001 at (2001) 24 OSCB 3723. No comments were received.

Canadian Venture Exchange Inc.

In connection with the exchange restructuring, on December 5, 2000, the Commission granted an order exempting CDNX from recognition as a stock exchange in Ontario (the "CDNX Exemption Order") (published at (2000) 23 OSCB 8437). The CDNX Exemption Order was granted on the basis that CDNX is and will continue to be recognized as an exchange by the Alberta Securities Commission (the "ASC") and the British Columbia Securities Commission (the "BCSC") and is subject to joint oversight by the ASC and BCSC.

As a result of the Transaction, the ASC and BCSC granted new recognition orders for CDNX dated July 31, 2001 with terms and conditions. Consequently, on July 31, 2001, the Commission granted an amended order exempting CDNX from recognition as a stock exchange in Ontario (the "Amended CDNX Exemption Order"). The new ASC and BCSC recognition orders for CDNX are attached as schedules to the Amended CDNX Exemption Order. The Amended CDNX Exemption Order is set out below.

The ASC and BCSC issued the new recognition orders on the basis of representations contained in CDNX's application for approval of the Transaction and after having obtained from the TSE the representations, undertakings and acknowledgements set out in a letter from the TSE to the ASC and BCSC dated July 30, 2001. The TSE letter to the BCSC is attached below. Please note that the TSE letter to the ASC is identical in substance.

The ASC and BCSC have requested to receive certain information about the TSE that may be relevant to their assessment of CDNX's operations and its financial condition. Since the TSE is recognized as a stock exchange in Ontario and is currently required to provide that information to the Commission, the Commission agreed to provide the relevant information. The letter from the Commission to the ASC and BCSC is attached below.

**AS AMENDED (the "Act")**

**AND**

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

**AMENDED EXEMPTION O R D E R  
(Section 144)**

1. **WHEREAS** Canadian Venture Exchange Inc. ("CDNX") applied to the Ontario Securities Commission (the "Commission") for and was granted on December 5, 2000:

1.1. an order pursuant to section 147 of the Act (the "Previous Order") exempting CDNX from recognition under section 21 of the Act (the "Act") for the purposes of carrying on business as a stock exchange in Ontario

and the Commission considers it appropriate to amend the Previous Order to reflect the continued recognition of CDNX as an exchange by the Alberta Securities Commission (the "ASC") and the British Columbia Securities Commission ("BCSC") following the closing of a transaction whereby CDNX will become a wholly-owned subsidiary of The Toronto Stock Exchange Inc. (TSE) and CDNX will become a for-profit corporation (the "Transaction").

**IT IS ORDERED**, pursuant to section 144 of the Act that the Previous 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  
CANADIAN VENTURE EXCHANGE INC.**

**AMENDED EXEMPTION O R D E R  
(Section 147)**

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

2. **AND WHEREAS** CDNX has represented to the Commission that:

**Corporate Structure, Recognition and Services in Ontario:**

- 2.1. CDNX was incorporated on October 29, 1999 pursuant to the *Business Corporations Act* (Alberta).
- 2.2. On November 26, 1999, CDNX was recognized by the Alberta Securities Commission (the "ASC") as an exchange in Alberta under subsection 52(2) of the *Securities Act* (Alberta) (the "Alberta Act") 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) (the "BC Act") pursuant to COR #99/323 and the ASC and BCSC will continue the recognition of CDNX effective on the closing of the Transaction (together, the "Recognition Orders" which are attached as Schedules "A" and "B").
- 2.3. CDNX will operate a national exchange for junior issuers which is separate from the TSE's exchange and which has a separate CDNX brand identity. CDNX presently maintains offices in Calgary, Vancouver and Winnipeg. CDNX opened an office in Toronto, Ontario on May 1, 2000 and intends to receive applications from issuers for listings and to perform continuous listing services for issuers through its Ontario office.

**Regulatory Oversight:**

- 2.4. CDNX is subject to joint regulatory oversight by both the ASC and the BCSC.
- 2.5. CDNX is advised that the OSC, ASC and BCSC have entered into a memorandum of understanding ("MOU") respecting the continued oversight of CDNX by the ASC and BCSC (attached as Schedule "C") 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 CDNX. Under the terms of the MOU, the ASC and BCSC will continue to be responsible for conducting the regulatory oversight of CDNX and for conducting an oversight program of CDNX for the purpose of ensuring that CDNX meets appropriate standards for market operation and regulation.
- 2.6. CDNX 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. CDNX will concurrently provide the OSC 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 OSC.
- 2.7. CDNX 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, CDNX entered into an agreement (the "Agreement") with the The Toronto Stock Exchange Inc. ("TSE") and the Canadian Dealing Network Inc. ("CDN"), a wholly-owned subsidiary of the TSE, pursuant to which the TSE 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 CDNX 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 not-for-profit subsidiary of CDNX, CDNX and the OSC 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. CDNX 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, effective June 30, 2001, CDNX Issuers that are not otherwise reporting issuers in Ontario and have a "significant connection to Ontario" make application to the OSC and become reporting issuers in Ontario.
  - 2.12. CDNX has adopted Corporate Finance Policy 5.9 effective June 30, 2001, entitled "*Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*" in the form attached as schedule "F".
3. **AND UPON** the Commission being satisfied that the amendment of the order granting an exemption from recognition to CDNX would not be contrary to the public interest.
  4. **IT IS HEREBY ORDERED** that pursuant to section 147 of the Act, CDNX is exempt from recognition under section 21 of the Act provided that:
    - 4.1. CDNX 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. CDNX 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. CDNX 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 OSC;

- 4.5. CUB will continue to be in compliance with the agreement referred to in clause 2.10 above until the OSC implements a local rule relating to Ontario over-the-counter trading;
  - 4.6. CDNX concurrently provides to the OSC copies of all by-laws, rules, policies and other regulatory instruments that it files for review and approval with the ASC and BCSC. CDNX also provides to the OSC copies of all final by-laws, rules, policies and other regulatory instruments;
  - 4.7. CDNX provides to the OSC, where requested by the OSC through the ASC and the BCSC, any information in the possession of CDNX relating to members, shareholders and the market operations of CDNX, including, but not limited to, shareholder and participating organization lists, products, trading information and disciplinary decisions; and
5. **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. CDNX is deemed to be in compliance with clause 4.6 and 4.7 unless CDNX 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.

July 31, 2001

"Howard I. Wetston"

"Paul Moore"

#### **SCHEDULE A**

ORD # 2001/110  
DOC # 804409.2

#### **ALBERTA SECURITIES COMMISSION**

#### **IN THE MATTER OF the Securities Act (S.A. 1981, c. S-6.1, as amended) (the "Act")**

**AND**

#### **IN THE MATTER OF THE CANADIAN VENTURE EXCHANGE INC.**

#### **RECOGNITION (Subsection 52(2))**

1. **WHEREAS** Canadian Venture Exchange Inc. ("CDNX") was recognized as an exchange under subsection 52(2) of the Act by Recognition Order dated November 26, 1999 (the "First Recognition Order");
2. **AND WHEREAS** CDNX has applied to the Commission for approval of a transaction whereby CDNX will become a wholly-owned subsidiary of The Toronto Stock Exchange Inc. (the "TSE") and CDNX will become a for-profit corporation (the "Transaction"), as more fully described in CDNX's application dated May 16, 2001 published under Alberta Securities Commission Notice dated May 18, 2001.
3. **AND WHEREAS** CDNX's application contains a number of significant changes to the representations and undertakings made by CDNX when its predecessors, the Vancouver Stock Exchange and The Alberta Stock Exchange, applied for recognition under subsection 52(2) of the Act in November, 1999;
4. **AND WHEREAS** the Commission considers it appropriate to set out in an order the terms and conditions of CDNX's continued recognition as an exchange in Alberta following the Transaction;

5. **AND WHEREAS** CDNX and the TSE have agreed to the terms and conditions set out in the order;
6. **AND WHEREAS** based on the application of CDNX, including the representations, undertakings and acknowledgments made by the TSE to the Commission in connection with CDNX's application, the Commission is satisfied that the continued recognition of CDNX following the Transaction would not be prejudicial to the public interest;
7. **IT IS HEREBY ORDERED** that CDNX will continue to be recognized as an exchange in Alberta under subsection 52(2) of the Act effective on the closing of the Transaction provided CDNX meets and continues to meet the terms and conditions set out in Schedule A. Such recognition will continue until the Commission, after giving CDNX an opportunity to be heard, revokes it.
8. **IT IS HEREBY FURTHER ORDERED** that this order will replace and supercede the First Recognition Order.

Dated at the City of CALGARY            )  
   )  
 in the Province of ALBERTA    )  
 this 31<sup>st</sup> day of July, October 26, 2001)        "original signed by"  
   )        Stephen P. Sibold, Q.C., Chair  
   )          
   )        "original signed by"  
   )        Glenda A. Campbell, Vice-Chair  
   )

**Schedule A  
 to the Recognition Order of CDNX  
 Dated July 31, 2001**

**National Junior Exchange**

1. CDNX will operate a national exchange for junior issuers under a separate brand identity and separately from the national exchange for senior issuers operated by the TSE.
2. CDNX will maintain an office in Calgary.

**Public Interest**

3. CDNX will operate in the public interest.
4. CDNX will maintain by-laws, rules, regulations, policies, procedures and practices and other similar instruments that:
  - a) are not contrary to the public interest;
  - b) regulate all aspects of its business and affairs; and
  - c) are appropriate to foster a vibrant and effective market for junior issuers.
5. More specifically, CDNX will govern and regulate with the purpose of:
  - a) ensuring compliance with applicable securities legislation and its by-laws, rules, regulations, policies, procedures and practices and other similar instruments;
  - b) preventing fraudulent and manipulative acts and practices;
  - c) promoting just and equitable principles of trade;
  - d) fostering co-operation and co-ordination with persons engaged in regulating, clearing, settling, processing information about, and facilitating transactions in, securities; and
  - e) ensuring that all persons over which CDNX has jurisdiction are appropriately sanctioned for violations of

securities legislation and the by-laws, rules, regulations, policies, procedures, practices and other similar instruments of CDNX.

6. CDNX will not
  - a) permit unreasonable discrimination between clients, listed issuers, shareholders, and members or participating organizations; or
  - b) impose any burden on competition that is not necessary or appropriate in view of applicable securities legislation.

#### **Corporate Finance Services and Functions**

7. Subject to paragraph 8, CDNX will continue to
  - a) provide corporate finance services and functions to listed issuers and applicants for listing in its Calgary office,
  - b) obtain, solicit and provide regional input on the development of corporate finance policies, and
  - c) perform its existing decision-making and internal review and appeal processes for corporate finance mattersin a manner that is substantially equivalent to the manner in which these services, functions and processes were provided before the transaction.
8. CDNX will not make any significant change to the services, functions and processes outlined in paragraph 7 without first obtaining the approval of the Commission.

#### **Regulatory Functions**

9. Subject to paragraph 10, CDNX will continue to
  - a) perform listed company and market surveillance functions in its Calgary office, and
  - b) use its existing decision-making and internal review and appeal processes for surveillance related matters in a manner that is substantially equivalent to the manner in which these services, functions and processes were provided before the transaction.
10. CDNX will not make any significant change to the services, functions and processes outlined in paragraph 9 without first obtaining the approval of the Commission.
11. As long as CDNX performs any regulatory function, CDNX will advise the Commission in writing at least on a monthly basis of
  - a) all new investigations initiated by CDNX and provide information on the persons involved and the nature of the investigation; and
  - b) all investigations that do not lead to disciplinary proceedings and are closed and provide information on the date the investigation started, the conduct and persons involved and the disposition of the investigation.
12. CDNX will advise the Commission in writing on at least a quarterly basis of all significant exemptions or waivers of corporate finance policies and provide information on the issuers involved, the nature of these waivers or exemptions and the reasons for granting these waivers or exemptions.

#### **Regulatory Oversight**

13. CDNX will be subject to the joint regulatory oversight of the ASC and the BCSC.
14. CDNX will provide 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 from time to time by the ASC and BCSC.
15. The existing memoranda of understanding ("MOU") respecting the oversight of CDNX by the ASC and BCSC

entered into by the ASC and BCSC with the Ontario Securities Commission (OSC) and the Manitoba Securities Commission, or any successor agreements, as amended from time to time, will continue to govern the regulatory oversight of CDNX.

### **Corporate Governance**

16. CDNX will ensure that
  - a) the persons appointed to its board are individuals that provide a proper balance between the interests of the different persons using the services and facilities of CDNX; and
  - b) subject to paragraph 19, at least 50 percent of its directors are independent from CDNX and the TSE or their members and participating organizations.
17. More specifically, CDNX's corporate governance structure will provide for:
  - a) fair and meaningful representation, having regard to the nature and structure of CDNX, on the board and any board or advisory committee;
  - b) appropriate representation on the board and any board or advisory committees of persons independent of CDNX, the TSE, any members or participating organizations of CDNX and any participating organizations of the TSE; and
  - c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for directors, officers and employees of CDNX generally.
18. At least 25% of the directors of CDNX will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market.
19. For purposes of making the calculation to ensure that at least 50% of the directors of CDNX are independent directors, CDNX will
  - a) on closing of the transaction, exclude the CEO and the President from both the numerator and the denominator; and
  - b) by the close of the first annual meeting of its shareholders following the closing of the transaction, exclude the CEO from the numerator and denominator and count the President and any other officer as a non-independent director.
20. By the close of the first annual meeting of its shareholders after the closing of the transaction, CDNX will amend its By-law No. 1 to give effect to the condition set out in paragraph 19 b).
21. Except as noted in paragraphs 18 to 20, CDNX will not implement any significant changes to the corporate governance structure and practices of its board, including changes to the composition and terms of reference of its board committees and advisory committees, without the prior approval of the Commission.

