

## SRO Notices and Disciplinary Proceedings

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**13.1.1 Notice of Commission Approval – TSX Inc.  
(formerly The Toronto Stock Exchange Inc.) –  
Reorganization and Initial Public Offering**

**NOTICE OF COMMISSION APPROVAL  
TSX INC. (FORMERLY  
THE TORONTO STOCK EXCHANGE INC.)  
REORGANIZATION AND INITIAL PUBLIC OFFERING**

On September 3, 2002, the Commission approved the following documents in connection with the reorganization of TSX Inc. and the initial public offering (IPO) of TSX Group Inc. (TSX Group), a new holding company for TSX Inc.:

- (i) An amended and restated recognition order for TSX Group and TSX Inc. reflecting:
  - the reorganization of TSX Inc. prior to the IPO of TSX Group;
  - the name change of The Toronto Stock Exchange Inc. to TSX Inc.;
  - additional terms and conditions to be followed by TSX Inc. in connection with the proposed listing of TSX Group shares on the Toronto Stock Exchange; and
  - the recognition of TSX Group as an exchange with terms and conditions.
- (ii) An order pursuant to subsection 21.11(4) of the *Securities Act* approving the transfer of ownership of all of the shares of TSX Inc. to the new holding company, TSX Group and applying the ownership limit currently imposed on The Toronto Stock Exchange Inc. to TSX Group.
- (iii) A regulation made by the Commission pursuant to subsection 21.11(5) of the Act to raise the ownership limit from 5% to 10%.
- (iv) An order amending and restating the Commission's amended exemption order of the Canadian Venture Exchange Inc. (CDNX) to reflect the reorganization of TSX Inc. and the name change of CDNX to TSX Venture Exchange Inc.
- (v) A letter from the Commission to the Alberta Securities Commission (ASC) and the British Columbia Securities Commission (BCSC) agreeing to advise the ASC and BCSC of certain information about TSX Inc. and TSX Group that may be relevant to their assessment of TSX

Venture Exchange Inc.'s operations and financial condition. Since TSX Inc. and TSX Group are recognized as stock exchanges in Ontario and are currently required to provide that information to the Commission, the Commission agreed to provide the relevant information.

All documents set out above are attached to this notice.

**Publication for comment**

On July 26, 2002, the Commission published for comment the application of TSX Inc. and related documents. Two comment letters were received. A summary of comments and the response prepared by TSX Inc. is attached to this notice.

In response to comments received, TSX Inc. has revised the composition of the conflicts committee to include a requirement for two members who are independent of TSX Inc. (as independence is defined in the recognition order). The requirement for the inclusion of representatives of Market Regulation Services Inc. has been amended to provide for one representative rather than two. In addition, there will be five representatives of TSX Inc. rather than six.

**TSX Inc. (formerly The Toronto Stock Exchange Inc.)  
Reorganization and Initial Public Offering -  
Summary of Comments Received**

Two comment letters were received.

**I. Share Ownership Limit Increase**

Both letters commented on the proposed increase in the share ownership limit under Section 21.11 of the *Securities Act* from five percent of outstanding shares to ten percent.

One commentator stated that it had no objection to the increase in the share ownership limit.

The second commentator stated that the original five percent limit should not be changed at this time but should be reviewed on a periodic basis to ensure its continued validity. It commented that a five percent limit on shareholdings is appropriate because TSX Inc. has a concentrated customer base and that the increase in limit on shareholdings could result in an equally concentrated shareholder base. The commentator also stated that if a viable regime for Alternative Trading Systems were in place, its concerns would be met and no share ownership restrictions would be required.

**TSX Inc. Response**

The proposed share ownership limit is consistent with share ownership restrictions on large financial institutions in Canada.

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

The concern about concentration of customer base is not valid. TSX Inc. demutualized in April, 2000 and at that time separated ownership in TSX Inc. from access to its facilities. The proposed initial public offering of TSX Group Inc., which is in effect the final step in the demutualization, will broaden the existing shareholder base and will further de-link ownership from access. Many companies have a concentrated number of customers; this does not, per se, drive the requirement for share ownership limits.

In respect of the second commentator's comments on Alternative Trading Systems, TSX Inc. notes that since December, 2001 a viable regime for Alternative Trading Systems has in fact been in place.

**II. Conflict Committee Composition**

In response to the specific question posed by the Commission requesting comment on the proposed composition of the conflicts committee, one commentator proposed that there should be at least one representative of the Commission actively participating as a member of the conflicts committee, as well as representation from independent directors of TSX Inc. That commentator expressed the view that independent representatives on the conflicts committee should be independent of TSX Inc. and Market Regulation Services Inc. (in which TSX Inc. owns 50%).

The second commentator agrees that members of the conflicts committee should have a requisite level of expertise in, and understanding of, TSX Inc.'s business and that the members be able to respond in an expedited manner to any time-sensitive conflicts or potential conflicts. The commentator suggests that there is an implication that "time-sensitive" conflicts will not require immediate action. The commentator suggests a significant minority of members of the conflicts committee should have no connection with TSX Inc. or its participating organizations, and suggest that these independent members could be drawn from a pool of past Toronto Stock Exchange board members, retired senior brokerage personnel, senior members of the "buy side" investment community or members of the academic community.

**TSX Inc. Response**

TSX Inc. continues to believe the conflicts committee, as proposed, has the highest degree of independence of any conflicts committee of any publicly-traded stock exchange, to the best of the knowledge of TSX Inc. The proposed structure balances independence with the requirement that the conflicts committee respond to issues considered by it in a timely and efficient manner. The inclusion of two members on the conflicts committee who are external to, and independent from, TSX Inc., and the requirement that at least one such individual must attend a meeting in order to achieve quorum, provides independent representation on this committee in both fact and appearance. In response to the comments, TSX Inc. proposes that the conflicts committee include a requirement for two members who are independent of TSX Inc. (as independence is defined in the recognition order for purposes of composition of the TSX Inc. board). The specific requirement for inclusion of representatives of Market Regulation Services Inc. has been amended to provide for one representative rather than two. In addition, there will be five representatives of TSX Inc. rather than six. As suggested by one commentator, in filling the positions, TSX Inc. may consider approaching retired brokerage personnel, retired TSX Inc. board members, academics or representatives of the "buy side" investment community. TSX Inc. may also ask its independent directors to sit as independent representatives on the committee.

Specifically, Section 3.4 of Appendix I to Schedule "A" of the proposed amended recognition order of TSX Inc. and TSX Group Inc. will be amended to read as follows:

- 3.4 The Conflicts Committee will be composed of: the Chief Executive Officer of TSX, the general counsel of TSX (the "Committee Secretary"), the senior officer responsible for listings of each of TSX and TSX Venture Exchange Inc., the senior officer responsible for trading operations of TSX, a senior management representative of Market Regulation Services Inc. and two other persons who shall be independent of TSX (as independent is defined in paragraph 1(a) of Schedule "A" of the terms and conditions of the recognition order). At least one such independent member must participate in meetings of the Conflicts Committee, in order for there to be a quorum.

As noted by the first commentator, the Commission is intimately involved in the entire conflict resolution process and has the ability at any time, under its overriding and independent decision-making authority, to intervene and to take carriage of any conflict issue, either on its own initiative or on request by an affected party. Accordingly, it is unnecessary for a representative of the Commission to be a member of the conflicts committee. In addition, as a regulator, the Commission and its representatives should maintain their oversight role and should not be actively involved in the conflicts committee through Commission representation. The presence of representatives of the Commission would raise conflicts as the Commission would be placed in a position of having to review decisions and actions of the conflicts committee in which a representative of the Commission had participated.

It is necessary first and foremost that the members of the committee have a requisite level of expertise in, and understanding of, TSX Inc.'s business and that the members are able to respond in an expedited manner to any time-sensitive conflicts or potential conflicts. TSX Inc. disagrees with the second commentator that time-sensitive conflicts will not require immediate action. In order to maintain listings in the increasingly competitive exchange industry, TSX Inc. must be responsive to its customers, particularly in situations of conflict arising as a result of the listing of TSX Group shares. In practice, the conflicts committee must act promptly and it is not practical to recruit members who cannot participate in the formulation of a quick response. These factors are important for TSX Group as well as for any of its competitors who may need to have an issue considered by the conflicts committee.

The proposed model emphasizes constant timely reporting that allows for Commission review and oversight. This model allows the conflicts committee to use its expertise to efficiently deal with matters that may involve conflicts while

being monitored by the Commission. With this reporting mechanism and Commission monitoring, and the ability of the Commission to intervene at any time under its public interest jurisdiction, a fair and efficient model results.

### **III. Rules and Rule Making**

The second commentator believes that the rules and rule making function of TSX Inc. must become more transparent than it currently is. The commentator supports TSX Inc.'s demutualization and the proposed reorganization and initial public offering as they are being undertaken to place the Toronto Stock Exchange on a sound commercial footing. However, the commentator draws a distinction between the operation of TSX Inc.'s business (where the widest possible latitude must be allowed) with the structure of the Toronto Stock Exchange's marketplace (where constraints must be placed on TSX Inc. and TSX Group Inc. to ensure a fair and equitable marketplace and that due process is maintained).

