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- and -

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Dear Sirs and Mesdames:

**RE: REQUEST FOR COMMENTS — SHORT FORM PROSPECTUS DISTRIBUTIONS**

Canadian Trading and Quotation System Inc. ("CNQ") appreciates this opportunity to comment on the proposed amendments to National Instrument 44-101 Short Form Prospectus Distributions and companion policy published for comment on January 7, 2005.



CNQ strongly supports initiatives to facilitate capital raising by issuers, particularly junior issuers. However, the proposed Alternative B, which would allow only Toronto Stock Exchange (“TSX”) and certain TSX Venture Exchange (“TSX VE”) (collectively, “TSX Group exchanges”) listed issuers to be eligible to use short-form prospectuses, contains a fundamental omission and will be a barrier to competition. It should be amended to include CNQ-listed issuers that have an active business and principal assets other than cash or its exchange listing. If Alternative B is adopted as proposed, it will create a huge impediment to CNQ’s ability to attract issuers to its market. Listing decisions could be determined by the ability to use a short-form prospectus rather than by the competitive attributes, liquidity and cost of a particular market. It would even deny eligibility to CNQ-listed issuers that met the “large issuer” thresholds in proposed Alternative A.

The proposal provides no analysis why the CSA has excluded CNQ issuers from eligibility. Including CNQ-listed issuers is consistent with the approach of reinforcing compliance with continuous disclosure rules and is also consistent with fostering fair competition among marketplaces, which is the underpinning of National Instrument 21-101.

Although CNQ was established to primarily be a market for micro- and small-cap issuers, it is not a market solely for companies that do not meet TSX VE requirements. Rather, it offers an alternative regulatory model and market structure, as well as competitive fees, that we believe will be attractive to issuers of all sizes. We have at least one issuer today that would appear to meet the TSX minimum listing standards and which issued a press release last April stating that its management believed the company’s best interests would be served by remaining on CNQ rather than by moving to another marketplace. Several of our issuers were active companies listed on Tier 1 and 2 of the TSX VE that voluntarily moved to CNQ because of its regulatory model and lower costs. To date there is no evidence that companies want to “graduate” to the TSX VE if they meet its listing standards, but they may be forced to if Alternative B is adopted as proposed.

We submit that there is no policy reason to differentiate between issuers listed on CNQ and on the TSX Group exchanges with respect to eligibility to use short-form prospectuses. CNQ is a marketplace for small-capitalization issuers, but is not an over-the-counter (“OTC”) market such as the Canadian Dealing Network (“CDN”) was. CNQ has the same regulatory framework as the TSX Group

exchanges and is subject to comparable oversight by the OSC to ensure it operates in the public interest.

*Background*

CNQ was recognized as a quotation and trade reporting system by the Ontario Securities Commission ("OSC") on February 28, 2003 and as a stock exchange by the OSC on May 7, 2004. It is the first new marketplace to be recognized since the implementation of National Instrument 21-101 — Marketplace Operation.

### *The CNQ Market Structure*

Like the TSX Group exchanges, CNQ operates an electronic, automated marketplace for participating investment dealers to trade securities. Investment dealers (“CNQ Dealers”), who must be members in good standing of the Investment Dealers Association of Canada, agree with CNQ to be bound by CNQ’s rules (including the Universal Market Integrity Rules and CNQ-specific trading and sales practice rules) and be subject to CNQ’s enforcement and discipline jurisdiction. CNQ has contracted with Market Regulation Services Inc. (“RS”) to provide market regulation services to CNQ’s marketplace, including market surveillance, timely disclosure policy administration, trade desk compliance and investigations and enforcement. Issuers (“CNQ Issuers”) that are Canadian reporting issuers and that meet CNQ’s minimum standards can apply to CNQ to list their securities. As described below, CNQ Issuers prepare and post an enhanced disclosure record on CNQ’s website [www.cnq.ca](http://www.cnq.ca) (the “Website”) and agree to follow CNQ’s policies and submit to CNQ’s jurisdiction to suspend or delist their securities.

### *Issuer Regulation*

CNQ has entry-level listing standards (minimum working capital, active business, minimum public distribution and integrity of principals) that allow the refusal of companies whose financial condition, capital structure or insiders give rise to market integrity concerns. CNQ issuers are also subject to ongoing enhanced disclosure requirements detailed below.

### *Enhanced Disclosure Model of Regulation*

CNQ’s regulatory model is different, but we submit no less effective, than the TSX Group exchanges. The enhanced disclosure requirements minimize the abuses that have been seen with small-cap companies in the past. CNQ Issuers are required to disclose material information over and above that mandated by Ontario securities law, and must post and update that information on the Website, which is a central repository of issuer and trading information for investors. These disclosure obligations are comparable to (and, in many instances, higher than) those for issuers on the TSX Group exchanges, and complement CSA initiatives to bolster continuous disclosure by reporting issuers.

In order to qualify for listing, CNQ Issuers must prepare and post a prospectus-like base disclosure document (“the Listing Statement”), and provide monthly progress reports and quarterly updates. The Listing Statement itself must be refiled annually, just like an Annual Information Form. Press releases must be posted, along with notices of corporate transactions (similar to the documentation provided to the exchanges for listed issuers which is considered public but which is not easily available for viewing).

Once listed, the issuer is subject to the same timely disclosure requirements as the TSX Group exchanges. Monitoring compliance with the timely disclosure rules and overall market integrity is done by RS. RS also investigates potential instances of insider trading and market manipulation and forward the results to CNQ and the relevant securities commission(s) for follow-up action.

In addition to disclosure requirements, management of CNQ Issuers is required to post monthly a certificate that the issuer is in compliance with all applicable securities law and CNQ requirements. This requirement forces management to turn their minds to compliance with applicable rules, and should help foster a compliance culture.

CNQ undertakes periodic compliance reviews to determine issuers’ compliance with applicable CNQ rules. These are on an ad-hoc basis (triggered by such things as a late filing or a complaint from an investor or RS) and a systematic basis (reviewing an issuer’s entire disclosure record). Initially, we intend to do a complete review of each issuer at least annually. As more issuers are listed, we will use a risk analysis to prioritize reviews, similar to that used by the commissions in their continuous disclosure review programmes.

CNQ’s sanctions for issuer non-compliance include suspension and delisting.

## **Conclusion**

For the foregoing reasons, CNQ requests that if Alternative B is adopted it be amended to allow CNQ-listed issuers to be eligible to use short-form prospectuses if they have current annual financial statements and a current AIF filed and if they are not issuers whose operations have ceased or whose principal assets are cash, cash equivalents or their exchange listing. To do otherwise will deal a severe and unwarranted blow to CNQ’s ability to attract issuers that also qualify for the other exchanges as a listing decision will likely be motivated by

the ability to raise funds through a short-form prospectus rather than by the competitive features of a particular market.

Because including CNQ-listed issuers is consistent with the underlying policy rationale for the proposed amendments and is consistent with National Instrument 21-101, we do not believe that it would require further publication and comment.

In addition, the National Instrument should provide that other marketplaces may be included on application. Otherwise, new marketplaces could only be accommodated in some jurisdictions through a rule change, which will be a significant barrier to entry.

Thank you for considering our submission.

Please direct any questions to myself at 416.572.2000 x2282 (e-mail: Timothy.Baikie@cnq.ca) or Mark Faulkner, Director, Listings and Regulation at 416.572.2000 x2305 (e-mail: Mark.Faulkner@cnq.ca).

Yours truly,  
CANADIAN TRADING AND QUOTATION SYSTEM INC.

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