### **Access**

22. CDNX's requirements will not unreasonably prohibit or limit properly registered dealers that are members of a self-regulatory organization or exchange and that satisfy CDNX's requirements for accessing the trading facilities of CDNX.
23. CDNX will not unreasonably prohibit or limit access by a person to services offered by it.
24. CDNX will maintain established written standards separate from the TSE for granting access to trading through its trading facilities.
25. CDNX will keep separate records of:
  - a) each grant of access and, for each entity granted access to its facilities, the reasons for granting access; and
  - b) each denial or limitation of access and the reasons for denying or limiting access.

## **Fees**

26. CDNX will have a fair and appropriate process for setting fees and will determine the fees it imposes on its listed issuers, applicants for listing, members, participating organizations and other market participants.
27. These fees will
- a) be allocated on an equitable basis as among the parties noted in paragraph 26;
  - b) not have the effect of creating barriers to access; and
  - c) be fair, reasonable and appropriate.

## **Financial Viability**

28. CDNX will have sufficient financial and other resources for the performance of its functions in a manner that is consistent with the public interest and the terms and conditions of this order.
29. CDNX will prepare annual financial statements, including note disclosure that would normally be included in audited financial statements, in accordance with Canadian GAAP and will file these statements with the Commission within 90 days of its financial year-end.

## **System Security, Capacity and Sustainability**

30. CDNX will:
- a) make reasonable current and future capacity estimates;
  - b) conduct capacity stress tests of the 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 CDNX's controls for ensuring that each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison and capacity and integrity requirements, complies with sub-paragraphs a) to 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.
31. For CDNX securities listed on a system operated by the TSE, CDNX will be considered to have met the requirements set out under sub-paragraphs a) to f) of paragraph 30 if the TSE meets the equivalent requirements contained in the OSC recognition order.

## **Change in Operations or Ownership**

32. CDNX will not cease to operate or suspend, discontinue or wind-up all or a significant portion of its operations and/or dispose of all or substantially all of its assets without
- a) providing the Commission at least six months prior notice of its intention; and
  - b) complying with any terms and conditions the Commission may impose in the public interest for the orderly

discontinuance of its operations or the orderly disposition of its assets.

33. CDNX will obtain the approval of the Commission before it or the TSE completes any transaction that would result in CDNX ceasing to be controlled by the TSE.
34. CDNX will not cease to be a wholly-owned subsidiary of the TSE without CDNX
  - a) providing the Commission at least three months prior notice of its intention; and
  - b) complying with any terms and conditions the Commission may impose in the public interest.

#### **Due Process**

35. In connection with giving access to its facilities, CDNX will ensure that
  - a) its requirements, the limitations or conditions it imposes on access, and the decisions it makes to deny access are fair and reasonable;
  - b) the parties are given notice and an opportunity to be heard or make representations; and
  - c) it keeps a record, gives reasons and provides for appeals of its decisions.

#### **Information Sharing**

36. CDNX will share information of a regulatory nature and will otherwise co-operate with the Commission and its staff, other exchanges and self-regulatory organizations recognized in Canada, and Canadian regulatory authorities responsible for the supervision or regulation of securities, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

#### **Additional Information**

37. CDNX will file any information required under the rules adopted to implement the alternative trading system proposal.

#### **Commission Approval**

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

### **SCHEDULE B**

#### **IN THE MATTER OF THE SECURITIES ACT R.S.B.C. 1996, c. 418**

**AND**

#### **IN THE MATTER OF THE CANADIAN VENTURE EXCHANGE INC.**

#### **Recognition Order Under Section 24(2)**

Canadian Venture Exchange Inc. (CDNX) was recognized as an exchange under section 24(2) of the Act on November 26, 1999 under COR#99/323.

CDNX has applied to the Commission for approval of a transaction whereby CDNX will become a wholly owned subsidiary of The Toronto Stock Exchange Inc. (TSE) and CDNX will become a for-profit corporation (the transaction), as more fully described in CDNX's application dated May 16, 2001 published with BCN2001/35.

CDNX's application contains a number of significant changes to the representations and undertakings made by CDNX when its predecessors, the Vancouver Stock Exchange and The Alberta Stock Exchange, applied for its recognition under section 24(2) of the Act in November 1999.

The Commission considers it appropriate to set out in an order the terms and conditions of CDNX's continued recognition as an exchange in British Columbia following the transaction.

CDNX and the TSE have agreed to the terms and conditions set out in the order.

Based on the application of CDNX, including the representations, undertakings and acknowledgements made by the TSE to the Commission in connection with CDNX's application, the Commission is satisfied that the continued recognition of CDNX following the transaction will not be prejudicial to the public interest.

The Commission orders the continued recognition of CDNX as an exchange in British Columbia under section 24(2) of the Act effective on the closing of the transaction provided CDNX meets and continues to meet the terms and conditions set out in Schedule A. Recognition will continue until the Commission, after giving CDNX an opportunity to be heard, revokes it.

This order revokes and replaces COR#99/323.

July 31, 2001.

Douglas M. Hyndman  
Chair

Ref: COR#99/323

## **Schedule A**

### **National Junior Exchange**

1. CDNX will operate a national exchange for junior issuers under a separate brand identity and separately from the national exchange for senior issuers operated by the TSE.
2. CDNX will maintain an office in Vancouver.

### **Public Interest**

3. CDNX will operate in the public interest.
4. CDNX will maintain by-laws, rules, regulations, policies, procedures and practices and other similar instruments that:
  - a) are not contrary to the public interest;
  - b) regulate all aspects of its business and affairs; and
  - c) are appropriate to foster a vibrant and effective market for junior issuers.
5. More specifically, CDNX will govern and regulate with the purpose of:
  - a) ensuring compliance with applicable securities legislation and its by-laws, rules, regulations, policies, procedures and practices and other similar instruments;
  - b) preventing fraudulent and manipulative acts and practices;
  - c) promoting just and equitable principles of trade;
  - d) fostering co-operation and co-ordination with persons engaged in regulating, clearing, settling, processing information about, and facilitating transactions in, securities; and
  - e) ensuring that all persons over which CDNX has jurisdiction are appropriately sanctioned for violations of securities legislation and the by-laws, rules, regulations, policies, procedures, practices and other similar instruments of CDNX.
6. CDNX will not
  - a) permit unreasonable discrimination between clients, listed issuers, shareholders, and members or

participating organizations; or

- b) impose any burden on competition that is not necessary or appropriate in view of applicable securities legislation.

### **Corporate Finance Services and Functions**

- 7. Subject to paragraph 8, CDNX will continue to
  - a) provide corporate finance services and functions to listed issuers and applicants for listing in its Vancouver office,
  - b) obtain, solicit and provide regional input on the development of corporate finance policies, and
  - c) perform its existing decision-making and internal review and appeal processes for corporate finance matters

in a manner that is substantially equivalent to the manner in which these services, functions and processes were provided before the transaction.
- 8 CDNX will not make any significant change to the services, functions and processes outlined in paragraph 7 without first obtaining the approval of the Commission.

### **Regulatory Functions**

- 9. Subject to paragraph 10, CDNX will continue to
  - a) perform listed company and market surveillance functions in its Vancouver office, and
  - b) use its existing decision-making and internal review and appeal processes for surveillance related matters

in a manner that is substantially equivalent to the manner in which these services, functions and processes were provided before the transaction.
- 10. CDNX will not make any significant change to the services, functions and processes outlined in paragraph 9 without first obtaining the approval of the Commission.
- 11. As long as CDNX performs any regulatory function, CDNX will advise the Commission in writing at least on a monthly basis of
  - a) all new investigations initiated by CDNX and provide information on the persons involved and the nature of the investigation; and
  - b) all investigations that do not lead to disciplinary proceedings and are closed and provide information on the date the investigation started, the conduct and persons involved and the disposition of the investigation.
- 12. CDNX will advise the Commission in writing on at least a quarterly basis of all significant exemptions or waivers of corporate finance policies and provide information on the issuers involved, the nature of these waivers or exemptions and the reasons for granting these waivers or exemptions.

### **Regulatory Oversight**

- 13. CDNX will be subject to the joint regulatory oversight of the ASC and the BCSC.
- 14. CDNX will provide 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 from time to time by the ASC and BCSC.
- 15. The existing memoranda of understanding ("MOU") respecting the oversight of CDNX by the ASC and BCSC entered into by the ASC and BCSC with the Ontario Securities Commission (OSC) and the Manitoba Securities Commission, or any successor agreements, as amended from time to time, will continue to govern the regulatory oversight of CDNX.

## Corporate Governance

16. CDNX will ensure that
  - a) the persons appointed to its board are individuals that provide a proper balance between the interests of the different persons using the services and facilities of CDNX; and
  - b) subject to paragraph 19, at least 50 percent of its directors are independent from CDNX and the TSE or their members and participating organizations.
17. More specifically, CDNX's corporate governance structure will provide for:
  - a) fair and meaningful representation, having regard to the nature and structure of CDNX, on the board and any board or advisory committee;
  - b) appropriate representation on the board and any board or advisory committees of persons independent of CDNX, the TSE, any members or participating organizations of CDNX and any participating organizations of the TSE; and
  - c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for directors, officers and employees of CDNX generally.
18. At least 25% of the directors of CDNX will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market.
19. For purposes of making the calculation to ensure that at least 50% of the directors of CDNX are independent directors, CDNX will
  - a) on closing of the transaction, exclude the CEO and the President from both the numerator and the denominator; and
  - b) by the close of the first annual meeting of its shareholders following the closing of the transaction, exclude the CEO from the numerator and denominator and count the President and any other officer as a non-independent director.
20. By the close of the first annual meeting of its shareholders after the closing of the transaction, CDNX will amend its By-law No. 1 to give effect to the condition set out in paragraph 19 b).
21. Except as noted in paragraphs 18 to 20 , CDNX will not implement any significant changes to the corporate governance structure and practices of its board, including changes to the composition and terms of reference of its board committees and advisory committees, without the prior approval of the Commission.

## Access

22. CDNX's requirements will not unreasonably prohibit or limit properly registered dealers that are members of a self-regulatory organization or exchange and that satisfy CDNX's requirements for accessing the trading facilities of CDNX.
23. CDNX will not unreasonably prohibit or limit access by a person to services offered by it.
24. CDNX will maintain established written standards separate from the TSE for granting access to trading through its trading facilities.
25. CDNX will keep separate records of:
  - a) each grant of access and, for each entity granted access to its facilities, the reasons for granting access; and
  - b) each denial or limitation of access and the reasons for denying or limiting access.

## Fees

26. CDNX will have a fair and appropriate process for setting fees and will determine the fees it imposes on its listed

issuers, applicants for listing, members, participating organizations and other market participants.

27. These fees will
- a) be allocated on an equitable basis as among the parties noted in paragraph 26;
  - b) not have the effect of creating barriers to access; and
  - c) be fair, reasonable and appropriate.

#### **Financial Viability**

28. CDNX will have sufficient financial and other resources for the performance of its functions in a manner that is consistent with the public interest and the terms and conditions of this order.
29. CDNX will prepare annual financial statements, including note disclosure that would normally be included in audited financial statements, in accordance with Canadian GAAP and will file these statements with the Commission within 90 days of its financial year-end.

#### **System Security, Capacity and Sustainability**

30. CDNX will:
- a) make reasonable current and future capacity estimates;
  - b) conduct capacity stress tests of the 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 CDNX's controls for ensuring that each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, and capacity and integrity requirements, complies with sub-paragraphs (a) to (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.
31. For CDNX securities listed on a system operated by the TSE, CDNX will be considered to have met the requirements set out under sub-paragraphs a) to f) of paragraph 30 if the TSE meets the equivalent requirements contained in the OSC recognition order.

#### **Change in Operations or Ownership**

32. CDNX will not cease to operate or suspend, discontinue or wind-up all or a significant portion of its operations, or dispose of all or substantially all of its assets, without
- a) providing the Commission at least six months prior notice of its intention; and
  - b) complying with any terms and conditions the Commission may impose in the public interest for the orderly discontinuance of its operations or the orderly disposition of its assets.
33. CDNX will obtain the approval of the Commission before it or the TSE completes any transaction that would result in CDNX ceasing to be controlled by the TSE.

34. CDNX will not cease to be a wholly-owned subsidiary of the TSE without CDNX:
- a) providing the Commission at least three months prior notice of its intention; and
  - b) complying with any terms and conditions the Commission may impose in the public interest.

#### **Due Process**

35. In connection with giving access to its facilities, CDNX will ensure that
- a) its requirements, the limitations or conditions it imposes on access, and the decisions it makes to deny access are fair and reasonable;
  - b) the parties are given notice and an opportunity to be heard or make representations; and
  - c) it keeps a record, gives reasons and provides for appeals of its decisions.

#### **Information Sharing**

36. CDNX will share information of a regulatory nature and will otherwise co-operate with the Commission and its staff, other exchanges and self-regulatory organizations recognized in Canada, and Canadian regulatory authorities responsible for the supervision or regulation of securities, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

#### **Additional Information**

37. CDNX will file any information required under the rules adopted to implement the alternative trading system proposal.