### **TSX Inc. Response**

TSX Inc. operates the Toronto Stock Exchange by virtue of a recognition order granted by the Commission. The recognition order establishes the principles under which TSX Inc. must operate and addresses the matters raised by the commentator. As part of the proposed reorganization and initial public offering, the recognition order has been revised and expanded. TSX Group is also being recognized by the Commission. Accordingly, both TSX Inc. and TSX Group Inc. will be subject to the regulatory oversight and monitoring by the Commission. The Commission has broad public interest jurisdiction to ensure that the marketplace operated by TSX Inc. meets all relevant standards to ensure public confidence in the public markets. If the marketplace is not so operated, the Commission has the power to revoke TSX Inc. and TSX Group Inc.'s recognition order.

All public interest rules of TSX Inc. and changes thereto are required to be published for public comment, and cannot be implemented without this consultative process being followed. This permits marketplace participants to participate in any changes to the rules.

**13.1.2 TSX Group Inc. and TSX Inc. – Recognition Order**

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

and

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

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

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

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

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

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

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

**AND**

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

**RECOGNITION ORDER  
(Section 21)**

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

**AND WHEREAS** the Commission granted the TSE an amended and restated recognition order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. (“RS Inc.”) as a regulation services provider (“RSP”) under National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (“ATS Rules”);

**AND WHEREAS** the TSE has changed its name to TSX Inc. (“TSX”);

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

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

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

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

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

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

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

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

“Howard Wetston”

“Paul Moore”

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**PART I—TSX GROUP**

**1. CORPORATE GOVERNANCE**

- (a) TSX Group's governance structure shall provide for:
  - (i) Fair and meaningful representation on its board of directors and any governance committee thereof, having regard to, among other things, TSX Group's ownership of TSX;
  - (ii) Appropriate representation of independent directors on TSX Group's committees; and
  - (iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of TSX Group generally.
- (b) TSX Group shall ensure that at least fifty per cent (50%) of its directors shall be independent. An independent director is a director that is not:
  - (i) associated with an entity desiring access to the trading facilities of TSX whose application is accepted by TSX ("Participating Organization") within the meaning of TSX Group's by-laws;
  - (ii) an officer or employee of TSX Group or its affiliates or an associate of such officer or employee;
  - (iii) a person who owns or controls, directly or indirectly, over 10% of TSX Group; or
  - (iv) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of TSX Group.

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

**2. FITNESS**

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

**3. ALLOCATION OF RESOURCES**

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

**4. FINANCIAL INFORMATION**

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

**5. COMPLIANCE**

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

**6. ACCESS TO INFORMATION**

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

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

**7. SHARE OWNERSHIP RESTRICTIONS**

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

**PART II—TSX**

**8. CORPORATE GOVERNANCE**

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

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

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

**9. FEES**

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

**10. ACCESS**

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

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

expenditures for the previous three fiscal years, and

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

**11. FITNESS**

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

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

**12. FINANCIAL VIABILITY**

(a) TSX shall maintain sufficient financial resources for the proper performance of its functions.

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

(b) TSX shall maintain: (i) a liquidity measure greater than or equal to zero; (ii) a debt to cash flow ratio less than or equal to 4.0/1; and (iii) a financial leverage ratio less than or equal to 4.0/1. For this purpose:

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

(i) liquidity measure is:  
 (working capital + borrowing capacity)  
 - 2 (adjusted budgeted expenses + adjusted capital expenditures - adjusted revenues)

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

where:

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

(A) working capital is current assets minus current liabilities,

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

(B) borrowing capacity is the principal amount of long term debt available to be borrowed under loan or credit agreements that are in force,

(C) adjusted budgeted expenses are 95% of the expenses (other than depreciation and other non-cash items) provided for in the budget for the current fiscal year,

(D) adjusted capital expenditures are 50% of average capital

(f) TSX shall not enter into any agreement or transaction either (i) outside the ordinary course of business or (ii) with

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

**13. REGULATION**

- (a) TSX shall continue to retain RS Inc. as an RSP to provide, as agent for TSX, certain regulation services which have been approved by the Commission. TSX shall provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS Inc. and the regulation services performed by TSX. All amendments to those listed services are subject to the prior approval of the Commission.
- (b) In providing the regulation services, as set out in the agreement between RS Inc. and TSX (Regulation Services Agreement), RS Inc. provides certain regulation services to TSX as the agent of TSX pursuant to a delegation of TSX's authority in accordance with Section 13.0.8(4) of the Toronto Stock Exchange Act and will be entitled to exercise all the authority of TSX with respect to the administration and enforcement of certain market integrity rules and other related rules, policies and by-laws.
- (c) TSX shall provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report shall be in such form as may be specified by the Commission from time to time.
- (d) TSX shall continue to perform all other regulation functions not performed by RS Inc. TSX shall not perform such regulation functions through any other party, including its affiliates or associates. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 23 does not contravene this paragraph.
- (e) Management of TSX (including the Chief Executive Officer) shall at least annually assess the performance by RS Inc. of its regulation functions and report thereon to the Board of TSX, together with any recommendations for improvements. TSX shall provide the Commission with copies of such reports and shall advise the Commission of any proposed actions arising therefrom.

**14. SYSTEMS**

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

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

**15. PURPOSE OF RULES**

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

**16. RULES AND RULE-MAKING**

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

**17. FINANCIAL STATEMENTS**

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

**18. SANCTION RULES**

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

**19. DUE PROCESS**

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

**20. INFORMATION SHARING**

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

**21. LISTED COMPANY RULES**

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

**22. SELF-LISTING CONDITIONS**

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

**23. OUTSOURCING**

recognized by the Commission.

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

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

**24. RELATED PARTY TRANSACTIONS**

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

**25. CLEARING AND SETTLEMENT**

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

**APPENDIX I**

**Listing-Related Conditions**

**1. UNDERLYING PRINCIPLES**

- 1.1. TSX carries on the business of the Toronto Stock Exchange.
- 1.2. TSX Group proposes to become a listed company on TSX, which will be wholly-owned by TSX Group.
- 1.3. TSX will report to the Director (the "Director") of the Ontario Securities Commission ("OSC") or other members of the staff of the OSC certain matters provided for in this Appendix I (the "Listing-Related Procedures") with respect to TSX Group or certain other TSX-listed issuers that raise issues of conflict of interest or potential conflict of interest for TSX.
- 1.4. The purpose of this reporting process is to ensure that TSX follows appropriate standards and procedures with respect to the initial and continued listing of TSX Group and Competitors, to ensure that TSX Group is dealt with appropriately in relation to, and Competitors are treated fairly and not disadvantaged by, TSX Group's listing on TSX. For purposes of these Listing-Related Procedures, "Competitor" means any person, the consolidated business and operations or the disclosed business plans of which are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material line of business of TSX Group or its affiliates.

**2. INITIAL LISTING ARRANGEMENTS**

- 2.1. TSX will review, in accordance with its procedures, the TSX Group initial listing application. A copy of the application will be provided by TSX to the OSC's Director, Corporate Finance at the same time that the application is filed with TSX.
- 2.2. Upon completing its review of the application and after allowing TSX Group to address any deficiencies noted by TSX, TSX will provide a summary report to the OSC's Director, Corporate Finance, with its recommendation for listing approval, if made. The summary report will provide details of any aspects of the application that were atypical as well as any issues raised in the process that required the exercise of discretion by TSX. Any related staff memoranda, analysis, recommendations and decisions not included in the summary report will be attached for review by the OSC's Director, Corporate Finance. A copy of TSX's current listing manual will also be provided to the OSC's Director, Corporate Finance.

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

**3. CONFLICTS COMMITTEE**

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

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

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

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

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

3.4. The Conflicts Committee will be composed of: the Chief Executive Officer of TSX, the general counsel of TSX (the "Committee Secretary"), the senior officer responsible for listings of each of TSX and TSX Venture Exchange Inc., the senior officer responsible for trading operations of TSX, a senior management representative of Market Regulation Services Inc. and two other persons who shall be independent of TSX (as independent is defined in paragraph 1(a) of Schedule "A" of the terms and conditions of the recognition order). At least one such independent member must participate in meetings of the Conflicts Committee, in order for there to be a quorum.

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

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

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

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

Competitor must be immediately brought to the attention of the Committee Secretary.

3.5.4. TSX shall provide to staff who review initial listing applications and to senior executives in the issuer services division of TSX a summary of the types of businesses undertaken to a significant degree by TSX Group or its affiliates and shall update the list as these businesses change, in order that initial listings staff and senior executives in the issuer services division of TSX may recognize a Competitor.

3.6. The Committee Secretary shall convene a meeting of the Conflicts Committee to be held no later than one business day after a Conflict of Interest has been brought to his or her attention. The Committee Secretary or any member of the Conflicts Committee may also convene a meeting of the Conflicts Committee whenever he or she sees fit, in order to address any conflict issues that may not be related to any one specific matter or issuer.

