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Dear Securities Regulatory Authorities:

Re: Comments on *Illegal Insider Trading in Canada: Recommendations on Prevention, Detection and Deterrence Report* (the "Insider Trading Report")

TSX Group Inc. welcomes the opportunity to comment on behalf of both Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX Venture")

(collectively, the "Exchanges") on the Insider Trading Report developed by the Illegal Insider Trading Task Force (the "Task Force"), and published by the Canadian Securities Administrators (the "CSA") on November 12, 2003.

The Exchanges support the work of the Task Force and the initiative in Canada to reduce illegal insider trading and leakage of information. It is our hope that many of the recommendations in the Insider Trading Report are implemented as soon as possible, subject to our comments.

With respect to those recommendations in the Insider Trading Report which specifically address the Exchanges, we have provided our comments addressing such recommendations in the Annex attached to this letter. With respect to comments relating to the remaining recommendations, if any, we have provided our comments below.

Quantifying the Issue

The Insider Trading Report does not identify securities regulators as also being potential sources of inside information, and therefore no specific recommendations are suggested to address this potential source.

Prevention

The Exchanges support any effort to clarify the definition of what constitutes "materiality" and agree that the current use of various terms for this definition, such as "material change" and "material fact", may be adding to confusion on this issue. The Task Force has expressly endorsed the recommendations on the issue of materiality published in the Ontario *Five Year Review Committee Final Report (March 2003)* (the "Five Year Report"), which has suggested such clarification and also suggested that the definition of materiality should include a broader scope of discloseable events. The Task Force should note that the Exchanges currently use the term "material information" in its timely disclosure policies, which is broader in scope then material change and material fact.

We also note the endorsement of the Five Year Report's recommendation to change the materiality standard to a "reasonable investor" standard as opposed to current "market impact" standard. Although we are not prepared to endorse the Final Report's recommendation at this point in time, we would encourage a debate on this issue in order to assess the best method.

Recommendation 11, which suggests the UMIR's be amended to allow for the use of real time insider trade markers as a way of broadening and clarifying the definitions of material change or material fact, does not represent a complete

solution to this issue. A real time marker, by itself, may not give investors sufficient time to make a reasoned investment decision nor does it provide investors with the information required to make such a decision. Furthermore, not all investors have access to such markers. Finally, the marker solution does not address on what basis the insider is making the trade.

With respect to Recommendation 12 and the dissemination of material information after it has been disclosed, we support the clarification of the term "generally disclosed". However, rather than recommend that insiders be prohibited from trading for a period of time after the release of material information, we recommend that guidelines be developed as to what constitutes a standard halt period to allow for such information to be generally disclosed.

Detection

On the issue of detection, the Insider Trading Report focuses on enhancing current detection methods, but does not suggest new methods of detection. Further, the summary of RS detection methods, as provided in Section 4.1.1 of the Insider Trading Report, should also include communication with Exchanges. Staff at the Exchanges will often contact RS by telephone to alert them to, among other things, undisclosed potential transactions.

Recommendation 15 suggests the Canadian Securities Administrators ("CSA"), Market Regulation Services Inc. ("RS") and Bourse de Montréal Inc. ("Mx") develop an enforceable obligation that issuers be required to provide full disclosure of material and potentially material events to "market regulators" (which is defined as RS and Mx) upon their request. The Exchanges question how such an obligation may be enforced and in what form the obligation would be. Furthermore, the circumstances in which such a request could be made need to be clearly defined.

The Exchanges support Recommendation 17 of increasing the profile of illegal insider trading in Canada through the education of market participants, and the public, of how insider trading and tipping occur and the harm they cause.

With respect to inter-market insider trading, we also support the development of a centralized database which identifies all markets upon which an equity and its derivatives trade, for the use of market regulators. TSX currently tracks all markets upon which an equity of a TSX listed issuer trades, but does not consistently track where its derivatives, if any, trade.
Further to this, we applaud Recommendations 26 and 27 and any effort to enhance communication between RS and Mx regarding detection of unusual

derivatives trading, particularly with respect to derivatives of TSX listed issuers which trade on Mx.

Deterrence

Overall, the Exchanges support increased enforcement as a major deterrent to illegal insider trading. Canada's poor track record on enforcement has been noted as a significant factor in the decreased investor confidence facing Canadian capital markets today. As a result, we believe that the Insider Trading Report should have placed more emphasis on improving the enforcement of illegal insider trading offences in Canada. We support any legislative changes that would facilitate enforcement of illegal insider trading offences provided that regular due process requirements are met.

Thank you for the opportunity to comment on the Insider Trading Report. Should you wish to discuss the comments with us in more detail, I would be pleased to respond.

Sincerely,

cc: Barbara Stymiest, CEO, TSX Group Inc.
Linda Hohol, President, TSX Venture Exchange

ANNEX

Prevention

Recommendation #1:

Canadian equity marketplaces amend their timely disclosure policies to:

- ***recommend that issuers adopt the best practices provided in the CSA's Disclosure Standards Policy and the CIRI Standards and Guidelines for Disclosure; and***

  The draft harmonized timely disclosure policy (the "Policy") for the Exchanges makes reference to the CSA's Disclosure Standards Policy within the Policy. Although the references do not expressly recommend that issuers adopt the CSA's Disclosure Standards Policy, they remind listed issuers of their obligation to comply with it.