#### **Commission Approval**

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

### **SCHEDULE C**

**MEMORANDUM OF UNDERSTANDING  
REGARDING THE OVERSIGHT OF THE CANADIAN VENTURE EXCHANGE INC.  
BY THE ALBERTA SECURITIES COMMISSION AND  
BRITISH COLUMBIA SECURITIES COMMISSION**

**BETWEEN:**

**ALBERTA SECURITIES COMMISSION  
(the "ASC")**

**AND**

**BRITISH COLUMBIA SECURITIES COMMISSION  
(the "BCSC")**

**AND**

**ONTARIO SECURITIES COMMISSION  
(the "OSC")**

The parties agree as follows:

#### **1. Underlying Principles**

- 1.1 The ASC and BCSC are the lead regulators (the "Lead Regulators") in connection with the oversight of the

Canadian Venture Exchange Inc. ("CDNX") in accordance with the division of duties outlined in Appendix "A".

- 1.2 The OSC has exempted or will exempt CDNX from recognition as a stock exchange in Ontario on the basis that:
  - 1.2.1 CDNX is and will continue to be recognized as an exchange by the Lead Regulators;
  - 1.2.2 the Lead Regulators are responsible for conducting the regulatory oversight of CDNX; and
  - 1.2.3 the OSC will be informed of the oversight activities of the Lead Regulators and will be provided with opportunities to raise issues concerning the oversight of CDNX with the Lead Regulators in accordance with this Memorandum of Understanding (the "MOU").
- 1.3 The parties will act in good faith in the resolution of issues raised by any of the parties in connection with the oversight of CDNX by the Lead Regulators.
- 1.4 The Lead Regulators are responsible for conducting an oversight program of CDNX which will include the matters described in Part 2 (the "Oversight Program") .<sup>1</sup>
- 1.5 The purpose of the Oversight Program is to ensure that CDNX meets appropriate standards for market operation and regulation. Those standards include:
  - 1.5.1 fair access to issuers and market participants;
  - 1.5.2 fair representation in corporate governance and rule making;
  - 1.5.3 systems and financial capacity to carry out its regulatory functions;
  - 1.5.4 orderly markets through appropriate review of products to be traded and trading rules;
  - 1.5.5 appropriate listed company regulation;
  - 1.5.6 transparency through timely access to relevant information on traded products and market prices;
  - 1.5.7 market integrity through prohibition of unfair trading practices;
  - 1.5.8 proper identification and management of risks, including financial condition of operation and standards for market participants; and
  - 1.5.9 integration with effective clearing and settlement systems.
- 1.6 The OSC acknowledges that the Lead Regulators may enter into a Memorandum of Understanding substantially similar to this MOU with the securities commission of any other jurisdiction where CDNX opens an office.
- 1.7 The Lead Regulators intend to enter into a Memorandum of Understanding with the Manitoba Securities Commission ("MSC") regarding the oversight of CDNX by the Lead Regulators (the "MSC MOU") in substantially the same form as this MOU.

## **2. Oversight Program**

- 2.1 The Lead Regulators will establish and conduct the Oversight Program, which will include, at a minimum, the following:
  - 2.1.1 review of information filed by CDNX on critical financial and operational matters and significant changes to operations, including information related to:
    - a) affiliated entities;
    - b) operation of CDNX systems/technological capacity;

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<sup>1</sup> The matters outlined in the Oversight Program are intended to prescribe a minimum level of oversight. The Lead Regulator may conduct additional review procedures. The purpose of specifying the Oversight Program is to ensure that each participant in the CDNX Oversight Protocol is comfortable that there is acceptable oversight of CDNX, which in turn justifies reliance on the Lead Regulator.

- c) financial statements;
  - d) membership and access requirements and forms;
  - e) corporate finance policies, including listing and filing requirements; and
  - f) corporate governance, including board and committee composition, structure, mandate and function;
- 2.1.2 review and approval of changes to CDNX by-laws, rules, policies and other regulatory instruments in accordance with the procedures established by the Lead Regulators for the review of such instruments in effect from time to time. The current procedures are set out in letters dated November 26, 1999 and February 24, 2000; and
- 2.1.3 periodic examination of CDNX functions, including:
- a) corporate finance policies: policies relating to minimum listing requirements, listing or tier maintenance requirements, sponsorship and continuous disclosure;
  - b) trading halts, suspensions and delisting procedures;
  - c) surveillance and enforcement: procedures for detection of non-compliance and resolution of outstanding issues;
  - d) access: requirements for access to trade through the facilities of CDNX;
  - e) information transparency: procedures for the dissemination of market information;
  - f) corporate governance: corporate governance procedures, including policy and rule making process; and
  - g) risk management and computer systems.
- 2.2 The Lead Regulators will retain sole discretion regarding the manner in which the Oversight Program is carried out, including, but not limited to, determining the order and timing of their examinations of CDNX functions under section 2.1. However, the Lead Regulators will perform the examinations of CDNX functions under section 2.1.3 at least once every three years. The Lead Regulators will provide to the OSC a copy of the report of the examination performed in accordance with section 2.1.3 and any responses of CDNX to the report.
- 3. Involvement of the OSC**
- 3.1 The Lead Regulators acknowledge that the OSC will require that CDNX provide to the OSC:
- 3.1.1 copies of all by-laws, rules, policies and other regulatory instruments that CDNX files for review and approval with the Lead Regulators, under the Lead Regulators' procedures referred to in section 2.1.2, at the same time that CDNX files those documents with the Lead Regulators;
  - 3.1.2 copies of all final by-laws, rules, policies and other regulatory instruments once approved by the Lead Regulators in accordance with the procedures outlined in section 2.1.2; and
  - 3.1.3 if requested by the OSC, copies of information filed by CDNX pursuant to section 2.1.1 as identified in the request.
- 3.2 Where the OSC advises the Lead Regulators that it has specific concerns regarding the operations of CDNX in Ontario and requests that the Lead Regulators perform an examination of CDNX in Ontario, the Lead Regulators may determine to conduct an examination of an office or offices of CDNX in Ontario or a function performed by a CDNX office located in Ontario. The OSC may, as part of its request, ask that the Lead Regulators include staff of the OSC in the Lead Regulators' examination.
- 3.3 If the Lead Regulators advise the OSC that they cannot or will not conduct the examination as referenced in section 3.2, the OSC may conduct such examination on behalf of the Lead Regulators without the participation of the Lead Regulators. In such cases, the OSC will provide copies of the results of the examination to the Lead Regulators.
- 3.4 The Lead Regulators will inform the OSC in writing of any material changes in how they perform their obligations under this MOU.
- 4. Information Sharing**
- 4.1 The Lead Regulators will, upon written request from the OSC, provide or request CDNX to provide to the OSC any information in the possession of CDNX relating to members, shareholders and the market operations of CDNX, including, but not limited to, shareholder and participating organization lists, products, trading information and disciplinary decisions.

## **5. Oversight Committee**

- 5.1 A committee will be established (the "Oversight Committee") which will act as a forum and venue for the discussion of issues, concerns and proposals related to the oversight of marketplaces by the parties.
- 5.2 The Oversight Committee will include staff representatives from each of the Lead Regulators and the OSC who have responsibility and/or expertise in the areas of exchange oversight and market regulation.
- 5.3 The Oversight Committee will meet at least once annually in person and will conduct conference calls at least quarterly.
- 5.4 At least quarterly the parties will provide to the Oversight Committee a summary report on their oversight of marketplaces regulated by them that will include a summary description of any material changes to their oversight program implemented during the period.
- 5.5 At least once annually the Oversight Committee will provide to the Canadian Securities Administrators (the "CSA") a written report of the oversight activities of the committee members during the previous period.
- 5.6 The OSC acknowledges that, since the Lead Regulators intend to enter into the MSC MOU and may enter into another Memorandum of Understanding substantially similar to this MOU with the securities commissions of any other jurisdiction where CDNX opens an office under section 1.6, the Oversight Committee will include staff representatives from the MSC and the relevant securities commission and those representatives will participate in the work of the Oversight Committee on the same basis as the staff representatives from the OSC.

## **Waiver and Non-Performance**

- 6.1 The terms, conditions and procedures of this MOU may be varied or waived by mutual agreement of the staff of the parties. A waiver or variation may be specific or general and may be for a time or for all times as mutually agreed by staff of the parties.
- 6.2 If a party believes that another party is not performing satisfactorily its obligations under this MOU, it may give written notice to the other party stating that belief and accompanied by particulars in reasonable detail of the alleged failure to perform. If the party receiving the notice has not satisfied the notifying party within two months of the delivery of the notice either that its performance is satisfactory or that it has taken or will take acceptable steps to rectify its performance, the notifying party may by written notice to the other parties terminate this MOU on a date not less than six months following delivery of such notice. In that case the notifying party will send to CDNX a copy of its notice of termination at the same time that it sends such notice to the other party.
- 6.3 For the purposes of this Part, the Lead Regulators will be considered to be one party.

## **Effective Date**

- 7.1 This MOU comes into effect on the date it is approved by the Minister of Finance in Ontario pursuant to section 143.10 of the Ontario Securities Act.

### **ALBERTA SECURITIES COMMISSION**

"Stephen Sibbold"  
Chair  
September 18, 2000

### **ONTARIO SECURITIES COMMISSION**

"David A. Brown"  
Chair  
September 18, 2000

### **BRITISH COLUMBIA SECURITIES COMMISSION**

"Douglas M. Hyndman"  
Chair  
September 18, 2000

**ASC/ BCSC FUNCTIONAL REGULATION CONTACT LIST**

<b>Functional Area</b>	<b>Functional Regulator</b>	<b>BCSC Contact Person</b>	<b>ASC Contact Person</b>
Corporate Governance	ASC	Special Adviser to the Chair (L. Gauvin (604) 899-6538)	Director, Legal Services & Policy Development (P.M. Johnston (403) 297-2074)
Corporate Finance	ASC	Director, Corporate Finance (W. Redwick (604) 899-6526)	Director, Legal Services & Policy Development (P.M. Johnston (403) 297-2074)
Trading	BCSC	Deputy Director, Compliance (G. Halischuk (604) 899-6617)	Director, Legal Services & Policy Development (P.M. Johnston (403) 297-2074)
Compliance	BCSC	Deputy Director, Compliance (G. Halischuk (604) 899-6617)	Director, Capital Markets (K. Parker (403) 297-3251) Director, Enforcement (G. Cornfield (403) 297-2091)
Risk Management	ASC	Deputy Director, Compliance (G. Halischuk (604) 899-6617)	Director, Capital Markets (K. Parker (403) 297-3251)
Systems	BCSC	Deputy Director, Compliance (G. Halischuk (604) 899-6617)	Director, Capital Markets (K. Parker (403) 297-3251)
Clearing & Settlement	BCSC	Deputy Director, Compliance (G. Halischuk (604) 899-6617)	Director, Legal Services & Policy Development (P.M. Johnston (403) 297-2074)

June 09, 2000.

**SCHEDULE D**

**OTC AGREEMENT**

**(the "Agreement")**

**THIS AGREEMENT** made as of the 6<sup>th</sup> day of October, 2000,

**AMONG:**

**CANADIAN UNLISTED BOARD INC.  
("CUB")**

**AND**

**CANADIAN VENTURE EXCHANGE INC.  
("CDNX")**

**AND**

**THE ONTARIO SECURITIES COMMISSION  
("OSC")**

**WHEREAS:**

- A. By an agreement made as of February 28, 1991 among The Toronto Stock Exchange (the "TSE"), the OSC and the Canadian Dealing Network Inc. ("CDN"), CDN (a wholly-owned subsidiary of the TSE) took on assignment from the OSC and has been operating a trade reporting system (the "CDN Reporting System") and a quotation system (the

"CDN Quotation System") (collectively, the "CDN System") to provide visibility for over-the-counter ("OTC") trading of equity securities in the Province of Ontario;

- B. By an agreement made as of September 29, 2000 among CDNX, the TSE and CDN (the "CDN Agreement"), the TSE and CDN have agreed to cease operating the CDN System;
- C. The OSC wishes to ensure that a system continues to exist in the Province of Ontario through which OSC registered dealers can continue their mandatory reporting of all OTC trading in unlisted and unquoted equity securities in the Province of Ontario not specifically excluded from the reporting requirements of the *Securities Act, R.S.O. 1990, Chapter S.5* and the regulations thereto (collectively, the "Act");
- D. Subject to the terms and conditions of this Agreement, CUB, a wholly owned subsidiary of CDNX, is prepared to operate an internet web-based reporting system for the reporting by registered dealers of OTC trading in unlisted and unquoted equity securities in the Province of Ontario (the "OTC System") and to provide certain services to the OSC with respect thereto; and
- E. Subject to the terms and conditions of this Agreement, CDNX has agreed to ensure that CUB fulfils its obligations hereunder and has adequate resources (including those made available to it by CDNX) to operate the OTC System and to provide to the OSC those services called for by this Agreement;

**NOW THEREFORE** in consideration of the premises and the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

## **1. THE OTC SYSTEM**

- 1.1 The OTC System to be operated by CUB pursuant to this Agreement shall possess the characteristics and functionality described in Schedule "A" which is attached hereto and forms a part of this Agreement; provided, however, and the parties further agree that for greater certainty the OTC System will not provide for visible trade reporting.
- 1.2 The OTC System shall commence operation as at 5:00 p.m. EST on October 6, 2000 such that mandatory reporting by OSC registered dealers of all OTC trading in unlisted and unquoted equity securities in the Province of Ontario not specifically excluded from the reporting requirements of the Act (hereinafter referred to as "Ontario OTC trading") via the OTC System will commence on October 10, 2000.
- 1.3 All right, title and interest in and to the OTC System shall be owned solely by CUB, its successors and permitted assigns. For greater certainty, the right, title and interest in and to all registered and unregistered trademarks, trade names, service marks, copyrights, designs, inventions, patents, patent applications, patent rights, licenses, franchises, processes, technology, trade secrets and other industrial property pertaining to the OTC System developed by CUB (or on behalf of CUB by CDNX) or to any developments or enhancements of the OTC System implemented by CUB shall be owned solely by CUB, its successors and permitted assigns and, subject as herein otherwise provided, the OSC, OSC registered dealers who report trades on the OTC System ("Users") and any other parties shall acquire no rights in or license to use the OTC System except as may be necessary for the due implementation of this Agreement.