3.7. TSX shall, at the time a Conflicts Committee meeting is called in response to a Conflict of Interest, immediately notify the OSC's Manager of Market Regulation that it has received notice of a Conflict of Interest and shall provide with such notice: (i) a written summary of the relevant facts; and (ii) an indication of the required timing for dealing with the matter.

3.8. The Conflicts Committee will consider the facts and form an initial determination with respect to the matter. The Conflicts Committee will then proceed as follows depending on the circumstances:

3.8.1. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group or the initial or continued listing of a Competitor on TSX does not exist and is unlikely to arise, it will notify the OSC's Manager of Market Regulation of this determination. If the OSC's Manager of Market Regulation approves such determination, TSX will deal with the matter in its usual course. When it has dealt with the matter, a brief written record of such determination with details of the analysis undertaken, and the manner in which the matter was disposed of, will be made by TSX and provided to the OSC's Manager of Market Regulation. If the OSC's Manager of Market Regulation does not approve the determination and provides notice of such non-approval to TSX, TSX will

follow the procedures set out in section 3.8.2.

3.8.2. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group or the initial or continued listing of a Competitor on TSX does exist or is likely to arise or if TSX is provided non-approval notice from the OSC's Manager of Market Regulation under section 3.8.1, TSX shall: (i) formulate a written recommendation of how to deal with the matter; and (ii) provide its recommendation to the OSC's Manager of Market Regulation for his or her approval, together with a summary of the issues raised and details of any analysis undertaken. If the OSC's Manager of Market Regulation approves the recommendation, TSX will take steps to implement the terms of its recommendation.

3.9. Where the OSC's Manager of Market Regulation has considered the circumstances of an issue based on the information provided to him or her by the Conflicts Committee under section 3.8.2, and has determined that he or she does not agree with TSX's recommendation (i) and has requested that TSX reformulate its recommendation, TSX shall do so; or (ii) the OSC's Manager of Market Regulation may direct TSX to take such other action as he or she considers appropriate in the circumstances.

3.10. Where the OSC's Manager of Market Regulation or the Director is requested to review a matter pursuant to section 3.9 or 3.2, respectively, TSX shall provide to the OSC's Manager of Market Regulation or the Director any relevant information in its possession and, if requested by the OSC's Manager of Market Regulation or the Director, any other information in its possession, in order for the OSC's Manager of Market Regulation or the Director to review or, if appropriate, make a determination regarding the matter, including any notes, reports or information of TSX regarding the issue, any materials filed by the issuer or issuers involved, any precedent materials of TSX, and any internal guidelines of TSX. TSX shall provide its services to assist the matter, if so requested by the OSC's Manager of Market Regulation or by the Director.

3.11. TSX will provide to the OSC's Manager of Continuous Disclosure a copy of TSX Group's annual questionnaire and any other TSX Group disclosure documents that are filed with TSX but not with the OSC's Continuous Disclosure department. TSX will conduct its usual review process in connection with TSX Group's annual questionnaire and all prescribed periodic filings of

TSX Group. Any deficiencies or irregularities in TSX Group's annual questionnaire or other TSX-issuer prescribed filings will be communicated to the OSC's Manager of Continuous Disclosure and brought to the attention of the Conflicts Committee which shall follow the procedures outlined in this section 3.

#### **4. TIMELY DISCLOSURE AND MONITORING OF TRADING**

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

#### **5. MISCELLANEOUS**

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

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

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

13.1.3 TSX Inc. and TSX Group Inc. - Order

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

**AND**

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

**ORDER  
(Section 21.11)**

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

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

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

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

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

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

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

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

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

September 3, 2002.

"Howard Wetston"

"Paul Moore"

13.1.4 Regulation

**ONTARIO REGULATION  
made under the  
SECURITIES ACT**

**TORONTO STOCK EXCHANGE INC.**

**Restriction on shareholdings**

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

Ontario Securities Commission:

*"Howard Wetston"*  
Vice Chair

\_\_\_\_\_  
Howard Wetston  
(Print Name)

*"Paul Moore"*  
Vice Chair

\_\_\_\_\_  
Paul Moore  
(Print Name)

Dated on September 3, 2002.

13.1.5 TSX Venture Exchange Inc. – Exemption Order

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

**AND**

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

**AMENDED EXEMPTION ORDER  
(Section 144)**

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

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

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

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

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

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

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

**AND**

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

**AMENDED EXEMPTION ORDER  
(Section 147)**

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

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

Corporate Structure, Recognition and Services in Ontario

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

**Regulatory Oversight**

- 2.4. TSX Venture Exchange is subject to joint regulatory oversight by both the ASC and the BCSC.

- 2.5. TSX Venture Exchange is advised that the Commission, ASC and BCSC have entered into a memorandum of understanding ("MOU") respecting the continued oversight of TSX Venture Exchange by the ASC and BCSC (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 TSX Venture Exchange. Under the terms of the MOU, the ASC and BCSC will continue to be responsible for conducting the regulatory oversight of TSX Venture Exchange and for conducting an oversight program of TSX Venture Exchange for the purpose of ensuring that TSX Venture Exchange meets appropriate standards for market operation and regulation.
- 2.6. TSX Venture Exchange provides any proposed changes to its by-laws, rules, policies, and other regulatory instruments to the ASC and BCSC for review and approval in accordance with the review and approval procedures established by the ASC and BCSC from time to time. TSX Venture Exchange will concurrently provide the Commission with copies of all by-laws, rules, policies and other regulatory instruments that it files for review and approval with the ASC and BCSC. Copies of all final by-laws, rules, policies and other regulatory instruments will also be provided to the Commission.
- 2.7. TSX Venture Exchange has represented to the ASC and BCSC that it will operate its exchange in accordance with the representations set forth in Schedules "A" and "B".

**CDN Business**

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

trading in unlisted and unquoted equity securities in Ontario.

*Reporting Issuer Status and Incorporation of OSC Rule 61-501*

2.11. TSX Venture Exchange has adopted certain amendments to its Corporate Finance Policies in the form attached as Schedule "E", as may be amended from time to time, which require that TSX Venture Exchange issuers that are not otherwise reporting issuers in Ontario and have a "significant connection to Ontario" make application to the Commission and become reporting issuers in Ontario.

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

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

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

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

the Commission copies of all final by-laws, rules, policies and other regulatory instruments; and

4.7. TSX Venture Exchange provides to the Commission, where requested by the Commission through the ASC and the BCSC, any information in the possession of TSX Venture Exchange relating to members, shareholders and the market operations of TSX Venture Exchange, including, but not limited to, shareholder and participating organization lists, products, trading information and disciplinary decisions.

**IT IS HEREBY FURTHER ORDERED** that:

5.1. CUB is deemed to be in compliance with the agreement referred to in clause 4.5 above unless CUB has been provided with written notice of non-compliance and has failed to remedy the alleged non-compliance in accordance with the terms of the agreement; and

5.2. TSX Venture Exchange is deemed to be in compliance with clause 4.6 and 4.7 unless TSX Venture Exchange has been provided with written notice of non-compliance and failed to provide the documents or information within 10 business days of receipt of such written notice.

September 3, 2002.

"Howard Wetston"

"Paul Moore"

**SCHEDULE "A"**

**ALBERTA SECURITIES COMMISSION**

**IN THE MATTER OF  
the Securities Act, R.S.A 2000, c. S-4 (the "Act")**

**and**

**IN THE MATTER OF  
TSX Venture Exchange Inc.**

**RECOGNITION ORDER  
(Subsection 62(2) and Section 214)**

1. WHEREAS by recognition order dated November 26, 1999 (the "First Recognition Order") the Alberta Securities Commission (the "Commission") recognized the Canadian Venture Exchange Inc., as an exchange in Alberta under subsection 52(2) of the *Securities Act* S.A. 1981, c. S-6.1, as amended;
2. AND WHEREAS the Commission revoked and replaced the First Recognition Order with a revised recognition order dated July 31, 2001 (the "Second Recognition Order") following the acquisition of the Canadian Venture Exchange Inc. by The Toronto Stock Exchange Inc.;
3. AND WHEREAS The Toronto Stock Exchange Inc. has changed its name to TSX Inc. ("TSX") and the Canadian Venture Exchange Inc. has changed its name to TSX Venture Exchange Inc./Bourse de croissance TSX Inc. ("TSX Venture Exchange");
4. AND WHEREAS TSX will complete a reorganization (the "Reorganization") pursuant to which
  - 4.1 TSX will become a wholly owned subsidiary of a new holding company, TSX Group Inc. ("TSX Group"), and TSX Venture Exchange will continue to be a wholly owned subsidiary of TSX, and
  - 4.2 TSX Group will provide certain corporate services, such as financial services, accounting, payroll, human resources, administration, legal and corporate information technology services, to TSX and TSX Venture Exchange;
5. AND WHEREAS following the Reorganization, TSX Group intends to conduct an initial public offering;
6. AND WHEREAS TSX Venture Exchange applied to the Commission to amend the Second Recognition Order to reflect the Reorganization, its change of name and the arrangement by which Market Regulation Services Inc. has been retained as TSX Venture Exchange's regulation

services provider for the performance of certain market regulation functions;

7. AND WHEREAS the Commission considers it appropriate to continue its recognition of TSX Venture Exchange as an exchange following the Reorganization and to set out in an order the revised terms and conditions of TSX Venture Exchange's continued recognition as an exchange;
8. AND WHEREAS TSX Venture Exchange will continue to be subject to the joint regulatory oversight of the Commission and the British Columbia Securities Commission;
9. AND WHEREAS TSX Group, TSX and TSX Venture Exchange have agreed to the terms and conditions of this order;
10. AND WHEREAS based on the application by TSX Venture Exchange, including the representations, undertakings and acknowledgements made to the Commission by TSX Group and TSX in connection with TSX Venture Exchange's application, the Commission is satisfied that the continued recognition of TSX Venture Exchange as an exchange following the Reorganization is in the public interest;
11. IT IS HEREBY ORDERED that TSX Venture Exchange will continue to be recognized as an exchange in Alberta under subsection 62(2) of the Act effective on the closing of the Reorganization provided TSX Venture Exchange meets and continues to meet the revised terms and conditions set out in Schedule "A". Such recognition will continue until the Commission, after giving TSX Venture Exchange an opportunity to be heard, revokes it.
12. IT IS HEREBY FURTHER ORDERED that the Second Recognition Order is revoked and replaced by this order.

