DELIVERED and via EMAIL

November 27, 2003

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Mr. John Stevenson, Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
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Dear Mr. Stevenson:

Re: Comments on Proposed OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions*

TSX Group Inc. welcomes the opportunity to comment on Proposed Rule 48-501 ("Rule 48-501") published by the Ontario Securities Commission (the "OSC") on August 29, 2003. We are concurrently submitting a comment letter (the "RS Letter") to Market Regulation Services Inc. ("RS") in respect of the request for comments published by RS on August 29, 2003 regarding "amendments respecting restrictions on trading by a participant during a distribution and restrictions on trading during a securities exchange take-over bid" (the "RS Notice"). We provide a copy of the RS Letter at Schedule "A" hereto.

Issues On Which Comments Requested

1. "Acting jointly or in concert"

It would bring clarity to Rule 48-501 if an explanatory section is added that provides an example of the type of activity that would be construed as "acting jointly or in concert" with a dealer. This is consistent with the approach taken in Part XX of the *Securities Act* (Ontario) (the "Act"). As in Part XX of the Act, the explanatory section could assert that the determination of what constitutes "acting jointly or in concert" is a question of fact, and could go further to provide one or more examples of such activity.

2. "Highly-liquid security"

With respect to the proposed exemption for dealer-restricted persons (as that term is defined in Rule 48-501), we suggest that the definition of "highly-liquid security" should use the average daily trading value test and public float test rather than the average daily trading value test and the number of trades per day measurement. We submit that the public float test, which is used in Regulation M under the *Securities Exchange Act of 1934*, is the more effective manner in which to measure a "highly-liquid security" because of the reduced risk of manipulation under the public float. Our understanding of the term "public float" as defined in Regulation M is that it is the market value of common

equity securities held by non-affiliates of the issuer, and that an affiliate may include a person that has the power to direct or cause the direction of the management and policies of the issuer (whether through ownership of voting securities or otherwise). This definition of public float, therefore, could exclude from its calculation holdings by a control block, but would often include insider holdings.

We submit that the ideal calculation of public float would not include insider holdings or control block holdings. We acknowledge that a public float figure that would exclude insider and control block holdings may be difficult to obtain by a member of the general public as this public float value may not be widely available in Canada. However, many dealer-restricted persons who would need to access the public float information to determine whether a security comes within the "highly-liquid" definition could do so by requesting such information directly from the issuer of the securities in question, which, for many dealer-restricted persons, would not be difficult given their relationship with the issuer. In addition, many dealer-restricted persons have access to public float information through the resources of the dealer itself. We submit that a public float of at least $150 million would not be inappropriate in the Canadian context.

In the event that the OSC determines that the public float value is not a useful measure of liquidity in Rule 48-501 because it is too difficult to access, we submit that it may be valuable to use market capitalization as a determinant of a security's liquidity. Market capitalization information is readily available to the public and provides another useful dimension in determining whether a security is "highly-liquid". We acknowledge the concern that, as the market capitalization calculation is based solely on the number of outstanding securities and market price, there is the possibility that the securities of issuers that are controlled by insiders or through block holdings would not appear, on their face, to be less liquid than the securities of those issuers that are widely held with no significant insider or control block holdings. However, we believe that the market capitalization measurement used with an average day trading requirement (and, perhaps, a number of daily trades measurement, if deemed useful) could be effective in determining whether a security is "highly liquid".

3. Multiple restricted periods

No comment.

4. Termination of Restricted Period

We submit that language should be added to Rule 48-501 to clarify when the restricted period ends. We find that the language proposed in the RS Notice is helpful in determining the end of a restricted period. Further, we submit that, if Rule 48-501 is to contain such clarification, it should be identical to the respective provisions in the RS Notice, so as to avoid any unnecessary confusion.

A critical aspect in the compliance with Rule 48-501 will be determining when the selling period ends. The more easily a person is able to interpret these provisions, the less likely it is that such person will inadvertently fall offside the rule.

5. Research Activities

We submit that section 4.2 of Rule 48-501 should not apply to all restricted securities listed in section 3.2(b). The application of section 4.1 of Rule 48-501 should extend to reports relating to issuers of "highly-liquid securities". Public opinion can be swayed by one analyst report, even when the security meets the Rule 48-501 definition of "highly-liquid". It is possible that certain securities will meet the test for a "highly-liquid security" and yet be covered only by very few research analysts. If one report is published with a position on a security that is more favourable than other reports, and there are only few reports published on such securities, that particular report could be given much weight in the marketplace and could sway the opinion of many investors. Although it would be very difficult to manipulate the market in order to have a security meet the "highly-liquid" test, it is relatively easy to publish one report that is extremely positive on a security, and that could effectively move the market in an upward direction. This could happen on "highly-liquid securities" where research coverage is relatively lean and there are few other reports available for comparison purposes. As the dealer-restricted period is a defined period of time, and in many cases, will be fairly short, we submit that it would not be overly restrictive to ensure that proposed section 4.1 of Rule 48-501 applies to information, opinions or recommendations published or disseminated by dealer-restricted persons in respect of issuers of all "highly-liquid securities".

6. Exemptions

No comment.