## **2. ADMINISTRATION/OPERATION OF THE OTC SYSTEM**

- 2.1 Subject to the terms and conditions of this Agreement, CUB shall administer and operate the OTC System by providing:
  - (i) trade reporting services in respect of Ontario OTC trading by Users;
  - (ii) surveillance services as referred to in Part 4 of this Agreement in respect of Ontario OTC trading by Users; and
  - (iii) such services as may be required to record and account for the fees referred to in subsection 2.3 below and charged by CUB for use of the OTC System.
- 2.2 CUB will provide such staff as are necessary to operate the OTC System with the functionality described in Schedule "A".
- 2.3 CUB may establish and from time to time amend a schedule of fees that it will be entitled to charge for use of the OTC System. Such fees shall be established at a level which, in the aggregate, will permit CUB to be reimbursed for all

costs associated with the development and ongoing operation of the OTC System, including all operating, capital and related costs. All fees charged by CUB will be consistent with CUB's status as a not-for-profit entity and, though not subject to prior approval by the OSC, may be reviewed by the OSC.

- 2.4 All fees and other revenue derived from the operation of the OTC System will be retained by CUB.
- 2.5 CUB will ensure that each User shall, as a condition of using the OTC System, enter into an agreement with CUB (the "User Agreement") in the form and upon substantially the terms attached hereto as Schedule "B".

### **3. REGULATION OF THE OTC SYSTEM**

- 3.1 In the event that the OTC System is implemented prior to the implementation of the OSC's rules governing alternative trading systems (the "ATS Rules") and unless otherwise agreed, the parties agree that the OTC System will be regulated in two phases as follows:
- (i) for the period commencing on the date of implementation of the OTC System and ending on the date of implementation in Ontario of a local rule relating to Ontario OTC trading which will be implemented concurrently with the ATS Rules or such other rules as the OSC may apply to Ontario OTC trading (the "Ontario Local Rule"), the OTC System will be regulated in accordance with the OTC Terms and Conditions which are attached as Schedule "A" to the User Agreement (the "User Obligations"); and
  - (ii) commencing on the date of implementation of the Ontario Local Rule and ending on the date of the termination of this Agreement, the OTC System will be regulated in accordance with the Ontario Local Rule.
- 3.2 In the event that the OTC System is implemented after implementation of the Ontario Local Rule, the OTC System will be regulated in accordance with the Ontario Local Rule.
- 3.3 It is recognized and agreed that CUB shall not make any rules or regulations regarding Ontario OTC trading and that until such time as the Ontario Local Rule is implemented the OTC System will be operated and governed in accordance with the User Obligations.

### **4. SURVEILLANCE SERVICES IN RESPECT OF THE OTC SYSTEM**

- 4.1 CUB will provide surveillance services as described in confidential Schedule "C" which is attached hereto and forms a part of this Agreement in respect of Ontario OTC trading that is reported to the OTC System; provided, however, and it is further understood and agreed, that the responsibility for enforcement regulatory activity pertaining to Ontario OTC trading will rest exclusively with the OSC and CUB will not provide enforcement services in respect of the market participants using the OTC System.
- 4.2 The surveillance services described in confidential Schedule "C" and provided by CUB in respect of Ontario OTC trading that is reported to the OTC System will be comprised generally of and limited to the following:
- (i) exception monitoring for Ontario OTC trading activity in violation of the terms of any User Agreement, applicable trading rules or applicable securities laws; and
  - (ii) press release monitoring for issuer disclosure in respect of Ontario OTC trading in violation of applicable securities laws.
- 4.3 All matters requiring enforcement action will be referred to the applicable securities regulatory body which it is anticipated will be the OSC in most cases involving the OTC System.
- 4.4 CUB will impose no trading halts in respect of any Ontario OTC trading reported to the OTC System.
- 4.5 CUB will provide to the OSC on request all such Ontario OTC trading and surveillance data respectively reported to the OTC System and collected by CUB as the OSC may require for its investigative and enforcement purposes.

### **5. MAINTENANCE OF TRADING DATA**

- 5.1 Ontario OTC reporting and surveillance data respectively reported to the OTC System and collected by CUB will be maintained by CUB for its surveillance and the OSC's enforcement purposes only, and will not be published. For greater certainty, CUB shall ensure that such data is retained for a period of at least seven (7) years and accessible to OSC staff for investigative and enforcement purposes.

5.2 CUB recognizes its obligation to provide the OSC access (via the OTC System) to data collected by CUB in respect of Ontario OTC trading reported to the OTC System so as to assist the OSC in carrying out its regulatory responsibilities.

## **6. ACKNOWLEDGEMENTS OF THE OSC**

6.1 Effective as at 5:00 p.m. EST on October 6, 2000, the OSC by separate instrument has appointed CUB as the OSC's agent as contemplated in Part VI of the *Regulation*, for the purpose of operating the OTC System.

6.2 In order to assist CUB in its operation of the OTC System, the OSC may obtain and provide to CUB such information as the OSC deems appropriate, including information:

- (i) on disciplinary or other action the OSC determines to take against a User which, in the OSC's view, will have a material impact on the User's participation in the OTC System; and
- (ii) relating to issuers of OTC Securities (being the same as "COATS Securities" as defined in section 152 of Part VI of the *Regulation*), OSC registered dealers or any other Persons (as such latter term is defined in the Act) that leads the OSC to believe that there has been or will be a breach of the terms and conditions of Part VI of the *Regulation*.

## **7. COVENANTS OF CDNX**

7.1 CDNX agrees to ensure that CUB fulfils its obligations under this Agreement and has adequate resources (including those made available to it by CDNX) to operate the OTC System and to provide to the OSC those services called for by this Agreement.

## **8. CUB TO LIMIT THE LIABILITY OF CDNX**

8.1 CUB agrees that it will, in connection with the performance by it of its obligations under this Agreement, take reasonable precautions to limit the liability, if any, of CDNX to any third party in connection with the operation of the OTC System, such precautions to include, where possible, the use of disclaimers in connection with the supply of information and the insertion of appropriate limiting conditions in contracts entered into by CUB.

## **9. TERM AND TERMINATION**

9.1 This Agreement shall come into force and effect as at 5:00 p.m. EST on October 6, 2000 (the "Effective Date") such that the reporting of Ontario OTC trading via the OTC System will commence on October 10, 2000 and (provided that it is not terminated due to termination of the CDN Agreement pursuant to the terms thereof) shall survive from such date until the earlier of the day upon which it is terminated pursuant to subsection 9.2 hereof or the day upon which this Agreement is replaced by a new agreement entered into amongst the parties by reason of implementation by the OSC of the Ontario Local Rule; provided, however, that if this Agreement is so replaced the replacement agreement will not itself be able to be terminated before the earliest date that this Agreement can be terminated pursuant to subsection 9.2 hereof.

9.2 At any time at least three (3) years after the Effective Date, any of the parties may give one (1) year's written notice to the others of its decision to terminate its obligations hereunder, and this Agreement shall thereafter terminate on the expiry of such notice.

## **10. NON PERFORMANCE**

10.1 If a party to this Agreement believes that another party is not performing satisfactorily its obligations under this Agreement, it may give written notice to the other party stating that belief accompanied by particulars in reasonable detail of the alleged failure to perform. If the party receiving such notice has not satisfied the notifying party within one (1) month of the delivery of the notice either that its performance is satisfactory or that it has taken or will take acceptable steps to rectify its performance, the notifying party may by written notice to the other parties terminate this Agreement on a date not less than three (3) months following delivery of such notice.

## **11. NOTICE**

Any notice or other communication required or permitted to be given hereunder shall be sufficiently given if delivered in person or if sent by facsimile transmission:

11.1 in the case of CUB, both for itself and on behalf of CDNX, at the following address:  
Canadian Unlisted Board Inc.  
c/o Canadian Venture Exchange Inc.  
10<sup>th</sup> Floor, 300 Fifth Avenue S.W.  
Calgary, Alberta T2P 3C4

Attention: CDNX Vice President, Regulatory Affairs & Corporate Secretary  
Facsimile No: (403) 237-0450

11.2 in the case of the OSC, at the following address:  
The Ontario Securities Commission  
Suite 1800, P.O. Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Attention: Manager, Market Regulation  
Facsimile No: (416) 593-8240

or at such other address as the party to which such notice or other communication is to be given has last notified to the other parties in the manner provided in this section, and if so given the same shall be deemed to have been received on the date of such delivery or sending.

## **12. FURTHER ASSURANCES, AMENDMENTS AND WAIVERS**

12.1 Each party hereto covenants and agrees that it shall from time to time and at all times execute and deliver all such further documents and assurances as shall be reasonably required in order to fully perform and carry out the intent of this Agreement. This Agreement can only be amended with the consent in writing of both parties and no party shall be deemed to have waived any provision of this Agreement unless such waiver is in writing.

## **13. APPLICABLE LAW**

13.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **14. COUNTERPARTS AND FACSIMILE SIGNATURE**

14.1 This Agreement may be executed in separate counterparts and all such counterparts shall together constitute one and the same instrument.

14.2 The parties agree that executed copies of this Agreement may be delivered by fax or similar device and that the signatures appearing on the copies so delivered will be as binding as if copies bearing original signatures had been delivered; each party undertakes to deliver to the other party a copy of this Agreement bearing original signatures, forthwith upon demand.

## **15. FORCE MAJEURE**

15.1 No party shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, the operation of any law, regulation or order of government or other similar authority, any labour disparity or dispute, strike, lockout, riot, explosion, war, invasion, epidemic, fire, earthquake or other natural disaster, power failure or system failure including network failures.

## **16. SUCCESSORS AND ASSIGNS**

16.1 Neither CUB, CDNX nor the OSC shall assign this Agreement or any of their respective rights or obligations hereunder without the prior written consent of the others. This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

**IN WITNESS WHEREOF**, the parties have hereunto duly executed this Agreement as of the day and year first above written.

**CANADIAN UNLISTED BOARD INC.**

Per: \_\_\_\_\_

Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**CANADIAN VENTURE EXCHANGE INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**THE ONTARIO SECURITIES COMMISSION**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

This is Schedule "A" to that certain Agreement made as of the 6th day of October, 2000, among Canadian Unlisted Board Inc., Canadian Venture Exchange Inc. and The Ontario Securities Commission

**OTC SYSTEM CHARACTERISTICS AND FUNCTIONALITY**

**1.1 Characteristics- Included Characteristics**

The OTC System will be a CUB-developed internet web-based system solution for the reporting of Ontario OTC trading the general characteristics of which will be a system:

1. providing a secure, reliable environment to enable registered dealers to report trades in securities according to the Securities Act (Ontario).
2. providing a basic reporting, surveillance, and administrative functionality with unexplained trading and disclosure anomalies being forwarded to the OSC for enforcement and further investigation.
3. providing a separation of Ontario OTC trading from CDNX and the CDNX brand.
4. separable from CDNX technology operations and deployable to other technical environments should the OSC choose to change service providers.
5. extendable to other provincial jurisdictions in support of possible national trade reporting.
6. possessing a separate logical billing system within CDNX's Oracle Financials to generate invoices and statements for CUB that are distinct from those of CDNX.
7. possessing a backup OTC System application server (existing disaster recovery hardware at CDNX Business Continuity Planning ("BCP") recovery sites having sufficient capacity to accommodate the OTC System application).

**1.2 Functionality**

**1.2.1 Included Functionality**

The OTC System will possess the following functionality:

- 1.2.1.1 Registered Dealer Functionality:
  1. Registered Dealer administrative functions

- 1.1. Provide the ability for the registered dealer (who may or may not be TSE or CDNX members) to logon, logoff and change their passwords
2. Report a trade
  - 2.1. Report a trade done today (typically reported by the selling registered dealer)
    - 2.1.1. Data includes: symbol, volume, price, contra-broker, time-stamp, identification of which side reported the trade.
  - 2.2. Limit or restrict the registered dealer from reporting a trade that was executed prior to the current day. 'As of' reporting to be handled by the administrative or market regulation function of CUB (see *Administrative Functionality* below).
3. Report a trade cancellation
4. Inquire on trading activity for an issue
  - 4.1. The reporting functions proposed with respect to Ontario OTC trading are purposely limited.
  - 4.2. Data attributes to be displayed are:
    - 4.2.1. For today: high price, low price, last price, net change, volume, value, # trades and list of all trades
    - 4.2.2. For historical periods: high price, low price, last price, net change, volume, value, # trades
5. View Administrative Notice Board
  - 5.1. Contains textual information posted by CUB administrative and market regulation staff
6. Online Help
  - 6.1. Display of "How To" information explaining the operation of the OTC System
  - 6.2. Inquiries to list:
    - 6.2.1. Securities on the system that have reported activity (stock list) that would include the issue name, symbol, and Cusip number (if applicable)
    - 6.2.2. Yesterday's and today's add's, delete's and changes to the stock list
    - 6.2.3. A directory of registered dealer users Ids and names

1.2.1.2. Administrative Functionality:

Administrative functionality will be used by CUB staff to administer the OTC System.