September 3, 2002.

"Stephen P. Sibold"

"Glenda A. Campbell"

**Schedule "A"**  
**to the Recognition Order of TSX Venture Exchange**  
**dated September 3, 2002**

**National Junior Exchange**

1. TSX Venture Exchange will operate a national exchange for junior issuers under a separate brand identity and separately from the national exchange for senior issuers operated by TSX and TSX Group.

processing information about, and facilitating transactions in, securities; and

(v) provide for appropriate sanction or discipline for violation of its rules for all persons under the jurisdiction of TSX Venture Exchange and for its listed issuers;

**Local Presence**

2. TSX Venture Exchange will maintain an office in Calgary through which it will

(b) the Rules do not

(a) provide corporate finance services to, and perform corporate finance functions for, its listed issuers and applicants for listing; and

(i) permit unreasonable discrimination between those seeking and granted access to the listing, trading and other services of TSX Venture Exchange;

(b) perform issuer regulation functions.

(ii) impose any burden on competition that is not reasonably necessary or appropriate; and

3. TSX Venture Exchange will obtain, solicit and provide regional input on the development of listing and other corporate finance requirements for its listed issuers and applicants for listing.

(c) the Rules are designed to ensure that the business of TSX Venture Exchange is conducted in a manner that affords protection to investors.

**Public interest**

4. TSX Venture Exchange will operate in the public interest.

**Regulatory Functions**

5. TSX Venture Exchange will maintain rules, policies, and other similar instruments ("Rules") that

7. TSX Venture Exchange will continue to perform its corporate finance and issuer regulation functions, including

- (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.

(a) setting listing and other corporate finance requirements for its listed issuers and applicants for listing;

6. More specifically, TSX Venture Exchange will ensure that

- (a) the Rules are designed to
  - (i) ensure compliance with applicable securities legislation;
  - (ii) prevent fraudulent and manipulative acts and practices;
  - (iii) promote just and equitable principles of trade;
  - (iv) foster co-operation and co-ordination with entities engaged in regulating, clearing, settling,

(b) monitoring the conduct and activities of its listed issuers for compliance with its rules; and

(c) making decisions under its Rules about its listed issuers, persons associated with its listed issuers and applicants for listing and providing for a review or appeal process for these decisions.

8. TSX Venture Exchange is and remains responsible for performing market regulation functions, including setting requirements governing the conduct of its members and participating organizations, monitoring their conduct and enforcing the requirements of TSX Venture Exchange governing their conduct.

9. TSX Venture Exchange has retained and, except with prior Commission approval, will continue to retain Market Regulation Services Inc. ("RS") as a regulation services provider to provide, as its agent, certain regulation services that have been

approved by the Commission. TSX Venture Exchange will provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS and by TSX Venture Exchange. Any amendment to this list will be subject to prior Commission approval.

10. TSX Venture Exchange will continue to perform all other regulation functions not performed by RS, including its corporate finance and issuer regulation functions. TSX Venture Exchange will not perform these functions through any other party, including any of its affiliates or associates, without prior Commission approval. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 35 does not contravene this paragraph.
11. Management of TSX Venture Exchange will at least annually assess the performance by RS of its regulation services and submit a report to the board of TSX Venture Exchange with any recommendations for improvements. TSX Venture Exchange will give the Commission a copy of each report and advise the Commission of any actions it proposes to take as a result.
12. TSX Venture Exchange
  - (a) will provide the Commission with an annual report in the form and with the information specified by the Commission from time to time; and
  - (b) will not, without prior Commission approval, make any significant changes to the manner in which it provides and performs corporate finance services and functions and performs issuer regulation functions.
13. TSX Venture Exchange, through RS or otherwise, will ensure that its members, participating organizations and listed issuers are appropriately sanctioned or disciplined for violations of its Rules. In addition, TSX Venture Exchange will provide notice to the Commission of any violation of securities legislation of which it becomes aware in the ordinary course operation of its business.
14. TSX Venture Exchange will advise the Commission on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant issues arising from issuer non-compliance with TSX Venture Exchange Rules, and provide information in a form acceptable to the Commission on the issuers or other persons involved, the nature of the issues and the action taken or being taken by it to deal with the situation.
15. TSX Venture Exchange will advise the Commission in writing on at least a quarterly basis

(or any other basis as the Commission may agree to in writing) of all significant exemptions or waivers of corporate finance policies and provide information on the issuers involved, the nature of the waivers or exemptions and the reasons for granting the waivers or exemptions.

#### **Regulatory Oversight**

16. TSX Venture Exchange will
  - (a) comply with the Rule review and approval procedures established from time to time by the Commission and the BCSC,
  - (b) file with the Commission all Rules adopted by its board,
  - (c) comply with the compliance or regulatory review program established from time to time by the Commission, and
  - (d) permit the Commission to have access to and inspect, or provide to the Commission, all data and information in its possession that is required for the assessment by the Commission of the performance by TSX Venture Exchange of its regulation functions and its compliance with the terms of this Order.

#### **Corporate governance**

17. To ensure diversity of representation, TSX Venture Exchange will ensure that
  - (a) its board is composed of individuals that provide a proper balance between the interests of the different entities using its services and facilities; and
  - (b) a reasonable number and proportion of its directors are independent directors, as provided in paragraph 20.
18. TSX Venture Exchange's governance structure will provide for
  - (a) fair and meaningful representation, having regard to its nature and structure, on the board and any board or advisory committee;
  - (b) appropriate representation on the board and any board committees of persons that are independent directors;
  - (c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for its directors, officers and employees generally.

19. At least 25% of the directors of TSX Venture Exchange will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market.
20. At least 50% of the directors of TSX Venture Exchange will be independent directors, and an independent director is a director that is not
- (a) associated with any member or participating organization of TSX Venture Exchange, as defined in TSX Venture Exchange's by-law;
  - (b) an officer or employee of TSX Venture Exchange or its affiliates, or an associate of that officer or employee;
  - (c) a person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange; or
  - (d) an associate, director, officer or employee of any person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange (other than a director of TSX Group or TSX).

If at any time TSX Venture Exchange fails to meet this threshold, it will promptly remedy the situation.

21. TSX Venture Exchange will not, without prior Commission approval, implement any significant changes to the governance structure and practices of its board, including significant changes to the composition and terms of reference of its board committees and advisory committees.

**Fitness**

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

**Access**

23. TSX Venture Exchange requirements will not unreasonably prohibit or limit access to its trading facilities by properly registered dealers that are members of a self-regulatory organization or exchange recognized in Canada and that satisfy the requirements of TSX Venture Exchange.
24. TSX Venture Exchange will not unreasonably prohibit or limit access to its services.
25. TSX Venture Exchange will maintain written standards separate from TSX for granting access to trading on its facilities.

26. TSX Venture Exchange 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 to any applicant.

**Due Process**

27. TSX Venture Exchange shall ensure that
- (a) its requirements, the limitations or conditions it imposes on access to its trading and listing facilities, 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 reviews of its decisions.

**Fees**

28. TSX Venture Exchange 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.
29. These fees will
- (a) be allocated on an equitable basis as among the parties noted in paragraph 28;
  - (b) not have the effect of creating barriers to access;
  - (c) be balanced with its need to have sufficient revenues to satisfy its responsibilities; and
  - (d) be fair, reasonable and appropriate.

**Financial Viability**

30. TSX Venture Exchange 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.
31. TSX Venture Exchange will file with the Commission annual audited financial statements prepared in accordance with generally accepted accounting principles in Canada (Canadian GAAP) and accompanied by the report of an

independent auditor within 90 days of its financial year end or any shorter period provided in Alberta securities laws for reporting issuers to file their financial statements.

32. TSX Venture Exchange will file with the Commission quarterly financial statements prepared in accordance with Canadian GAAP within 60 days of the end of each financial quarter or any shorter period provided in Alberta securities laws for reporting issuers to file their financial statements.