7. Short Sales

Our understanding of proposed section 2.1 of Rule 48-501 is that it does not prohibit unsolicited client orders (and therefore, unsolicited client order short sales) that are placed at any time (where the client is not an issuer-restricted person). If this understanding is correct, then we interpret the intention of proposed section 3.2(a)(v) to be to permit a dealer-restricted person to cover unsolicited client short sales where such short sale is entered into prior to the dealer-restricted period, or pursuant to market making obligations. If the focus of proposed section 3.2(a)(v) is on unsolicited client orders, then we submit that this proposed section should allow the dealer-restricted person to cover such client orders regardless of when the order is placed. The dealer-restricted person should not be restricted from covering an unsolicited client order short sale that is received during the dealer-restricted period. If the short sale order is unsolicited, the dealer-restricted person should be permitted to cover such order in the same way that it is able to accept an unsolicited buy order from a client during the dealer-restricted period, so long as the client account is not controlled by the dealer-restricted person or is an account in which an issuer-restricted person has a beneficial interest or in respect of which an issuer-restricted person exercises direction or control.

Thank you for the opportunity to comment on Rule 48-501. We look forward to the implementation of Rule 48-501, subject to our comments as discussed above. Should you wish to discuss them with us in more detail, I would be pleased to respond.

Sincerely,

Robert M. Fabes

cc: Jim Twiss, Market Regulation Services Inc.

SCHEDULE “A”

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Mr. James E. Twiss, Senior Counsel
Market Surveillance
Market Regulation Services Inc.
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145 King Street West
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Dear Mr. Twiss:

Re: Comments on Amendments to the Universal Market Integrity Rules Respecting Restrictions on Trading by a Participant During a Distribution and Restrictions on Trading During a Securities Exchange Take-Over Bid (the "RS Proposal")

TSX Group Inc. welcomes the opportunity to comment on the RS Proposal published by Market Regulation Services Inc. ("RS") on August 29, 2003. We are concurrently submitting a comment letter (the "OSC Letter") to the Ontario Securities Commission ("OSC") in respect of the request for comments published by the OSC on August 29, 2003 regarding Proposed OSC Rule 48-501 ("Rule 48-501"). We provide a copy of the OSC Letter at Schedule "A" hereto. We understand that it is the intention of RS through the RS Proposal that the approved amendments to the Universal Market Integrity Rules ("UMIR") will parallel the provisions of Rule 48-501, subject to minor differences.

Differences between the RS Proposal and Rule 48-501

1. Definition of "Restricted Period" and Acting for an Issuer-Restricted Person

It is preferred, from a legal interpretation perspective, to have one definition of restricted period between Rule 48-501 and the RS Proposal. However, we understand the methodology of the OSC in drafting for two separate domains in Rule 48-501: the issuer domain and the dealer domain. If the OSC believes that maintaining the two definitions provides clarity notwithstanding that its definition of "dealer-restricted period" is not identical to the RS Proposal definition of "restricted period", then this is acceptable.

2. Definition of "dealer-restricted person" and "issuer-restricted person"

We agree with the approach that RS has taken by using the concept of "direction or control" and agree that such usage by the OSC would lead to clearer drafting in Rule 48-501.

3. Exemptions from Trading Restrictions

We support RS' assertion that section 3.1 of Rule 48-501 is unnecessary.

4. Exempted Securities

We agree with RS that non-convertible preferred shares, non-convertible debt securities and asset-backed securities should not be exempt from the market stabilization and market balancing restrictions. As these types of securities can be relatively illiquid, they could be susceptible to market manipulation. There is no compelling evidence that these securities, by the fact that they are traded on the basis of their yields and credit ratings, should be given blanket exemptions from the restrictions set out in Rule 48-501 and in the proposed changes to UMIR.

5. Definition of "restricted security"

We submit that it would be helpful for legal interpretation purposes if UMIR and Rule 48-501 used the same definition for "restricted security". As it seems fundamental that the restrictions should not apply to the actual securities being offered in the public distribution (ie. the restrictions don't apply to the securities in the offering that are triggering the rule), the definition of "restricted security" in Rule 48-501 is preferable to the UMIR definition as Rule 48-501 includes, upfront, the specific exclusion for the securities that comprise the public distribution. The definition in the RS Proposal is circuitous as it deals with this exclusion at the end of UMIR s.7.7(4) as opposed to clarifying this fundamental exclusion upfront in the definition of "restricted security" in UMIR s.1.1.

Issues on Which Comments Requested

1. Restriction on stabilization activities in significant private placements or significant "public offerings"

We submit that restricting stabilization activities where a participant is acting as agent in certain private placements or public offerings is not necessary. These types of restrictions could inhibit smaller companies' abilities to raise capital that is needed in order to grow their businesses. These smaller companies should not be penalized based on the manner in which they raise capital.

With respect to companies that are listed on TSX Venture Exchange Inc. ("TSX Venture"), financings are structured almost exclusively on a best efforts basis with the participant acting as agent. It is very rare to see a bought deal financing with a TSX Venture issuer (for example, it is possible that years may pass before one bought deal emerges from a TSX Venture issuer). Given that these financings are structured almost exclusively on a best efforts basis, there is no incentive for a participant to manipulate the market as the participant is able to extricate itself from the financing if the pricing or other aspects of the deal are not acceptable to the participant.

Further, we submit that these types of restrictions could be difficult to comply with and to enforce. For example, it may be difficult in a non-public agency distribution to determine

the precise beginning of the restricted period, which lack of clarity could lead to confusion and, ultimately, compliance difficulties on the part of the participant.

Thank you for the opportunity to comment on the RS Proposal. We look forward to the implementation of the relevant UMIR amendments, subject to our comments as discussed above. Should you wish to discuss them with us in more detail, I would be pleased to respond.

Sincerely,

Robert M. Fabes

cc: Cindy Petlock, Manager, Market Regulation, OSC

SCHEDULE “A”