1. UserID administration
  - 1.1. Setup new UserID
  - 1.2. Maintain UserID (change, delete, force password changes)
2. Security Master maintenance
  - 2.1. Add, change, delete issues that can be reported. This functionality can be done in real-time.
  - 2.2. Update Trading status to restrict the reporting of trades
3. Report trade (on behalf of a registered dealer)
  - 3.1. Similar to the registered dealer function to report a trade.

- 3.2. This functionality can also serve as a short-term backup service should operational problems arise with accessing the system.
4. Report a trade done up to 364 days ago ("as of")
  - 4.1. 'As of' reporting is done by CUB staff on behalf of the registered dealer. The registered dealer would send (via fax) to CUB the particulars of the delayed trade report.
  - 4.2. Historical information to be updated to reflect the reported trade.
5. Report trade cancellation (on behalf of a registered dealer)
  - 5.1. Similar to the registered dealer function to report a trade cancellation.
  - 5.2. This functionality can also serve as a short-term backup service should operational problems arise with accessing the system.
  - 5.3. Historical information would be updated to reflect the cancelled trade.
6. Post and clear notices and other textual information to Administrative Notice Board
  - 6.1. The transaction is logged to an audit trail file
7. Online Help maintenance
  - 7.1. Update static "How To" information

#### 1.2.1.3. **Regulatory Functionality:**

Regulatory functionality will be that employed by CUB staff to provide regulatory oversight or surveillance of Ontario OTC trading (it being understood that all enforcement action arising from CUB's surveillance activities in respect of Ontario OTC trading that is reported to the OTC System will be undertaken by the OSC). Due to the nature of Ontario OTC trading, all such regulatory functionality will be of a post-trade nature.

1. Alerts of reported trades that cause exceptions to price change and volume tolerance parameters.
2. OSC access to the OTC System to perform specified inquiry functions:
  - 2.1. Today and historical trading inquiries (see *Registered Dealer Functionality* above)
  - 2.2. Generate reports on trading activity per Registered Dealer firm, per security, and for all securities per specified (flexible) date range.
  - 2.3. Access to Online Help inquiries (see *Registered Dealer Functionality* above)
3. Ad hoc reports for investigations forwarded to the OSC.
4. Data extracts for investigations forwarded to the OSC.

#### 1.2.1.4. **Operational Functionality:**

Operational functionality will be global in nature and apply to the entire OTC System.

- Implement a standalone OTC System application server (NT operating system), separate from CDNX systems.
- Establish recovery procedures to transfer the application to an existing CDNX NT server on an interim basis in the event of a CUB/OTC System server failure.
- Store trade summaries for surveillance purposes (history)
- Store detail trade records for investigative purposes (history)
- Conduct daily backup of files and databases

- Include OTC System in CDNX BCP and provide 48 hour recovery time for the CUB OTC System at the CDNX BCP recovery site(s)

- Generate billing reports

- Generate monthly reports of trading activity for invoice preparation.

### 1.3 Excluded Functionality:

The OTC System will NOT possess the following functionality:

- ! Capability regarding investigation and enforcement of trading and disclosure anomalies generated by the system.
- ! Capability to prioritize price/volume exceptions.
- ! Capability to generate real time data feeds or press reports.
- ! Capability to transfer historical trade information from the TSE/CATS system.

This is Schedule "B" to that certain Agreement made as of the 6th day of October, 2000, among Canadian Unlisted Board Inc., Canadian Venture Exchange Inc. and The Ontario Securities Commission

## **CANADIAN UNLISTED BOARD INC. USER AGREEMENT (THE "AGREEMENT")**

**WHEREAS** the Canadian Venture Exchange Inc. ("CDNX" or the "Exchange") has entered into an agreement with the Toronto Stock Exchange Inc. ("TSE") and the Canadian Dealing Network Inc. ("CDN") whereby:

- (i) as at 5:00 p.m. EST on September 29, 2000, the TSE and CDN shall cease operating the CDN Quotation System such that eligible CDN quoted issuers that have filed complete applications as determined by CDNX shall commence trading on CDNX Tier 3 as at the start of business on October 2, 2000; and
- (ii) as at 5:00 p.m. EST on October 6, 2000, the TSE and CDN shall cease operating the CDN Reporting System such that as of the start of business on October 10, 2000, OSC registered dealers can continue their mandatory reporting of all OTC trading in unlisted and unquoted equity securities in the province of Ontario not specifically excluded from the reporting requirements of the Act and the regulations thereto via the OTC System;

**WHEREAS** the Canadian Unlisted Board Inc., a wholly owned subsidiary of CDNX ("CUB"), CDNX and the Ontario Securities Commission (the "Commission") have 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 (the "OTC System") for the purposes of Part VI of Regulation 1015 ("Part VI");

**WHEREAS** CUB has been appointed as an agent of the Commission for the purposes of developing computer software and providing and operating computer facilities for the reporting of trading in unlisted and unquoted equity securities in Ontario pursuant to section 153 of Part VI;

**WHEREAS** for the purposes of this agreement the following definitions shall apply:

"Act" means the Securities Act, R.S.O. 1990, c.s. 5 as amended;

"CDN Policy" means that policy which has been adopted by CDN board of directors respecting trading in unlisted and unquoted equity securities in Ontario;

"OTC security" shall have the same meaning as "COATS security" as defined in section 152 of Part VI;

"Person" means a "person" as that term is defined in the Act;

"User" means a registrant under the Act and who reports trades on the OTC System;

**WHEREAS** in order to assist CUB in its operation of the OTC System, the Commission may obtain and provide to CUB such information as the Commission deems appropriate, including information:

- (i) on disciplinary or other action the Commission determines to take against a User which, in the Commission's view, will have a material impact on the User's participation in the OTC System; and

- (ii) relating to issuers of OTC Securities, registrants under the Act or any other Persons that leads the Commission to believe that there has been or will be a breach of the terms and conditions of Part VI.

**WHEREAS** the Commission and CUB have agreed that in the event that the OTC system is implemented prior to the implementation of the OSC's rules governing alternative trading systems (the "ATS Rules") the OTC System shall be regulated in the following two phases:

for the period commencing on the date of implementation of the OTC System and ending on the date of the implementation of a local Ontario rule relating to Ontario OTC trading which will be implemented concurrently with the ATS Rules or such other rules as the OSC may apply to Ontario OTC trading (the "Ontario Local Rule"), the OTC System will be regulated in accordance with Part VI and those portions of the CDN Policy pertaining to trade reporting of unlisted and unquoted equity securities in Ontario as in effect at 5:00 p.m. EST October 6, 2000; and

- (i) commencing on the date of the implementation of the Ontario Local Rule and ending on the date of the termination of the Agreement, the OTC System will be regulated in accordance with the Ontario Local Rule.

**WHEREAS** CUB will provide monitoring and surveillance services to the OSC in respect of trading in securities reported through the OTC System. CUB will not provide enforcement services in respect of the market participants using the OTC System.

**WHEREAS** CUB will refer any matters relating to a suspected violation of applicable trading rules or securities laws to the OSC or other applicable securities regulatory body.

**WHEREAS** CUB has agreed to provide to the OSC on request all such trading and surveillance data collected by CUB in respect of the OTC System as the OSC may require.

**WHEREAS** the OSC requires registered dealers to act in accordance with applicable securities legislation including but not limited to the obligation to deal fairly, honestly and in good faith with its customers.

**WHEREAS** the OSC expects registered dealers, as part of their general obligations, to have policies and procedures which enable them to operate in a manner which is consistent with the requirements set out in the OTC Terms and Conditions (as defined below);

**NOW, THEREFORE**, in consideration of CUB permitting the undersigned User to utilize the OTC System, the User agrees with CUB as follows:

1. The User is a registered dealer within the meaning of the Act and shall at all times act in accordance with applicable securities legislation including but not limited to the obligation to deal fairly, honestly and in good faith with its customers and shall have policies and procedures which enable them to operate in a manner which is consistent with the requirements set out in the OTC Terms and Conditions (as defined below);
2. Until such time as the Ontario Local Rule is implemented, the User agrees that the OTC System will be operated and governed in accordance with:
  - (i) Part VI and those portions of the CDN Policy pertaining to trade reporting of unlisted and unquoted equity securities in Ontario as in effect at 5:00 p.m. EST on October 6, 2000; and
  - (ii) such directives as may be issued by authority of the Board of Directors of CUB in respect of the use of the OTC System;

(collectively, the "OTC Terms and Conditions" which are attached as Schedule "A" to this Agreement) and the User shall comply with the OTC Terms and Conditions.

3. The User shall promptly communicate to CUB transaction reports with respect to OTC securities in accordance with the OTC Terms and Conditions;
4. The User shall comply with all requirements of the OTC Terms and Conditions and without limiting the generality of the foregoing, all Users acknowledge and agree:
  - (i) that they will provide to CUB any and all records, reports, and information required or requested by CUB in order for CUB to satisfy its regulatory obligations, in such manner and form, including electronically, as may be required by CUB from time to time;

- (ii) that they will permit CUB or its designate to inspect their records at any time;
  - (iii) that CUB may suspend the User's access to the OTC System pending a determination of the OSC in respect of any referral by CUB to the OSC of any suspected violation of the User's obligation to comply with section 1 above; and
  - (iv) that CUB may terminate the User's access to the OTC System upon notification to CUB by the OSC that the User has violated the OTC Terms and Conditions.
5. The User shall pay, when due, any applicable fees or charges established by CUB from time to time and which current fees and charges are attached as Schedule "B" to this Agreement.
6. The User acknowledges that it is possible that from time to time the OTC System may be disrupted, contain inaccurate information, omit required information or may otherwise operate in an unsatisfactory manner (such events being hereinafter referred to as "Errors") whether through malfunction of equipment, power failure, human error or other reason. The causes of such Errors may be attributable to CUB, the Exchange, negligent or wilful acts or omissions of current or former directors, governors, officers, employees or committee members of CUB or the Exchange (hereinafter collectively referred to as "Personnel") or persons or companies who have supplied goods or services to either CUB or the Exchange in connection with the OTC System (hereinafter referred to as "Contractors").
7. It is acknowledged that neither CUB nor the Exchange assumes any responsibility with respect to the use to which the User, its employees or agents puts the facilities, services or the information obtained therefrom or with respect to the results of such use. It is further acknowledged that the information, services and facilities provided hereunder are provided on the express condition that Users making use of them assent that no liability whatsoever in relation thereto shall be incurred by CUB, the Exchange or Personnel.
8. The User agrees that none of CUB, the Exchange or Personnel shall have any liability whatsoever to the User with respect to any loss, damage, cost, expense or other liability or claim suffered or incurred by or made against the User, directly or indirectly, by reason of Errors, or arising from any negligent, reckless or wilful act or omission or out of the use, operation or regulation of the OTC System by CUB, the Exchange, Personnel or Contractors, or otherwise as a result of the use by the User of the facilities, services or information provided by CUB or the Exchange. By making use of the facilities, services or information provided by CUB or the Exchange the User expressly agrees to accept all liability arising from such use.
9. It is acknowledged by the User that the sole remedy for any wilful or negligent act or omission of any Personnel or Contractors shall be appropriate action, of a disciplinary nature or otherwise, instituted solely at the discretion of CUB or the Exchange.
10. CUB may terminate or amend this Agreement, subject to the approval of its Board of Directors and upon notice to the User, and any subsequent participation of the User in the OTC System shall constitute acceptance by the User of any such amendment.
11. It is acknowledged that neither CUB nor the Exchange shall incur any liability to the User with respect to any loss or damage whatsoever that the User may suffer, directly or indirectly, by reason of any termination of this Agreement.
12. In the event that any legal proceeding is brought or threatened against CUB, the Exchange, Personnel or Contractors to impose liability which arises directly or indirectly from the use by the User of the OTC System or from the use by the User of the facilities, services or information provided by CUB or the Exchange, the User agrees to indemnify and save CUB and the Exchange harmless from and against:
- (i) all liabilities, damages, losses, costs, charges and expenses of every nature and kind (including, without limitation, legal and professional fees) incurred by CUB or the Exchange in connection with the proceeding, including costs incurred to indemnify Personnel;
  - (ii) any recovery adjudged against CUB, the Exchange or Personnel in the event that any of them is found to be liable; and
  - (iii) any payment by CUB or the Exchange, made with the consent of the User, in settlement of such proceeding.

13. Except as otherwise expressly provided herein, all of the terms used in this Agreement which are defined in OTC Terms and Conditions are used herein as so defined.
14. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
15. The Agreement shall not be binding until accepted in writing by CUB.
16. The Agreement shall be effective as of the date accepted in writing by CUB.