**Systems Security, Capacity and Sustainability**

33. For each of its systems that supports order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, TSX Venture Exchange will

- (a) on a reasonably frequent basis and, in any event, at least annually,
  - (i) make reasonable current and future capacity estimates;
  - (ii) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
  - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
  - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters; and
  - (v) establish reasonable contingency and business continuity plans;
- (b) on an annual basis, cause to be performed 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 changes in technology on the exchange and parties interfacing with exchange systems and obtain a written report of the review. This will include an assessment of its controls for ensuring that each of its systems that

support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, complies with paragraph (a) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and

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

34. If securities of issuers that are listed on TSX Venture Exchange trade on systems operated by TSX, TSX Venture Exchange will be considered to have met the requirements set out under subparagraphs a and b of paragraph 33 if TSX meets the equivalent requirements contained in the order continuing the recognition of TSX and recognizing the TSX Group issued by the OSC in conjunction with the reorganization.

**Outsourcing**

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

- (a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of material outsourcing arrangements;
- (b) in entering into any material outsourcing arrangement
  - (i) assess the risk of the arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX Venture Exchange, and
  - (ii) execute a contract with the service provider addressing all significant elements of the arrangement, including service levels and performance standards;
- (c) ensure that any contract implementing material outsourcing arrangement that is likely to impact on TSX Venture Exchange's regulation functions gives TSX Venture Exchange, its agents and the Commission access to, and the right to inspect, all data and information maintained by the service provider that

TSX Venture Exchange is required to share under paragraph 39 or that the Commission requires to assess how TSX Venture Exchange is performing its regulation functions and how TSX Venture Exchange complies with these terms and conditions; and

- (d) monitor the performance of the service provider under any material outsourcing arrangement.

**Related Party Transactions**

36. Any material agreement or transaction entered into between TSX Venture Exchange and

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

will be on terms and conditions that are at least as favourable to TSX Venture Exchange as market terms and conditions.

**Change in Operations or Ownership**

37. TSX Venture Exchange 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 that the Commission may impose in the public interest for the orderly discontinuance of its operations or the orderly disposition of its assets.

38. TSX Venture Exchange will not cease to be wholly owned or directly controlled by TSX or indirectly wholly owned or controlled by TSX Group without TSX Venture Exchange

- (a) providing the Commission at least three months' prior notice of its intention; and
- (b) complying with any terms and conditions that the Commission may impose in the public interest.

**Information Sharing**

39. TSX Venture Exchange 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.

**Clearing and Settlement**

40. TSX Venture Exchange will have rules that impose a requirement on its members and participating organizations to have appropriate arrangements in place for clearing and settlement.

**Commission Approval**

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

**SCHEDULE "B"**

COR#02/096

**Recognition Order  
TSX Venture Exchange Inc.  
Section 24(b) of the Securities Act, RSBC 1996, c. 418**

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

On July 31, 2001, the Commission ordered the continued recognition of CDNX as an exchange in British Columbia under section 24(2) of the Act under certain terms and conditions effective on the closing of a transaction whereby CDNX became a wholly owned subsidiary of The Toronto Stock Exchange Inc. (TSE) and became a for-profit corporation (COR#01/086), and revoked COR#99/323.

The TSE changed its name to TSX Inc. (TSX) and CDNX changed its name to TSX Venture Exchange Inc./Bourse de croissance TSX Inc. (TSX Venture Exchange).

TSX will complete a reorganization. Under the reorganization,

1. TSX will become a wholly owned subsidiary of a new holding company, TSX Group Inc. (TSX Group), and TSX Venture Exchange will continue to be a wholly owned subsidiary of TSX; and
2. TSX Group will provide corporate services, such as financial services, accounting, payroll, human resources, administration, legal and corporate information technology services, to TSX and TSX Venture Exchange.

Following the reorganization, TSX Group intends to conduct an initial public offering.

The Commission received representations, acknowledgements and undertakings from TSX Venture Exchange, TSX and TSX Group in connection with TSX Venture Exchange's application for continued recognition as an exchange.

The Commission considers it appropriate to set out in an order revised terms and conditions of the continued recognition of TSX Venture Exchange as an exchange following the reorganization.

TSX Venture Exchange, TSX and TSX Group have agreed to the terms and conditions set out in the order.

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

Based on the application of TSX Venture Exchange, including the representations, undertakings and acknowledgements made by TSX and TSX Group to the Commission in connection with the application, the Commission is satisfied that the continued recognition of TSX Venture Exchange following the reorganization will not be prejudicial to the public interest.

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

This order revokes and replaces COR#01/086.

September 3, 2002.

"Douglas M. Hyndman"

Ref: COR#01/086

**Schedule A**

**National junior exchange**

1. TSX Venture Exchange will operate a national exchange for junior issuers under a separate brand identity and separately from the national exchange for senior issuers operated by TSX and TSX Group.

**Local presence**

2. TSX Venture Exchange will maintain an office in Vancouver through which it will

(a) provide corporate finance services to, and perform corporate finance functions for, its listed issuers and applicants for listing; and

(b) perform issuer regulation functions.

3. TSX Venture Exchange will obtain, solicit and provide regional input on the development of listing and other corporate finance requirements for its listed issuers and applicants for listing.

**Public interest**

4. TSX Venture Exchange will operate in the public interest.

5. TSX Venture Exchange will maintain rules, policies, and other similar instruments (rules) 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.

6. More specifically, TSX Venture Exchange will ensure that

(a) the rules are designed to

(i) ensure compliance with applicable securities legislation;

(ii) prevent fraudulent and manipulative acts and practices;

(iii) promote just and equitable principles of trade;

(iv) foster co-operation and co-ordination with entities engaged in regulating, clearing, settling, processing information about, and facilitating transactions in, securities; and

(v) provide for appropriate sanction or discipline for violation of its rules for all persons under the jurisdiction of TSX Venture Exchange and for its listed issuers;

(b) the rules do not

(i) permit unreasonable discrimination between those seeking and granted access to the listing, trading and other services of TSX Venture Exchange;

(ii) impose any burden on competition that is not reasonably necessary or appropriate; and

(c) the rules are designed to ensure that the business of TSX Venture Exchange is conducted in a manner that affords protection to investors.

**Regulation functions**

7. TSX Venture Exchange will continue to perform its corporate finance and issuer regulation functions, including

(a) setting listing and other corporate finance requirements for its listed issuers and applicants for listing;

(b) monitoring the conduct and activities of its listed issuers for compliance with its rules; and

(c) making decisions under its rules about its listed issuers, persons associated with its listed issuers and applicants for listing and providing for a review or appeal process for these decisions.

8. TSX Venture Exchange is and remains responsible for performing market regulation functions, including setting requirements governing the conduct of its members and participating organizations, monitoring their conduct and enforcing the requirements of TSX Venture Exchange governing their conduct.

9. TSX Venture Exchange has retained and, except with prior Commission approval, will continue to retain Market Regulation Services Inc. (RS) as a regulation services provider to provide, as its agent, certain regulation services that have been approved by the Commission. TSX Venture Exchange will provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS and by TSX Venture

Exchange. Any amendment to this list will be subject to prior Commission approval.

10. TSX Venture Exchange will continue to perform all other regulation functions not performed by RS, including its corporate finance and issuer regulation functions. TSX Venture Exchange will not perform these functions through any other party, including any of its affiliates or associates, without prior Commission approval. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 35 does not contravene this paragraph.
11. Management of TSX Venture Exchange will at least annually assess the performance by RS of its regulation services and submit a report to the board of TSX Venture Exchange with any recommendations for improvements. TSX Venture Exchange will give the Commission a copy of each report and advise the Commission of any actions it proposes to take as a result.
12. TSX Venture Exchange
  - (a) will provide the Commission with an annual report in the form and with the information specified by the Commission from time to time; and
  - (b) will not, without prior Commission approval, make any significant changes to the manner in which it provides and performs corporate finance services and functions and performs issuer regulation functions.
13. TSX Venture Exchange, through RS or otherwise, will ensure that its members, participating organizations and listed issuers are appropriately sanctioned or disciplined for violations of its rules. In addition, TSX Venture Exchange will provide notice to the Commission of any violation of securities legislation of which it becomes aware in the ordinary course operation of its business.
14. TSX Venture Exchange will advise the Commission on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant issues arising from issuer non-compliance with TSX Venture Exchange rules, and provide information in a form acceptable to the Commission on the issuers or other persons involved, the nature of the issues and the action taken or being taken by it to deal with the situation.
15. TSX Venture Exchange will advise the Commission in writing on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant exemptions or waivers of corporate finance policies and provide information on the issuers involved, the nature of

the waivers or exemptions and the reasons for granting the waivers or exemptions.

#### **Regulatory oversight**

16. TSX Venture Exchange will comply with the rule review and approval procedures established from time to time by the Commission and the ASC. TSX Venture Exchange will file with the Commission all rules adopted by its board.