  The Policy does not make reference to the CIRI Standards and Guideline for Disclosure (the "CIRI Guidelines"). Although the Exchange generally support the CIRI Guidelines, the Exchanges should not make reference to a third party policy (with the exception of legislation) over which it has no control over amendments and enforcement thereof. The CIRI Guidelines are also not generally publicly available, and listed issuers who wish to obtain a copy must pay a fee to CIRI.

- ***emphasize (i) the responsibility of boards of directors and senior offices of issuers for compliance with best practices for information containment, as exemplified by the CSA and CIRI best practices, and (ii) where directors or senior offices fail to fulfill this responsibility, their suitability to act may be reviewed by the marketplace.***

  Although the Policy currently does not make specific reference to the responsibility of directors and senior officers to comply with timely disclosure requirements (there is one reference to the requirement of directors, officers and employees to maintain confidentiality when appropriate), the Exchanges will consider adding such a specific reference with respect to the CSA Disclosure Standards Policy. Such a reference would be consistent with the approach currently taken in the Policy, in the format of a "reminder" for directors and senior officers. An express reference to the CIRI Guidelines should not be included, for the same reasons discussed above.

With respect to enforcement and assessment of directors' and senior officers' "suitability" to act, the Exchanges will be unable to adopt this recommendation. The Exchanges are not able to enforce compliance with third party policies, but rather can only enforce compliance with its own Policy. Further, although TSX Venture has the ability to require a director or senior officer to resign where no longer suitable, TSX ability to do so is limited only to new listings and to new appointments for non-exempt issuers.

Recommendation #2:

The CSA, with the Canadian equities markets, develop a process whereby, upon receipt of a Form 4B, the director or officer is sent an information package that includes responsibilities and guidelines applicable to information containment, timely disclosure and insider trading restrictions, as well as background on the underlying market integrity standards and potential sanctions.

The Exchanges support this recommendation and will participate with the CSA in developing a process to provide educational materials to new director and officer appointees.

We assume that the Form 4B referred to, which is unknown to the Exchanges, is supposed to be filed upon the appointment of any new director or officer of an issuer. We suggest that the requirement be referenced to the event, rather than to the filing of a form.

Recommendation: #4:

Canadian equity marketplaces amend their timely disclosure policies to:

- ***recommend that issuers retain only lawyers who have adopted best practices on information containment; and***

- ***emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices on information containment, as exemplified by using only lawyers who have adopted best practices on information containment and (ii) where directors or senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the applicable marketplace.***

The Exchanges do not support this recommendation and will not implement it. It is not appropriate for the Exchanges to recommend to their listed issuers what type of service providers they choose to retain.

Recommendation #6:

Canadian equity marketplaces amend their timely disclosure policies to:

- ***recommend that issuers retain only accountants who have adopted best practices on information containment; and***

- ***emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices on information containment, as exemplified by using only accountants who have adopted best practices on information containment and (ii) where directors and senior offices fail to fulfil this responsibility, their suitability to act may be reviewed by the applicable marketplace.***

The Exchanges do not support this recommendation and will not implement it. It is not appropriate for the Exchanges to recommend to their listed issuers what type of service providers they choose to retain.

Recommendation #9:

The IDA, RS, Mx and TSXVN form a committee to amend their procedures for the regulation of information containment by dealers to i) address the elements identified in OSC Policy 33-601, ii) eliminate duplication of effort and iii) rationalize the regulation of information containment.

TSX Venture supports this recommendation and will participate on such a committee to determine if procedures for the regulation of information containment by dealers should be amended.

TSX will also consider adopting requirements for information containment that a sponsor of a TSX applicant must have, similar to those currently in place for TSX Venture. As such, the Task Force should consider adding TSX as a potential member of any committee proposed to discuss information containment by dealers.

Recommendation #10:

TSXVN and TSX harmonize their timely disclosure policies.

The Exchanges are currently in the process of harmonizing their policies and have completed a draft harmonized timely disclosure policy. It is anticipated that the harmonized policy may be published by the Exchanges in 2004. The harmonized timely disclosure policy will refer to a list of events that are "likely" to require immediate disclosure, while the TSX Venture version will also include a list of events where issuers "must" make immediate disclosure.

Recommendation #12:

The CSA, with input from RS and the Canadian securities markets, clarify the legislative prohibition on persons in possession of inside information trading after the announcement of the event, but before there has been sufficient time to evaluate the materiality of the event, in order that the prohibition can be enforced.

The Exchanges support this recommendation and will participate in commenting on this prohibition.

Detection

Recommendation #24:

Direct access to a marketplace be prohibited for persons who do not reside in a jurisdiction with a satisfactory regulatory regime unless the person agrees in writing to make available to the market regulator on request all information, including bank account information, relating to trading conducted through that account.

The Exchanges support this recommendation. TSX will be initiating a process to review its rules, policies and guidelines as they relate to direct access entities, in order that it is in a position to adequately address this recommendation. It is not anticipated that TSX Venture will undergo a similar review, as the same direct access concerns do not apply to TSX Venture under its rules.