\_\_\_\_\_  
[Insert Name of User]

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Name and Title of Authorized Signatory  
(Please Print Name and Title)

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Name and Title of Authorized Signatory  
(Please Print Name and Title)

Accepted this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

**CANADIAN UNLISTED BOARD INC.**

By: \_\_\_\_\_

Schedule "A" to User Agreement

OTC Terms and Conditions

**A Transaction Reporting**

**1. Operation and Administration of OTC System**

- 1.1. All Users shall comply with the Terms and Conditions governing the operation and administration of the OTC System, which Terms and Conditions shall include:
- 1.2. those matters set forth in Part VI applicable to trade reporting in respect of over-the-counter equity securities in Ontario;
- 1.3. those portions of the former CDN Policy pertaining to trade reporting of unlisted and unquoted equity securities in Ontario as in effect at 5:00 p.m. EST on October 6, 2000 and incorporated herein; and
- 1.4. such directives as may be issued by authority of the Board of Directors of CUB in respect of the use of the OTC System.

**2. Trades to be Reported**

- 2.1 Pursuant to Part VI, every purchase or sale in Ontario of an OTC security made by a registered dealer, as principal or agent, must be reported through the OTC System, with the following exceptions (which shall not be reported through the OTC System):
  - 2.1.1 a trade made through the facilities of a stock exchange or other organized market recognized and identified in this section A-2;
  - 2.1.2. a distribution effected in accordance with the Act by or on behalf of an issuer; or

- 2.1.3. a secondary trade made in reliance on the exemptions in clauses 72(1)(a), (c) or (d) of the Act.
- 2.2. Where a security that is listed on one or more of the Canadian stock exchanges becomes suspended (i.e., it is no longer posted for trading) on all such exchanges, then any trade in that security by a registered dealer shall become reportable through the OTC System if that security and trade is otherwise required to be reported through the OTC System.
- 2.3. The obligation to report a trade in an OTC security applies only with respect to purchases and sales in Ontario of such security. A purchase or sale in Ontario for the purpose of these OTC Terms and Conditions is one in which either:
- 2.3.1. the person to whom the trade is confirmed (other than a User) is a resident of Ontario; or
- 2.3.2. the User's trader or sales representative handling the trade is acting from an Ontario office (irrespective of whether the User is acting as principal or agent).
- 2.4. Transactions that are merely booked through a User's inventory for purposes of adding a usual mark-up or commission in respect of trades which, for all intents and purposes, are agency trades on NASDAQ or a foreign stock exchange, need not be reported through the OTC System. Such transactions are considered to be trades made through the facilities of a foreign stock exchange or NASDAQ.
- 2.5. With respect to clause 2.1.1 above, CUB recognizes NASDAQ, The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and all stock exchanges outside of Canada that require participants to report details of transactions and publish such details.
- 2.6. Trades may not be aggregated for reporting purposes except that trades from orders received prior to the opening of the OTC System and simultaneously reported at the opening may be aggregated into a single transaction report.

### **3. Who Reports Trades**

- 3.1. Every purchase or sale in an OTC security that is required to be reported under subsection A-2 above shall be reported on the OTC System in accordance with the following provisions:
- 3.1.1. Where the transaction involves only one User, that User shall report the trade.
- 3.1.2. Where the transaction involves two Users, the User by or through whom the sale is made shall report the trade.
- 3.1.3. Where the transaction is not a trade in Ontario for the seller, the User by or through whom the purchase is made must report the trade.

### **4. Method, Timing and Content of Trade Reports**

- 4.1. For reporting purposes, a trade is a transaction between a User and a given client, or another User, in a specific OTC security, at a given price, and executed at a certain time.
- 4.2. For the purposes of this section A-4, "Reportable Trades" shall mean every purchase or sale in an OTC security that is required to be reported under subsection A-3.
- 4.3. All trade tickets for Reportable Trades shall be time stamped at the time of execution.
- 4.4. All Reportable Trades taking place at or between 9:30 A.M. and 5:00 P.M. on a business day shall be reported through the OTC System within three minutes after execution.
- 4.5. All Reportable Trades taking place after 5:00 P.M. on a business day and prior to 9:30 A.M. the next business day shall be reported through the OTC System between 8:30 A.M. and 9:30 A.M. the next business day and shall form part of the trading statistics for the next business day.
- 4.6. All reports of Reportable Trades shall contain the following information:
- 4.6.1. symbol of the OTC security traded;
- 4.6.2. number of shares traded;

- 4.6.3. price of the trade as required by section A-5;
- 4.6.4. the identities of the purchasing and selling Users;
- 4.6.5. the time of execution of the transaction; and
- 4.6.6. any trade marker required by these OTC Terms and Conditions.

## **5. Price to be Reported**

- 5.1. The price to be reported is the price at which the User actually traded with its customer, adjusted by the amount that would be customary as a commission or spread in such transaction.
- 5.2. A trade with another User is to be reported at the actual price agreed upon. This applies to a trade in which the reporting User is acting as agent for a customer, as well as to a trade in which the User acts as principal vis-a-vis the other User.

## **B. Dealers' Obligations**

### **1. Prices to Customers**

- 1.1. Spread or Mark-Up: Where a trade is substantially an agency transaction, the size of any spread or "mark-up" should reflect the riskless nature of the transaction.
- 1.2. *Interpositioning*: Users shall not arrange or otherwise participate in any transaction which interpositions an intermediary or other third party in a way that will result in an unfavourable price for a customer of any User.
- 1.3. Users shall not enter into any transaction with a customer for any OTC security at any price that is not reasonably related to the then current market price of that security or charge a customer a commission or service charge that is not fair and reasonable in all the circumstances.

### **2. Fair Dealings**

- 2.1. Users shall transact business openly and fairly and in accordance with just and equitable principles of trade. No fictitious sale or contract shall be made in an OTC security.

### **3. Customer Priority**

- 3.1. No User Shall:
  - 3.1.1 buy or initiate the purchase of a OTC security for its own account or for any account in which it or any person associated with it is directly or indirectly interested, while such User holds or has knowledge that any person associated with it holds an unexecuted market order or limit price order to buy such security for a customer;
  - 3.1.2 sell or initiate the sale of any OTC security for its own account or for any account in which it or any person associated with it is directly or indirectly interested, while it holds or has knowledge that any person associated with it holds an unexecuted market order or limit price order to sell such security for a customer.
- 3.2. The provisions of this section shall not apply:
  - 3.2.1 to any purchase or sale of any OTC security in an amount less than the customary unit of trading made by a User to offset odd-lot orders for customers;
  - 3.2.2 to any purchase or sale of any OTC security upon terms for delivery other than those specified in such unexecuted market or limit price order; or
  - 3.2.3 to any unexecuted order that is subject to a condition that has not been satisfied.
- 3.3. For purposes of this section a User may include a reasonable commission charge in determining whether its customer's order is at the same price as a principal order.

### **4. Best Market Price**

- 4.1 Where a User executes a trade with or for its client for an OTC security that is posted for trading on a foreign market recognized under this subsection, the User shall execute the trade on behalf of the client at a price equal to or better than the market price in the foreign market (taking exchange rates into account), plus or minus (as the case may be) a reasonable commission and any added cost of executing the order in the foreign market.
- 4.2. For the purpose of this subsection, CUB presently recognizes any foreign stock exchange or organized market that provides real time public dissemination of information, including firm market quotations and trading statistics.

## **5. Manipulative or Deceptive Trading**

5.1. A User shall not use or knowingly participate in the use of any manipulative or deceptive method of trading in connection with the purchase or sale of an OTC security that creates or may create a false or misleading appearance of trading activity or an artificial price for the said security. Without in any way limiting the generality of the foregoing, the following shall be deemed manipulative or deceptive methods of trading:

- 5.1.1 making a fictitious trade or giving or accepting an order which involves no change in the beneficial ownership of an OTC security;
- 5.1.2 entering an order or orders for the purchase of an OTC security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of any such security, has been or will be entered by or for the same or different persons and with the intention of creating a false or misleading appearance of active public trading in a security or with respect to the market price of an OTC security;
- 5.1.3 entering an order or orders for the sale of an OTC security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the purchase of such security, has been or will be entered by or for the same or different person and with the intention of creating a false or misleading appearance of active public trading in a security or with respect to the market price of an OTC security;
- 5.1.4 making purchases of, or offers to purchase an OTC security at successively higher prices, or sales of or offers to sell any such security at successively lower prices for the purpose of creating or inducing a false or misleading appearance of trading in such security or for the purpose of unduly or improperly influencing the market price of such security; or
- 5.1.5 effecting, alone or with one or more persons, a series of trades in an OTC security, for the purpose of inducing the purchase or sale of such security, which creates actual or apparent trading in such security or raises or depresses the price of such security.

## **6. Restrictions on Trading During Distributions**

### Restricted Users

- 6.1 The restrictions on trading during a distribution set out in this part 6.1 entitled "Restricted Users" apply to a User (a "restricted User") involved in a distribution by prospectus of an OTC security or a distribution by prospectus, Exchange Offering Prospectus, Statement of Material Facts or "wide distribution" of a security that is related to an OTC security. The restrictions do not apply to a User involved in a distribution only as a selling group member that is not obligated to purchase any unsold securities.
  - 6.1.1 Two securities are "related" if they have substantially the same characteristics, or
    - (a) one is immediately convertible, exercisable or exchangeable into the other; and
    - (b) the conversion, exercise or exchange price at the beginning of the restricted period (as defined below) is less than 110% of the offer price of the underlying security on the principal market where the underlying security is traded.
  - 6.1.2 A "wide distribution" means a series of distribution principal trades to not less than 25 separate and unrelated client accounts, no one of which participate to the extent of more than 50% of the total value of the distribution

### Restrictions

- 6.1.3 During the restricted period, a restricted User shall not bid for or purchase an OTC security that is being distributed or that is related to a security being distributed except as follows:

Distributed Securities

- 6.1.4. Restricted User Not Short. A restricted User that is not short the OTC security being distributed may bid for or purchase it at or below the lower of the highest independent bid price at the time of the bid or purchase and the distribution price.
- (a) A restricted User may bid for or purchase the OTC security being distributed at or below the distribution price.
  - (b) A restricted User that makes an initial bid below the distribution price shall not raise that bid price during the restricted period.
- 6.1.5. Restricted User Short. A restricted User that is short the OTC security being distributed may bid for or purchase it at or below the distribution price.

Related Securities

- 6.1.6. A restricted User may bid for or purchase a related OTC security at or below the highest independent bid price.
- 6.1.7. If there is no independent bid price for a related OTC security, a restricted User shall not bid for or purchase that security without the prior consent of CUB.
- (a) A bid price is "independent" if it is for the account of a User that is not involved in the distribution or is involved only as a member of a selling group.
  - (b) A restricted User shall not solicit purchase orders for the OTC security being distributed or any related OTC security during the restricted period except orders to purchase OTC securities being sold pursuant to the distribution.
  - (c) The above restrictions do not affect sales by restricted Users to unsolicited client buy orders. In the case of an OTC security that will be listed on the Toronto Stock Exchange ("TSE") or the Canadian Venture Exchange Inc. ("CDNX") and until such time as the OTC security is actually listed and posted for trading on the TSE or CDNX and the TSE's or CDNX's market stabilization rules apply, Users must comply with the above market stabilization restrictions.

All Users

- 6.2. The restrictions on trading during a distribution set out in this part 6.2 entitled "All Users" apply to all Users

Restrictions

- 6.2.1 During the restricted period, no User shall participate in a trade of an OTC security that is being distributed or that is related to an OTC security being distributed involving a purchase by or on behalf of:
- (a) the issuer of the OTC security;
  - (b) a selling OTC security holder whose securities are being distributed
  - (c) an affiliate of the issuer or selling OTC security holder; or
  - (d) a person acting jointly or in concert with any of the foregoing.
- 6.3. The "restricted period" begins on the later of:
- 6.3.1. the ninth trading day (or, in the case of a OTC security that is related to a TSE or CDNX-listed security, the second trading day) prior to the date on which the offering price of the OTC securities to be distributed is determined; and
  - 6.3.2. the date on which the restricted User agrees to participate in a distribution, whether or not the terms and conditions of such participation have been agreed upon.

6.3.3. The restricted period ends on the earlier of:

- (a) the ninth trading day (or, in the case of a OTC security that is related to a TSE or CDNX listed security, the second trading day) prior to the date on which the offering price of the OTC securities to be distributed is determined; and
- (b) the date on which the restricted User has sold all of the OTC securities allotted to it (including all securities acquired by it in connection with the distribution) and any stabilization arrangements to which it is a party have been terminated; and
- (c) the date on which the distribution has been terminated pursuant to applicable securities legislation,

provided that, if purchasers of 5% or more of the OTC securities allotted to or acquired by a restricted User in connection with a distribution give notice that they intend to exercise their statutory rights of withdrawal, the restricted period shall again apply to that User until the OTC securities are resold or the distribution ends, as provided above. Securities are not considered "sold" before the receipt for the final prospectus has been issued.

## **7. Disclosure of Interest or Control**

- 7.1. Any User that is an insider (as that term is defined in the Act) or is controlled by, directly or indirectly, controls, or is under common control of any issuer must disclose to its customers prior to, and confirm, in writing, at the time of buying or selling any OTC security of such an issuer, the nature and existence of any such relationship.

## **8. System Failures**

- 8.1. Trades made during an OTC system power failure or any other event that would fully or partially disable the system or cause it to malfunction must be reported on the system immediately upon the system being available to accept such data.

## **9. Settlement Rules**

- 9.1. The settlement of transactions shall conform to the rules and practices of the TSE, CDNX and The Canadian Depository for Securities Limited.