#### **Corporate governance**

17. To ensure diversity of representation, TSX Venture Exchange will ensure that
  - (a) its board is composed of individuals that provide a proper balance between the interests of the different entities using its services and facilities; and
  - (b) a reasonable number and proportion of its directors are independent directors, as provided in paragraph 20.
18. TSX Venture Exchange's governance structure will provide for
  - (a) fair and meaningful representation, having regard to its nature and structure, on the board and any board or advisory committee;
  - (b) appropriate representation on the board and any board committees of persons that are independent directors;
  - (c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for its directors, officers and employees generally.
19. At least 25% of the directors of TSX Venture Exchange will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market.
20. At least 50% of the directors of TSX Venture Exchange will be independent directors, and an independent director is a director that is not
  - (a) associated with any member or participating organization of TSX Venture Exchange, as defined in TSX Venture Exchange's by-laws;
  - (b) an officer or employee of TSX Venture Exchange or its affiliates, or an associate of that officer or employee;

- (c) a person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange; or
- (d) an associate, director, officer or employee of any person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange (other than a director of TSX Group or TSX).

If at any time TSX Venture Exchange fails to meet this threshold, it will promptly remedy the situation.

21. TSX Venture Exchange will not, without prior Commission approval, implement any significant changes to the governance structure and practices of its board, including significant changes to the composition and terms of reference of its board committees and advisory committees.

**Fitness**

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

**Access**

23. TSX Venture Exchange requirements will not unreasonably prohibit or limit access to its trading facilities by properly registered dealers that are members of a self-regulatory organization or exchange recognized in Canada and that satisfy the requirements of TSX Venture Exchange.
24. TSX Venture Exchange will not unreasonably prohibit or limit access to its services.
25. TSX Venture Exchange will maintain written standards separate from TSX for granting access to trading on its facilities.
26. TSX Venture Exchange 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 to any applicant.

**Due process**

27. TSX Venture Exchange shall ensure that
- (a) its requirements, the limitations or conditions it imposes on access to its

trading and listing facilities, 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 reviews of its decisions.

**Fees**

28. TSX Venture Exchange 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.
29. These fees will
- (a) be allocated on an equitable basis among the parties noted in paragraph 28;
  - (b) not have the effect of creating barriers to access;
  - (c) be balanced with its need to have sufficient revenues to satisfy its responsibilities; and
  - (d) be fair, reasonable and appropriate.

**Financial viability**

30. TSX Venture Exchange 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.
31. TSX Venture Exchange will file with the Commission annual audited financial statements prepared in accordance with generally accepted accounting principles in Canada (Canadian GAAP) and accompanied by the report of an independent auditor within 90 days of its financial year end or any shorter period provided in British Columbia securities legislation for reporting issuers to file their financial statements.
32. TSX Venture Exchange will file with the Commission quarterly financial statements prepared in accordance with Canadian GAAP within 60 days of the end of each financial quarter or any shorter period provided in British Columbia securities legislation for reporting issuers to file their financial statements.

**System security, capacity and sustainability**

33. For each of its systems that supports order entry, order routing, execution, data feeds, trade

reporting and trade comparison, capacity and integrity requirements, TSX Venture Exchange will

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

34. If securities of issuers that are listed on TSX Venture Exchange trade on systems operated by TSX, TSX Venture Exchange will be considered to have met the requirements set out under sub-

paragraph (a) and (b) of paragraph 33 if TSX meets the equivalent requirements contained in the order continuing the recognition of TSX and recognizing TSX Group issued by the OSC in conjunction with the reorganization.

#### **Outsourcing**

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

- (a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of material outsourcing arrangements;
- (b) in entering into any material outsourcing arrangement
  - (i) assess the risk of the arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX Venture Exchange; and
  - (ii) execute a contract with the service provider addressing all significant elements of the arrangement, including service levels and performance standards;
- (c) ensure that any contract implementing a material outsourcing arrangement that is likely to impact on TSX Venture Exchange's regulation functions gives TSX Venture Exchange, its agents and the Commission access to, and the right to inspect, all data and information maintained by the service provider that TSX Venture Exchange is required to share under paragraph 39 or that the Commission requires to assess how TSX Venture Exchange is performing its regulation functions and how TSX Venture Exchange complies with these terms and conditions; and
- (d) monitor the performance of the service provider under any material outsourcing arrangement.

#### **Related party transactions**

36. Any material agreement or transaction entered into between TSX Venture Exchange and

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

for the joint regulatory oversight of TSX Venture Exchange.

will be on terms and conditions that are at least as favourable to TSX Venture Exchange as market terms and conditions.

**Change in operations or ownership**

- 37. TSX Venture Exchange 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 that the Commission may impose in the public interest for the orderly discontinuance of its operations or the orderly disposition of its assets.
- 38. TSX Venture Exchange will not cease to be wholly owned or directly controlled by TSX or indirectly wholly owned or controlled by TSX Group without TSX Venture Exchange
  - (a) providing the Commission at least three months' prior notice of its intention; and
  - (b) complying with any terms and conditions that the Commission may impose in the public interest.

**Information sharing**

- 39. TSX Venture Exchange 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.

**Clearing and settlement**

- 40. TSX Venture Exchange will have rules that impose a requirement on its members and participating organizations to have appropriate arrangements in place for clearing and settlement.

**Commission approval**

- 41. When seeking the approval of the Commission under these terms and conditions, TSX Venture Exchange will comply with the procedures established from time to time by the Commission

## SCHEDULE "C"

**Memorandum of Understanding  
about the Oversight of Exchanges and Quotation and  
Trade Reporting Systems**

among:

**Alberta Securities Commission (ASC)  
British Columbia Securities Commission (BCSC)  
Commission des valeurs mobilières du Québec  
(CVMQ)  
Ontario Securities Commission (OSC) and  
Manitoba Securities Commission (MSC)**

The parties agree as follows:

**1. Underlying Principles**

- (a) Each recognized exchange (Exchange) and recognized quotation and trade reporting system (QTRS) has a lead regulator (Lead Regulator) responsible for its oversight and may have one or more exempting regulators (Exempting Regulator). In certain circumstances, an Exchange or QTRS may have a regulator that is neither a Lead Regulator nor an Exempting Regulator (Participating Regulator). A Participating Regulator has the same rights as an Exempting Regulator under this Memorandum of Understanding (MOU). The current list of Exchanges and QTRSs and their Lead Regulators, Exempting Regulators and Participating Regulators is attached as Appendix A, which may be amended from time to time.
- (b) The Exempting Regulator of an Exchange or QTRS has exempted or will exempt it from recognition as an Exchange or QTRS on the basis that:
- (i) the Exchange or QTRS is and will continue to be recognized by the Lead Regulator as an Exchange, QTRS or, in Québec, as a self-regulatory organization;
  - (ii) the Lead Regulator is responsible for conducting the regulatory oversight of the Exchange or QTRS; and
  - (iii) the Lead Regulator will inform the Exempting Regulator of its oversight activities and the Exempting Regulator will have the opportunity to raise issues concerning the oversight of the Exchange or QTRS with the Lead Regulator in accordance with this MOU.
- (c) The Lead Regulator is responsible for conducting an oversight program (the Oversight Program)<sup>1</sup> of the Exchange or QTRS that will include the matters described in Part 2.
- (d) The purpose of the Oversight Program is to ensure that each Exchange and QTRS meets appropriate standards for market operation and regulation. Those standards include:
- (i) fair access for issuers and market participants;
  - (ii) fair representation in corporate governance and rule-making;
  - (iii) systems and financial capacity to carry out its regulatory functions;
  - (iv) orderly markets through appropriate review of traded products and trading rules;
  - (v) appropriate listed or quoted company regulation;
  - (vi) transparency through timely access to relevant information on traded products and market prices;
  - (vii) market integrity through the adoption of rules that prohibit unfair trading practices and monitoring and enforcing these rules;
  - (viii) proper identification and management of risks, including credit risks related to market participants; and
  - (ix) integration with effective clearing and settlement systems.
- (e) The parties will act in good faith to resolve issues raised by any Exempting Regulator in connection with the Oversight Program carried out by the Lead Regulator.
- (f) The parties acknowledge that, with the consent of the relevant Lead Regulator and Exempting Regulators, the securities commissions of any other jurisdiction where an Exchange or QTRS is recognized or exempted from recognition may become a party to this MOU.

<sup>1</sup> The matters outlined in the Oversight Program are intended to prescribe the minimum level of oversight of an Exchange or QTRS. The Lead Regulator may conduct additional review procedures. The purpose of specifying the Oversight Program is to ensure that each participant in the MOU is comfortable that there is acceptable oversight of the Exchange or QTRS. This in turn justifies reliance on the Lead Regulator.

(g) This MOU is the successor to any prior MOU regarding the oversight of an Exchange or QTRS<sup>2</sup> entered into between any of the parties to this agreement.

**2. Oversight Program**

(a) The Lead Regulator will establish and conduct the Oversight Program. At a minimum, the Oversight Program will include the following:

(i) Review of information filed by the Exchange or QTRS on critical financial and operational matters and significant changes to operations, including information related to:

- (A) affiliated entities;
- (B) operation of systems and technological capacity;
- (C) financial statements;
- (D) access requirements and forms;
- (E) corporate finance policies, including listing, quoting and filing requirements; and
- (F) corporate governance, including board and committee composition, structure, mandate and function.

(ii) Review and approval of changes to Exchange or QTRS by-laws, rules, policies, and other similar instruments (Regulatory Instruments) under the procedures established by the Lead Regulator from time to time. The current procedures are identified in Appendix B, which may be amended from time to time.

(iii) Periodic examination of Exchange or QTRS functions, including:

- (A) corporate finance policies: policies relating to minimum listing or quoting requirements, continuing listing or quoting requirements or tier maintenance requirements, sponsorship and continuous disclosure;
- (B) trading halts, suspensions and de-listing 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 the Exchange or QTRS;

(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.

(b) The Lead Regulator will retain sole discretion regarding the manner in which the Oversight Program is carried out, including determining the order and timing of its examinations of the functions under section 2(a)(iii). However, the Lead Regulator will perform the examinations of these functions at least once every three years. The Lead Regulator will provide to each Exempting Regulator a copy of the report of the examination performed under section 2(a)(iii) and any responses of the Exchange or QTRS to the report.

**3. Involvement of an Exempting Regulator**

(a) The Lead Regulator acknowledges that an Exempting Regulator may require that the Exchange or QTRS provide to the Exempting Regulator:

- (i) copies of all Regulatory Instruments that the Exchange or QTRS files for review and approval with the Lead Regulator under the Lead Regulator's procedures referred to in section 2(a)(ii) at the same time that the Exchange or QTRS files the Regulatory Instruments with the Lead Regulator;
- (ii) copies of all final Regulatory Instruments once approved by the Lead Regulator under the procedures outlined in section 2(a)(ii); and
- (iii) if requested by the Exempting Regulator, copies of information filed by the Exchange or QTRS pursuant to section 2(a)(i) as identified in the request.

(b) If an Exempting Regulator advises the Lead Regulator that it has specific concerns regarding

<sup>2</sup> As of September 3, 2002, no prior MOU exists for the oversight of a QTRS.

the operations of the Exchange or QTRS in the jurisdiction of the Exempting Regulator and requests that the Lead Regulator perform an examination of the Exchange or QTRS in that jurisdiction, the Lead Regulator may determine to conduct an examination of

- (i) the office of the Exchange or QTRS in the jurisdiction of the Exempting Regulator; or
- (ii) a function performed by an Exchange or QTRS office in that jurisdiction.

The Exempting Regulator may, as part of its request, ask that the Lead Regulator include staff of the Exempting Regulator in the Lead Regulator's examination. The Lead Regulator may, as a condition of performing the examination, request the assistance of staff of the Exempting Regulator in which case the Exempting Regulator will use its best efforts to provide this assistance.

- (c) If the Lead Regulator advises the Exempting Regulator that it cannot or will not conduct the examination referred to in section 3(b), the Exempting Regulator may conduct the examination without the participation of the Lead Regulator. In that case, the Exempting Regulator will provide copies of the results of the examination to the Lead Regulator.
- (d) If issuers or parties that are directly affected by a decision of the Exchange or QTRS in the jurisdiction of an Exempting Regulator appeal that decision to the Lead Regulator or request a hearing and review of that decision by the Lead Regulator, the Lead Regulator will provide videoconferencing facilities or other electronic equipment as necessary and appropriate to permit and facilitate the participation of the parties in the proceedings from, at or near the office of the Exchange or QTRS in the jurisdiction of the Exempting Regulator. The Lead Regulator will also provide simultaneous translation facilities or other facilities necessary and appropriate to permit the participation of the parties in the proceedings in French or English, at their request.
- (e) The Lead Regulator will inform each Exempting Regulator in writing of any material changes in how it performs its obligations under this MOU.

#### **4. Information Sharing**

- (a) The Lead Regulator will, upon written request from an Exempting Regulator, provide or request the Exchange or QTRS to provide to the Exempting Regulator any information about the marketplace participants, the shareholders and the market operations of the Exchange or QTRS. This would include shareholder and participating

organization lists, product and trading information and disciplinary decisions.

- (b) In specific circumstances, the Lead Regulator may agree to provide additional information to parties to the MOU. The current circumstances in which the Lead Regulator would provide additional information and the information the Lead Regulator would provide are set out in Appendix C, which may be amended from time to time.

#### **5. Oversight Committee**

- (a) The parties to the MOU will continue to participate in a committee that will act as a forum and venue for the discussion of issues, concerns and proposals related to the oversight of marketplaces by the parties (Oversight Committee).
- (b) The Oversight Committee will include staff representatives from each of the Lead Regulators and the Exempting Regulators who have responsibility and/or expertise in the areas of marketplace oversight and market regulation.
- (c) The Oversight Committee will meet at least once annually in person and will conduct conference calls at least quarterly.
- (d) At least quarterly, the parties will provide to the Oversight Committee a summary report on their oversight activities that will include a summary description of any material changes made to their oversight program during the period.
- (e) At least annually, the Oversight Committee will provide to the Canadian Securities Administrators a written report of the oversight activities of the committee members during the previous period.

#### **6. Issues Forum**

- (a) The parties acknowledge that:
  - (i) more than one Exchange or QTRS may submit the same Regulatory Instruments to different Lead Regulators for review and approval at the same time; or
  - (ii) one Exchange or QTRS may submit a Regulatory Instrument to its Lead Regulator for review and approval that is the same as an existing Regulatory Instrument adopted by a different Exchange or QTRS with a different Lead Regulator.
- (b) In the event the circumstances set out in section 6(a) arise, the Lead Regulators will act in good faith to resolve the issues raised by any of the parties in order to achieve consistent results among the Lead Regulators.

(c) The parties to this MOU will establish a committee of Commissioners (the "Issues Forum") that will attempt to establish a consensus between Lead Regulators on any issue in dispute under section 6(a). The Issues Forum will make recommendations to the various commissions. Staff of any of the Lead Regulators involved in a dispute or disagreement may submit the issue in dispute or the matter causing the disagreement to the Issues Forum.

(d) The Issues Forum will include one Commissioner from each jurisdiction that is a party to this MOU. For purposes of this section, the joint Lead Regulators of the TSX Venture Exchange Inc. (formerly the Canadian Venture Exchange Inc.) (TSXV) will be considered to be separate parties.

**7. Waiver and Termination**

(a) The terms, conditions and procedures of this MOU may be varied or waived by mutual agreement of the parties. A waiver or variation may be specific or general and may be for a time or for all time, as mutually agreed by the parties.

(b) If the Lead Regulator or an Exempting Regulator of an Exchange or QTRS believes that another party is not satisfactorily performing its obligations under this MOU, it may give written notice to the other party stating that belief and providing 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 party terminate this MOU as it relates to that Exchange or QTRS on a date not less than six months following delivery of the notice. In that case, the notifying party will send to the Exchange or QTRS a copy of its notice of termination at the same time it sends the notice to the other party or parties.

(c) In the event any significant change to the ownership, structure or operations of an Exchange or QTRS affects the oversight of the Exchange or QTRS, a Lead Regulator or any Exempting Regulator may give written notice to the other parties stating its concerns. If a resolution cannot be reached within two months of the delivery of the notice, the notifying party may by written notice to the other parties terminate this MOU as it relates to the Exchange or QTRS on a date not less than six months following delivery of the notice. In that case, the notifying party will send to the Exchange or QTRS a copy of its notice of termination at the same time it sends the notice to the other parties.

(d) For purposes of this Part, the joint Lead Regulators of the TSXV will be considered one party.

**8. Amendments to Appendices**

The parties agree that the appendices to this MOU may be amended from time to time.

**9. Effective Date**

In order to have a coordinated effective date, in Alberta, British Columbia, Ontario and Manitoba, this MOU comes into effect on the date it is approved by the Minister of Finance in Ontario. In Québec, the MOU comes into effect on the date the CVMQ executes the MOU.

Alberta Securities Commission  
Per: \_\_\_\_\_  
Title: \_\_\_\_\_

Commission des valeurs mobilières du Québec  
Per: \_\_\_\_\_  
Title: \_\_\_\_\_

British Columbia Securities Commission  
Per: \_\_\_\_\_  
Title: \_\_\_\_\_

Ontario Securities Commission  
Per: \_\_\_\_\_  
Title: \_\_\_\_\_

Manitoba Securities Commission  
Per: \_\_\_\_\_  
Title: \_\_\_\_\_

**Appendix A**

**List of Lead Regulators and Exempting Regulators**

*(Information as of September 3, 2002)*

1. **TSX Venture Exchange Inc.** (formerly Canadian Venture Exchange Inc.)
  - a. *Lead Regulator* - The ASC and BCSC act jointly as the Lead Regulator for TSX Venture Exchange Inc.
  - b. *Exempting Regulators* - CVMQ, OSC, and MSC
2. **TSX Inc.** (formerly The Toronto Stock Exchange Inc.)
  - a. *Lead Regulator* - OSC
  - b. *Exempting Regulator* - BCSC, CVMQ and ASC
3. **Bourse de Montréal Inc.**
  - a. *Lead Regulator* - CVMQ
  - b. *Exempting Regulator* - OSC
4. **Winnipeg Commodity Exchange Inc.**
  - a. *Lead Regulator* - MSC
  - b. *Participating Regulator*<sup>3</sup> - OSC

**Appendix B**

**Procedures for Review and Approval of Changes to Regulatory Instruments**

*(information as of September 3, 2002)*

1. **TSX Venture Exchange Inc.** - The current procedures are set out in letters dated November 26, 1999 and February 24, 2000.
2. **TSX Inc.** - The current procedures are set out by protocol dated October 23, 1997 published at (1997) 20 OSCB 5684.
3. **Bourse de Montréal Inc.** - Section 177 of the *Securities Act* (Québec)
4. **Winnipeg Commodity Exchange Inc.** - Section 17 of *The Commodity Futures Act* (Manitoba)

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3 A Participating Regulator has the rights of an Exempting Regulator under this MOU.