## **C. Fees And Charges**

1. Every User shall pay the applicable OTC System fees.
2. All fees and charges of CUB, including, but not limited to, the fees charged for transaction reports shall be determined by CUB's board of directors.

## **D. Access**

1. Where the Commission has provided CUB with information relating to:
  - 1.1. disciplinary or other action the Commission determines to take against a User which, in the Commission's view will have a material impact on the User's participation in the OTC System; or
  - 1.2. the issuers of OTC Securities, registrants under the Act or any other persons that leads the Commission to believe that there has been or will be a breach of the terms and conditions of Part VI.
2. CUB may suspend the Users access to the OTC System pending a determination by the Commission in respect of such matters.
3. Where CUB has referred any matter relating to a suspected violation by a User of the OTC Terms and Conditions, CUB may suspend the Users access to the OTC System pending a determination by the Commission in respect of such matters.
4. Where the Commission has notified CUB that a User has violated the OTC Terms and Conditions, CUB may terminate the User's access to the OTC System

## **E. Miscellaneous**

1. All references to a "business day" in this Schedule "A" shall mean any day from Monday to Friday inclusive.
2. All references to a time of day in the Schedule "A" shall mean Eastern Standard Time.

Schedule "B" to User Agreement

Canadian Unlisted Board Inc. User and Transaction Fees

1. USER TRANSACTION FEE \$1.95/trade (each side)
2. USER FEE:  
  
Monthly Fee of \$150.00  
per Employee CUB access ID granted,  
up to a maximum of \$500.00/month per User

**SCHEDULE "E"**

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

**Policy 1.1 – Interpretation**

The following definitions will be added to Policy 1.1:

" **BHs**" means those beneficial shareholders of an Issuer that are included in either:

- (a) a DSR for the Issuer and whose shares were disclosed in the Issuer's books and records or list of registered shareholders as being held by an intermediary; or
- (b) after the implementation of National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, a NOBO list for the Issuer.

" **DSR**" means the Demographic Summary Report available from the International Investors Communications Corporation ("IICC").

" **NOBO list**" refers to a 'non-objecting beneficial owner list' as currently defined in Proposed National Instrument 54-101 or as defined in the final form of the instrument.

"**NOBOs**" refers to non objecting beneficial owners as currently defined in Proposed National Instrument 54-101 or as defined in the final form of the instrument.

"**RHs**" means the registered shareholders of the Issuer that are beneficial owners of the equity securities of the Issuer. For the purposes of this definition, where the beneficial owner controls or is an affiliate of the registered shareholder, the registered shareholder shall be deemed to be the beneficial owner.

" **Significant Connection to Ontario**" exists where an Issuer has:

- (a) RHs and BHs resident in Ontario who beneficially own more than 20% of the total number of equity securities beneficially owned by the RHs and the BHs of the Issuer; or
- (b) its mind and management principally located in Ontario and has RHs and BHs resident in Ontario who beneficially own more than 10% of the number of equity securities beneficially owned by the RHs and the BHs of the Issuer.

The residence of the majority of the board of directors in Ontario or the residence of the President or the Chief Executive Officer in Ontario may be considered determinative in assessing whether the mind and management of the Issuer is principally located in Ontario.

### **Policy 2.3 – Listing Procedures**

The following section 4 will be added to Policy 2.3:

#### **4. Significant Connection to Ontario**

4.1 Where it appears to the Exchange that an Issuer undertaking an Initial Listing on the Exchange has a Significant Connection to Ontario, the Exchange will, as a condition of its acceptance of the Initial Listing, require the Issuer to provide the Exchange with evidence that it has made a bona fide application to become a reporting issuer in Ontario.

### **Policy 2.4 – Capital Pool Companies**

The following subsection 12.6 will be added to Section 12, *Qualifying Transaction*, of Policy 2.4:

#### **12.6 Assessment of a Significant Connection to Ontario**

(a) Where a Resulting Issuer will have a Significant Connection to Ontario, it must be a reporting issuer in Ontario at the Completion of the Qualifying Transaction.

### **Policy 2.9 – Trading Halts, Suspensions and Delisting**

The following clause (h) will be added to section 3.1, *Reasons for Suspension*, of Policy 2.9:

3.1 The Exchange may impose a suspension in a variety of circumstances including where:

(h) an Issuer fails to comply with a direction or requirement of the Exchange to make application for and obtain reporting issuer status in Ontario when it has a Significant Connection to Ontario.

### **Policy 3.1 – Directors Officers and Corporate Governance**

The following sections will be added to Policy 3.1:

Subsection 2.8 will be added to section 2, *Directors and Management Qualifications*:

2.8. Where an Issuer has a Significant Connection to Ontario, the Exchange may refuse to grant Exchange Acceptance of any application relating to the acceptability of any director, officer or Insider, or revoke, amend or impose conditions in connection with a previous Exchange Acceptance of any such application, until such time as the Issuer has complied with a direction or requirement of the Exchange to make application or to become a reporting issuer in Ontario (See section 19, *Assessment of a Significant Connection to Ontario* of this Policy).

Subsection 12.3 will be added to section 12, *Management Compensation and Compensation Committee*:

12.3 The Exchange may refuse to accept any application that would provide remuneration, compensation or incentive to the directors, officers or Insiders of the Issuer until such time as the Issuer has complied with a direction or requirement of the Exchange to make application or to become a reporting issuer in Ontario where the Issuer has a Significant Connection to Ontario. (See section 19, *Assessment of a Significant Connection to Ontario* of this Policy).

Section 19 will be added to Policy 3.1

#### **19. Assessment of a Significant Connection to Ontario**

19.1 Effective June 30, 2001 all Issuers, that are not otherwise reporting issuers in Ontario, are required to immediately assess whether they have a Significant Connection to Ontario.

19.2 Where an Issuer, that is not otherwise a reporting issuer in Ontario, becomes aware that it has a Significant Connection to Ontario as a result of complying with subsection 19.1 above or otherwise, the Issuer is required to immediately notify the Exchange, and promptly make a bona fide application to the Ontario Securities Commission to be deemed a reporting issuer in Ontario. The Issuer must become a reporting issuer in Ontario within six months of becoming aware that it has a Significant Connection to Ontario.

19.3 All Issuers, that are not otherwise reporting issuers in Ontario, are required to assess on an annual basis, in connection with the preparation for mailing of their annual financial statements, whether they have a Significant

Connection to Ontario. All Issuers must obtain and maintain for a period of three years after each annual review, evidence of the residency of the RHs and BHs of the Issuer.

19.4 If requested, Issuers must provide the Exchange with evidence of the residency of their NOBOs.

## **SCHEDULE F**

### **POLICY 5.9**

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

##### **Scope of Policy**

**This Policy is not effective until June 30, 2001.**

This Policy incorporates Ontario Securities Commission ("OSC") Rule 61-501, Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions (the "OSC Rule"), together with the Companion Policy 61-501CP (the "OSC Policy"), as they exist as at September 1, 2000 as a policy of the Exchange, subject to certain modifications. In addition to the stated exemptions in the OSC Rule, this Policy also provides certain **additional exemptions**. A complete copy of the OSC Rule and OSC Policy can be found on the OSC's website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). The text of the OSC Rule and OSC Policy have also been incorporated, respectively, as Appendix 5B and Appendix 5C to the Exchange's Corporate Finance Manual.

The main headings of this Policy are:

1. Definitions
2. Effective Date of this Policy
3. Application of the OSC Rule and OSC Policy
4. Exchange Valuation Exemptions

#### **1. Definitions**

- 1.1 Definitions contained in the OSC Rule and OSC Policy that are inconsistent with definitions contained within other Exchange policies shall be applicable only to the interpretation of this Policy.
- 1.2 References in the OSC Rule and OSC Policy to the "Director", for the purposes of this Policy, shall refer to a Vice-President, Corporate Finance of the Exchange.
- 1.3 "Feasibility Study" for the purpose of this Policy, means a comprehensive study of a deposit in which all geological, engineering, operating, economic and other relevant factors are considered in sufficient detail to serve as the basis for a qualified person experienced in mineral production activities, acting reasonably, to make a final decision on whether to proceed with development of the deposit for mineral production.
- 1.4 "Independent Committee" for the purpose of this Policy, means a committee consisting exclusively of two or more Independent Directors.
- 1.5 "Independent Directors" for the purpose of this Policy, means for an Issuer, a director who is neither an employee, senior officer, Control Person or management consultant of the Issuer or its Associates or Affiliates and is otherwise independent as determined in accordance with section 7.1 of the OSC Rule.
- 1.6 "Related Party" and "Related Party Transaction" have the meaning ascribed to such terms in the OSC Rule.
- 1.7 "Unrelated Investors" for the purpose of this Policy, means Persons who are not Related Parties of the Issuer or the Target Issuer and who are not members of the Pro Group.

#### **2. Effective Date of this Policy**

- 2.1 This Policy shall become effective June 30, 2001 (the "Effective Date"). Prior to the Effective Date of this Policy, the Exchange may nevertheless use this Policy as a guideline.

#### **3. Application of the OSC Rule and OSC Policy**

- 3.1 The Exchange considers it appropriate to have policies providing guidance in respect of insider bids, issuer bids, going private transactions and related party transactions, and in particular concerning the circumstances in which disinterested shareholder approval, valuations, independent board committee approval and enhanced disclosure are required. On May 1, 2000, the OSC Rule and the OSC Policy became effective, replacing the former OSC Policy 9.1. Although the Exchange is considering adoption of its own separate policy, the Exchange considered the OSC Rule and the OSC Policy and determined that in an effort to create a national, harmonized set of rules, it would adopt the OSC Rule and the OSC Policy as a CDNX policy.
- 3.2 On the Effective Date, this Policy will apply to all Issuers listed on CDNX or seeking listing on CDNX, regardless of whether the Issuer is a reporting issuer in Ontario. References in either the OSC Rule or the OSC Policy to their application to Ontario reporting issuers, for the purposes of this policy, shall be considered to be references to Issuers listed on CDNX.
- 3.3 Subject to the modifications described in this Policy, and in particular the additional exemptions set forth in section 4 of this Policy, the OSC Rule and the OSC Policy are adopted, in their entirety, as a Corporate Finance policy of the Exchange as at the Effective Date.
- 3.4 Prior to the Effective Date, the Exchange will be reviewing its other corporate finance policies to minimize any conflicts or inconsistencies created by the introduction of this Policy and to provide appropriate cross-references and clarifications.
- 3.5 A number of Exchange policies may be impacted by the adoption of the OSC Rule and the OSC Policy, including the following:
- (a) Policy 2.4, Capital Pool Companies,
  - (b) Policy 4.1, Private Placements,
  - (c) Policy 5.2, Changes of Business and Reverse Take-Overs,
  - (d) Policy 5.3, Acquisitions and Dispositions of Non-Cash Assets,
  - (e) Policy 5.5, Stock Exchange Take-Over Bids and Issuer Bids, and
  - (f) Policy 5.6, Normal Course Issuer Bids.

#### **4. Exchange Valuation Exemptions**

- 4.1 The OSC Rule contains various provisions exempting issuers from its application. In regard to valuations, the OSC Rule sets out various situations in which an Issuer is exempt from the requirement to obtain an independent valuation. In addition to the stated exemptions in the OSC Rule and subject to sections 4.3 and 4.4 below, the Exchange will also generally exempt an Issuer from the requirement of an independent valuation ("Exchange Valuation Exemptions") in the course of Exchange acceptance of a Related Party Transaction in connection with a:
- ! Qualifying Transaction by a CPC;
  - ! Change of Business;
  - ! Reviewable Acquisition;
  - ! Reviewable Disposition; or
  - ! Reverse Take-Over or such other transaction deemed to be a Reverse Take-Over by the Exchange notwithstanding that the transaction may not be a reverse take-over for accounting purposes;

provided that one of the following circumstances is met:

- (a) the fair market value of the assets, business or securities is "indeterminate" with reference to the criteria described in section 4.5 below; or
- (b) the transaction constitutes the acquisition or disposition of an oil and gas property in North America and the Issuer has obtained an independent engineering or geological report, which provides a value of proved and probable reserves based on constant dollar pricing presented at discount rates of 10%, 15% and 20%, with probable reserves discounted a further 50%; or
- (c) the transaction constitutes the acquisition or disposition of a mineral resource property and the Issuer has obtained a Feasibility Study based on proven and probable reserves that demonstrates a minimum three year mine life; or

d) the transaction constitutes an acquisition by either a CPC or an Issuer that does not meet Tier 2 Tier Maintenance Requirements such that the Issuer could be designated Inactive, and the consideration to be paid consists solely of equity securities of the Issuer and the Issuer is conducting a concurrent financing constituting the issuance of equity securities provided that:

- (i) the product obtained by multiplying the gross proceeds of the financing by the inverted fractional interest that the concurrent financing subscribers will own of the Issuer, less net tangible assets of the Issuer, is equal to or greater than the total of the deemed value of the securities being issued for the assets, business or securities to be acquired;
- (ii) Unrelated Investors purchase equity securities in the concurrent financing representing 20% or more of the total issued and outstanding equity securities of the Issuer after giving effect to both the concurrent financing and the transaction; and
- (iii) Unrelated Investors contribute at least 2/3 of the aggregate proceeds of the concurrent financing.