## Appendix C

**Additional Information Provided by the Lead Regulator**  
(information as of September 3, 2002)

1. As part of the reorganization of TSX Inc. (TSX), under which TSX will become a wholly owned subsidiary of TSX Group Inc. (TSX Group) and TSX Venture Exchange Inc. (TSXV) will continue to be a wholly owned subsidiary of TSX, the OSC agreed to provide the following information to the ASC and BCSC:

For as long as the OSC recognizes and acts as the Lead Regulator for TSX and recognizes TSX Group, the OSC will promptly advise the Lead Regulators of TSXV in writing, if the OSC

- a) becomes concerned about the financial viability of TSX Group or TSX;
- b) is advised by TSX Group that TSX Group will not allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the OSC's recognition order for TSX Group and TSX;
- c) is advised by TSX that TSX has failed to satisfy any of the financial tests set out in the OSC's recognition order for TSX Group and TSX;
- d) is considering revoking or revokes its recognition of TSX Group or TSX; or
- e) becomes aware of any impending change of control of TSX Group or TSX or of an intention by TSX Group or TSX 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 TSX, the OSC will, immediately upon receipt of same, provide to the Lead Regulators of TSXV any reports provided to the OSC by TSX regarding the results of any tests, reviews or monitoring performed by TSX in connection with its systems.

## SCHEDULE "D"

## OTC AGREEMENT

(the "Agreement")

**THIS AGREEMENT** made as of the 6th 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.  
10th 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

- |  |  |
|--|--|
| <p>2. Report a trade</p> <p>2.1. Report a trade done today (typically reported by the selling registered dealer)</p> <p>2.1.1. Data includes: symbol, volume, price, contra-broker, time-stamp, identification of which side reported the trade.</p> <p>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).</p> <p>3. Report a trade cancellation</p> <p>4. Inquire on trading activity for an issue</p> <p>4.1. The reporting functions proposed with respect to Ontario OTC trading are purposely limited.</p> <p>4.2. Data attributes to be displayed are:</p> <p>4.2.1. For today: high price, low price, last price, net change, volume, value, # trades and list of all trades</p> <p>4.2.2. For historical periods: high price, low price, last price, net change, volume, value, # trades</p> <p>5. View Administrative Notice Board</p> <p>5.1. Contains textual information posted by CUB administrative and market regulation staff</p> <p>6. Online Help</p> <p>6.1. Display of "How To" information explaining the operation of the OTC System</p> <p>6.2. Inquiries to list:</p> <p>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)</p> <p>6.2.2. Yesterday's and today's add's, delete's and changes to the stock list</p> <p>6.2.3. A directory of registered dealer users Ids and names</p> | <p>1.2.1.2. <u>Administrative Functionality:</u></p> <p>Administrative functionality will be used by CUB staff to administer the OTC System.</p> <p>1. UserID administration</p> <p>1.1. Setup new UserID</p> <p>1.2. Maintain UserID (change, delete, force password changes)</p> <p>2. Security Master maintenance</p> <p>2.1. Add, change, delete issues that can be reported. This functionality can be done in real-time.</p> <p>2.2. Update Trading status to restrict the reporting of trades</p> <p>3. Report trade (on behalf of a registered dealer)</p> <p>3.1. Similar to the registered dealer function to report a trade.</p> <p>3.2. This functionality can also serve as a short-term backup service should operational problems arise with accessing the system.</p> <p>4. Report a trade done up to 364 days ago ("as of")</p> <p>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.</p> <p>4.2. Historical information to be updated to reflect the reported trade.</p> <p>5. Report trade cancellation (on behalf of a registered dealer)</p> <p>5.1. Similar to the registered dealer function to report a trade cancellation.</p> <p>5.2. This functionality can also serve as a short-term backup service should operational problems arise with accessing the system.</p> <p>5.3. Historical information would be updated to reflect the cancelled trade.</p> <p>6. Post and clear notices and other textual information to Administrative Notice Board</p> <p>6.1. The transaction is logged to an audit trail file</p> |
|--|--|

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:

- (i) 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
- (ii) 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 CDN policy.

3.2 On the Effective Date, this Policy will apply to all Issuers listed on CDN or seeking listing on CDN, 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 CDN.

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 (i.e. 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 (i.e. \$1,500,000) by the inverted fractional interest that the concurrent financing subscribers will own of the Resulting Issuer. (i.e. 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).  $\$4,500,000 (\$1,500,000 \times 100/25 - \$1,500,000)$  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.

### 13.1.6 Letter

**September 3, 2002**

**Stephen P. Sibold, Q.C.**  
**Chair**  
**Alberta Securities Commission**  
**Calgary, Alberta**  
**T2P 3C4**

**Douglas M. Hyndman**  
**Chair**  
**British Columbia Securities Commission**  
**4<sup>th</sup> Floor, 300 Fifth Avenue, S.W.**  
**P.O. Box 10142, Pacific Centre**  
**701 West Georgia Street**  
**Vancouver, British Columbia**  
**V7Y 1L2**

**Dear Sirs:**

**Re: Continued Recognition of the TSX Venture Exchange Inc. ("TSX Venture Exchange"), formerly the Canadian Venture Exchange Inc. ("CDNX")**

TSX Inc. ("TSX"), formerly The Toronto Stock Exchange Inc., will complete a reorganization ("Reorganization"). Under the Reorganization, TSX will become a wholly-owned subsidiary of a new holding company, TSX Group Inc. ("TSX Group"), and TSX Venture Exchange will continue to be a wholly-owned subsidiary of TSX. Following the Reorganization, TSX Group intends to conduct an initial public offering.

By recognition order dated April 3, 2000, the Ontario Securities Commission ("OSC") recognized the TSX as a stock exchange in the Province of Ontario. On September 3, 2002, the OSC continued the recognition of TSX and recognized TSX Group to reflect the Reorganization ("OSC Recognition Order").

Under the OSC Recognition Order, TSX must maintain sufficient financial resources for the proper performance of its functions and notify the OSC in the event it fails to satisfy any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio tests outlined in paragraph 12 of the OSC Recognition Order.

In addition, TSX Group must allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the OSC Recognition Order and must notify the OSC immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TSX to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the OSC Recognition Order.

Paragraph 14 of the OSC Recognition Order also requires TSX 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, and to promptly notify the OSC of material systems failures and changes.

Because the TSX Venture Exchange is a wholly-owned subsidiary of the TSX, which in turn is a wholly-owned subsidiary of TSX Group, TSX and TSX Group will control whether the TSX Venture Exchange can fulfill certain obligations that have been imposed or would have been imposed on the TSX Venture Exchange by the Alberta Securities Commission and British Columbia Securities Commission as the lead regulators of the TSX Venture Exchange ("Lead Regulators").

Further to the Memorandum of Understanding about the Oversight of Exchanges and Quotation and Trade Reporting Systems between the Lead Regulators, the Manitoba Securities Commission, the OSC and the Commission des valeurs mobilières du Québec, the OSC agrees that:

As long as the OSC recognizes and acts as the lead regulator for TSX and recognizes TSX Group, the OSC will advise the Lead Regulators of certain matters or events that occur in the operations and business of TSX Group and TSX because they may have an impact on the operations and business of TSX Venture Exchange and the recognition of TSX Venture Exchange by the Lead Regulators.

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

- a) becomes concerned about the financial viability of TSX Group or TSX;
- b) is advised by TSX Group that TSX Group will not allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the OSC Recognition Order;
- c) is advised by TSX that TSX has failed to satisfy any of the financial tests set out in the OSC Recognition Order;
- d) is considering revoking or revokes its recognition of TSX Group or TSX;
- e) becomes aware of any impending change of control of TSX Group or TSX or of an intention by TSX Group or TSX 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 TSX, the OSC will, immediately upon receipt of same, provide to the Lead Regulators any reports

provided to the OSC by TSX regarding the results of any tests, reviews or monitoring performed by TSX in connection with its systems.

Yours very truly,

"Howard Wetston"  
Vice Chair

cc: Louyse Gauvin, BCSC  
Patricia M. Johnston, ASC  
Denise F. Hendrickson, ASC  
Cindy Petlock, OSC