*Eg. An Issuer has outstanding 5,000,000 Listed Shares and is conducting an acquisition of a private start-up technology company, Targetco. The purchase price for all of the issued and outstanding shares of Targetco is to be the issuance by the Issuer of 10,000,000 Listed Shares at \$0.30 (ie. a deemed value of \$3,000,000) to acquire all of the issued and outstanding shares of Targetco. Concurrently with the acquisition, the Issuer is conducting a financing to arm's length subscribers, issuing 5,000,000 Listed Shares at \$0.30 to raise total gross proceeds of \$1,500,000. In this example, the Issuer has no net tangible assets other than the cash raised on the financing in the amount of the \$1,500,000.*

*The subscribers to the concurrent financing will own 25% of the Resulting Issuer, assuming completion of both the acquisition and the financing. Accordingly, the required 20% minimum has been met and the financing can be used as an alternative method of valuation.*

*Based on the financing, the Exchange will accept a deemed value for Targetco of up to \$4,500,000.*

*The \$4,500,000 is calculated by multiplying the gross proceeds of the concurrent financing (ie. \$1,500,000) by the inverted fractional interest that the concurrent financing subscribers will own of the Resulting Issuer. (ie. 25% is 25/100 which, when inverted is 100/25) less net tangible assets of the Issuer (which, in this case, are confined to \$1,500,000). \$4,500,000 (\$1,500,000 x 100/25 - \$1,500,000) is the maximum deemed value attributable to Targetco. Since the Issuer only intends to pay a deemed price of \$3,000,000, the consideration to be paid is acceptable.*

4.2 Subject to sections 4.3 and 4.4 below, an Exchange Valuation Exemption will also generally be available to an Issuer in the course of Exchange acceptance of a Private Placement which is a Related Party Transaction:

- (a) where the fair market value of the Issuer's securities is "indeterminate" with reference to the criteria described in section 4.5 below; or
- (b) where:
  - (i) a liquid market (as defined in paragraph 1.3(1)(a) of the OSC Rule) does not exist for the securities of the Issuer at the time the transaction is agreed to;
  - (ii) the Exchange's normal pricing policies will be applied in fixing the price of the equity securities purchased on the Private Placement;
  - (iii) Unrelated Investors contribute at least 2/3 of the aggregate proceeds of the Private Placement; and
  - (iv) the pro rata share of the total issued and outstanding equity securities of the Issuer owned by any Related Party of the Issuer will not increase after giving effect to the Private Placement.

4.3 Where an Issuer relies upon the Exchange Valuation Exemptions:

- (a) the Issuer must provide to the Exchange a certificate in accordance with section 4.4 below, executed by either a majority of the board of directors of the Issuer which must include two or more Independent Directors or an Independent Committee;

- (b) the contents of the Certificate must be disclosed in any Information Circular or Filing Statement provided to shareholders in connection with the transaction; and
- (c) any securities issued in consideration for such assets, business or securities will be subject to escrow or other resale restrictions as prescribed by the Exchange. See Policy 5.4 - Escrow and Vendor Consideration.

4.4 The certificate referred to in section 4.3 above shall provide:

- (a) disclosure with respect to the Exchange Valuation Exemption being relied upon and the basis for such reliance;
- (b) disclosure of the manner in and basis upon which price or value was determined;
- (c) that either a majority of the board of directors of the Issuer including two or more Independent Directors or the Independent Committee, having made reasonable inquiry, have:
  - (i) no knowledge of a Material Change or Material Fact concerning the Issuer or its securities that has not been generally disclosed; and
  - (ii) no reason to believe it is inappropriate to apply the Exchange's normal pricing policies; and
- (d) in respect of the exemptions set forth in subsections 4.1(a) and 4.2(a) above, the certificate must also state that:
  - (i) either a majority of the board of directors of the Issuer including two or more Independent Directors or the Independent Committee, acting in good faith, reasonably believe that the fair market value of the assets, business or securities is "indeterminate" with reference to the criteria described in section 4.5; and
  - (ii) there has been disclosure of the manner and basis upon which the consideration to be paid for the assets, business or securities was determined including, without limitation, reference to net tangible asset value;
- (e) in respect of the exemption set forth in subsection 4.1(d) above, the certificate must also state that:
  - (i) prior to making their investment, the Unrelated Investors will have received disclosure in the Information Circular or offering memorandum, as the case may be, of all matters relating to or affecting the concurrent financing and the transaction;
  - (ii) prior to voting on the transaction, the shareholders of the Issuer will have received disclosure in the Information Circular of all matters relating to or affecting the concurrent financing and the transaction; and
  - (iii) either a majority of the board of directors of the Issuer including two or more Independent Directors or the Independent Committee, having made reasonable inquiry, have no knowledge of any matter that might impact upon the deemed value determined in subsection 4.1(d).
- (f) in respect of the exemption set forth in subsection 4.2(b) above, that the pro rata share of the total issued and outstanding equity securities of the Issuer owned by any Related Party of the Issuer will not increase after giving effect to the Private Placement.

4.5. The Exchange will generally consider assets, businesses or securities to be of "indeterminate" value where:

- (a) the Issuer has demonstrated, to the satisfaction of the Exchange, a minimal history of commercial operations (less than one full fiscal year); and
- (b) financial statements relating to such assets, business or securities evidence:
  - (i) no cumulative earnings since commencement of operations;
  - (ii) either no sales or revenues or minimal cumulative sales or revenues derived from operations (less than \$1,000,000 since the commencement of operation of such assets or business); and

- (iii) no positive cash flow or a minimal history of positive cash flow (two or fewer quarterly reporting periods).
- 4.6 The Exchange exemptions from the valuation requirements are only exemptions from the application of this Policy. An Issuer that is a reporting issuer in Ontario and is therefore directly subject to the OSC Rule and OSC Policy cannot rely upon the Exchange Valuation Exemptions to exempt them from the requirements of the OSC Rule and OSC Policy.
- 4.7. Where an Issuer is a reporting issuer in Ontario and the Issuer seeks an exemption from the OSC Rule or OSC Policy from the OSC, the Issuer must make application to the OSC with a copy of such application and all subsequent correspondence being provided to the Exchange. Where an exemption or waiver is permitted by the OSC, the Exchange will generally defer to the decision of the OSC.
- 4.8. Where an Issuer is not a reporting issuer in Ontario and is not directly subject to the OSC Rule and OSC Policy and seeks only an exemption from this Policy 5.9, the Issuer will make application for exemption or waiver of this Policy solely to the Exchange.

July 30, 2001

Stephen P. Sibold, Q.C.  
Chair  
Alberta Securities Commission  
4th Floor, 300 - 5th Avenue S.W.  
Calgary, Alberta  
T2P 3C4

Dear Sir:

Re: **Continued Recognition of Canadian Venture Exchange Inc. ("CDNX")  
Following its Acquisition By The Toronto Stock Exchange Inc. ("TSE")**

The TSE has seen a copy of the order (the "Order") of the Alberta Securities Commission (the "Commission") for the continued recognition of Canadian Venture Exchange Inc. ("CDNX") as an exchange under subsection 52(2) of the Securities Act. The TSE is aware that the Order will become effective on the date of closing of the acquisition of CDNX by the TSE. The TSE agrees with the terms and conditions of CDNX's continued recognition under the Order.

The TSE is making the following representations, acknowledgments and undertakings to the Commission in connection with the Order.

#### **Performance of CDNX Functions**

1. The TSE represents that, subject to paragraph 3, it will allocate sufficient financial and other resources to CDNX to ensure that CDNX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the Order.
2. The TSE represents that it will cause CDNX to comply with the terms and conditions of the Order.
3. The TSE undertakes to notify the Commission
  - a) at least six months before it voluntarily allocates financial and other resources to CDNX in a way that could reasonably be expected to have the effect of preventing CDNX from carrying out its functions in a manner that is consistent with the public interest and the terms and conditions set out in the Order; and
  - b) immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to CDNX 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 the Order.
4. The TSE acknowledges that the Ontario Securities Commission (the "OSC") will advise the Commission promptly, if the OSC
  - a) becomes concerned about the financial viability of the TSE;

- b) is advised by the TSE that the TSE has failed to satisfy the financial tests set out in the TSE Recognition Order issued by the OSC on April 3, 2000 (the "OSC Recognition Order"); or
  - c) is considering revoking or takes steps to revoke the recognition of the TSE.
5. The TSE undertakes to create an Advisory Board to the TSE Board with the mandate, composition and terms of reference set out in Schedule 2.4 of the Acquisition Agreement between the TSE and CDNX dated April 30, 2001.

#### **Change in Control or Operations**

6. The TSE undertakes to obtain the prior approval of the Commission before it or CDNX completes any transaction that would result in CDNX ceasing to be controlled by the TSE.
7. The TSE undertakes that CDNX will not cease to be a wholly-owned subsidiary of the TSE without the TSE
- a) providing the Commission at least three months prior notice of its intention; and
  - b) complying with any terms and conditions the Commission may impose in the public interest.
8. The TSE will not complete any transaction that would result in CDNX ceasing to carry on business in Alberta, discontinuing, suspending or winding-up all or a significant portion of its operations, or disposing of all or substantially all of its assets without
- a) providing the Commission at least six months prior notice of its intention; and
  - b) complying with any terms and conditions the Commission may impose in the public interest for the orderly discontinuance of its operations or the orderly disposition of its assets.
9. The TSE acknowledges that the OSC will promptly advise the Commission in writing if the OSC becomes aware of any impending change of control of the TSE or of an intention to by the TSE to cease operations or dispose of all or substantially all of its assets.

#### **Systems**

10. Upon transfer of CDNX listed securities to trading facilities operated by the TSE, the TSE undertakes to
- a) meet standards equivalent to those set out in sub-paragraphs a) to f) of paragraph 30 of Schedule A to the order for the trading of CDNX listed securities;
  - b) adopt procedures that do not unreasonably discriminate against CDNX listed securities;
  - c) provide the same or better market and listed company surveillance tools as were provided by the trading facilities operated by CDNX prior to the transaction;
  - d) ensure that Capital Pool Companies and inactive issuers listed on CDNX are specifically designated as such in any trading and market data feeds provided by CDNX or by the TSE on CDNX's behalf; and
  - e) use commercially reasonable efforts to ensure that any display of trading and market data information to end-users includes the designation referred to in sub-paragraph d).

#### **General**

11. These representations, acknowledgments and undertakings will cease to have effect if
- a) the Commission revokes the Order; or
  - b) CDNX ceases to carry on business after complying with any terms and conditions the Commission may impose.

Yours truly,

"Barbara Stymiest"  
President and CEO  
The Toronto Stock Exchange Inc.

cc: Mr. Doug Hyndman, BCSC  
Mr. David A. Brown, OSC

July 31, 2001

Douglas M. Hyndman Chair British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2	Stephen P. Sibold, Q.C. Chair Alberta Securities Commission 4th Floor, 300 Fifth Avenue, S.W. Calgary, Alberta T2P 3C4
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Dear Sirs:

Re: **Continued Recognition of the Canadian Venture Exchange Inc. ("CDNX")  
Following its Acquisition by The Toronto Stock Exchange (the "TSE")**

The TSE entered into an Acquisition Agreement with CDNX dated April 30, 2001 under which the TSE will acquire all of the outstanding shares of CDNX and CDNX will become a for-profit corporation (the "Transaction"). The TSE and CDNX propose to close the Transaction on July 31, 2001.

By Recognition Order dated April 3, 2000 (the "Recognition Order"), the Ontario Securities Commission (the "OSC") recognized the TSE as a stock exchange in the Province of Ontario.

The Recognition Order requires the TSE to maintain sufficient financial resources for the proper performance of its functions as a stock exchange. Further, the TSE must notify the OSC in the event it fails to satisfy any of the liquidity measure, solvency ratio or financial leverage ratio tests outlined in Part 4 of the Recognition Order.

Part 6 of the Recognition Order also requires the TSE to meet certain requirements for each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison and capacity and integrity requirements, including to promptly notify the OSC of material systems failures and changes.

Upon closing of the Transaction, the TSE will control whether CDNX can fulfill certain obligations that have been imposed or would have been imposed on CDNX by the Alberta Securities Commission and British Columbia Securities Commission as the lead regulators of CDNX (the "Lead Regulators").

Further to the Memorandum of Understanding between the Lead Regulators and the OSC dated September 18, 2000, the OSC agrees that:

As long as the OSC recognizes and acts as the lead regulator for the TSE, the OSC has undertaken to advise the Lead Regulators of certain matters or events that occur in the operations and business of the TSE because they may have an impact on the operations and business of CDNX and the recognition of CDNX by the Lead Regulators.

For as long as the OSC recognizes and acts as the lead regulator for the TSE, the OSC will promptly advise the Lead Regulators in writing, if the OSC

- a) becomes concerned about the financial viability of the TSE;
- b) is advised by the TSE that the TSE has failed to satisfy any of the financial tests set out in the Recognition Order;
- c) is considering revoking or revokes its recognition of the TSE; or
- d) becomes aware of any impending change of control of the TSE or of an intention by the TSE to cease operations or dispose of all or substantially all of its assets.

For as long as the OSC recognizes and acts as the lead regulator for the TSE, the OSC will, immediately upon receipt of same, provide to the Lead Regulators any reports provided to the OSC by the TSE regarding the results of any tests, reviews or monitoring performed by the TSE in connection with its systems.

Yours very truly,

"Howard I. Wetston"  
Vice Chair

cc: Louyse Gauvin, BCSC  
Patricia M. Johnston, ASC  
Denise F. Hendrickson, ASC  
Randee Pavalow, OSC