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Via E-Mail & Fax

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Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission

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Dear Members of the Canadian Securities Administrators,

Re: Request for Comments on Proposed Repeal and Replacement of National Instrument 44-101 *Short Form Prospectus Distributions* (the "National Instrument" or "NI 44-101")

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 NI 44-101, and the accompanying Companion Policy and Form, as published by the Canadian Securities Administrators (the "CSA") on January 7, 2005.

All capitalized terms have the same meanings as defined in NI 44-101, unless otherwise defined in this letter.

I. GENERAL COMMENTS

The Exchanges support the CSA's efforts to harmonize the short form prospectus rules with the current continuous disclosure regime. This harmonization, along with National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") and proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* (together, the "CD Rules"), represents a positive step towards the implementation of an integrated disclosure system ("IDS") in Canada.

II. REQUEST FOR COMMENTS ON THE PROPOSED RULE

Proposed Qualification Criteria - Alternative A or B?

1. *The changes reflected in Alternative A of Part 2 of Proposed NI 44-101 are necessary to update and harmonize Current NI 44-101 with the CD Rules and other regulatory developments. Alternative B, however, represents a significant broadening of access to the short form prospectus system. Do you believe this broadening of access is appropriate? What are your views on the proposed qualification criteria set out in Alternative B?*

Alternative B:

The Exchanges support the broader set of basic qualification criteria for the short form prospectus system set out in Alternative B. We believe that Alternative B will not only benefit issuers on both Exchanges, it will significantly improve the ability of more junior issuers, in particular, to access equity markets on a more timely and cost efficient basis. The removal of the twelve month seasoning and minimum capitalization requirements would remove the largest obstacles to the short form prospectus regime currently facing junior issuers.

TSX Venture Issuers:

Currently, TSX Venture issuers must undertake distributions in the exempt market if they wish to take advantage of financing opportunities which may be time sensitive, and avoid the longer timelines associated with a long form prospectus filing. As a result, the majority of financings undertaken by junior issuers are exempt offerings, which are subject to resale restrictions. These resale restrictions make investment less attractive to potential investors. The reliance on exempt offerings also limits the ability of retail investors to participate in the junior market.

If Alternative B is adopted, TSX Venture issuers can offer free trading securities to a broader investor base. This will allow them to attract capital more easily from a wider variety of sources. Given that cash flow issues and the ability to attract financing are two of the most significant challenges facing junior issuers, we believe this proposal will benefit the junior market as a whole.

AIF:

We believe that the proposal in Alternative B could be broadened further in order to be more accessible TSX Venture issuers. We recommend that the proposed definition of annual information form ("AIF") in NI 44-101 be consistent with the definition of AIF in National Instrument 45-106 *Prospectus and Registration Exemptions* (the "Exemption

Instrument"). The definition of AIF in the Exemption Instrument takes into account alternate forms of an acceptable AIF other than an AIF under the CD Rules.

In the Exemption Instrument, the CSA recognizes that TSX Venture issuers are not required to file AIFs in accordance with NI 51-102. The broader definition is intended to permit TSX Venture issuers to use either a prospectus or an information circular in respect of a qualifying transaction for a capital pool company ("QT Circular") , as an alternate form of AIF. This alternate form of AIF allows a TSX Venture issuer to use the TSX Venture short form offering document exemption ("SFOD"), as prescribed by Part 5 of the Exemption Instrument (this exemption is currently available only in British Columbia, Alberta and Saskatchewan). Similar to comments we provided on the Exemption Instrument, we also recommend that information circulars prepared for reverse takeovers or changes of business ("RTO Circular") by TSX Venture issuers also be included as an alternate form of AIF.

We believe that these alternate forms of AIF are appropriate for TSX Venture issuers who wish to rely on the short form prospectus regime. The QT Circular and RTO Circular (the "Circulars") provide prospectus like disclosure that, when filed, become a part of the issuer's continuous disclosure record. The Circulars are pre-cleared and vetted by TSX Venture staff, and are posted on SEDAR. Based on this, the Circulars should provide TSX Venture issuers with the disclosure record they require in order to use a short form prospectus as proposed under Alternative B.

Exchange Listing:

We support the definition of "short form eligible exchange" as being either TSX or Tier 1 or 2 of TSX Venture Exchange, as a basic qualification criteria under Alternative B. This standard is consistent with that used in the CD Rules, and it makes the criteria simple and clear.

However, the criteria under section 2.2, 5. of Alternative B requires further clarification. The intent of this provision is to not allow companies without current business operations (i.e. shells) listed on the Exchanges to be eligible to use a short form prospectus. However, there may be circumstances where an issuer has not ceased operations, but whose principal asset is cash or cash equivalents. As a result, we recommend that either the term "principal asset" be defined appropriately, or in the alternative, that the criteria under 2.2., 5. (a) and (b) be required jointly, therefore replacement of the word "or" with "and" at the end of section 2.2, 5.(a).

Other Aspects of the Proposed Rule

2., 3. and 4. Questions

We have no comment.

III. REQUEST FOR COMMENT ON POSSIBLE FURTHER CHANGES IN PROSPECTUS REGULATION

5. Do you believe that issuers, investors or other market participants would benefit from the elimination of preliminary prospectuses and prospectus review? What are the principal benefits of such a system? Are there any potential drawbacks? Are you concerned about a

lack of regulatory review in the context of a prospectus offering? Are you concerned that expediting the process would put undue pressure on the due diligence process?

The Exchanges believe investors and other market participants could benefit from an offering system permitting eligible issuers to access capital based solely on the filing of a final prospectus (a "Final Prospectus Regime"). Such a system would strike an appropriate balance between a pure continuous disclosure based system or IDS, and the current prospectus based regime.

An offering system based only on a final prospectus would provide issuers, and investors, with more timely and predictable access to capital. The cost and time savings that would result by eliminating regulatory review would be substantial, thus decreasing the cost of raising capital and allowing issuers to focus more resources on their actual business.

The Final Prospectus Regime provides a distinct advantage over a pure disclosure based system like an IDS - investors would be provided with a consistent form of disclosure in the final prospectus, enabling them to easily locate information relevant to their investment decisions. It also assists investors in comparing investment opportunities.

Provided that the standard of disclosure and the rights of the purchasers remain intact, the proposed system would not result in an erosion of investor protection.

If such a system is implemented however, it is critical that a regulatory review of issuers' disclosure occur on a regular basis in order to ensure that there is an adequate and consistent level of disclosure in the public domain. Although this review may not take place at the time of an offering, issuers must be motivated to ensure that their continuous disclosure as well as any supplementary disclosure included in a prospectus meets the full, true and plain disclosure standard. If an issuer's disclosure is found to be inadequate, the penalties must be significant enough to motivate them to comply in the future. In addition to certain prohibitions and restrictions as discussed in Question 6, such a system must be introduced against a backdrop of civil liability for continuous disclosure.

6. *If we eliminate the preliminary prospectus and prospectus review as contemplated above, do you think we should impose more onerous restrictions on this offering system, given the lack of regulatory review at the time of the offering? Such restrictions could include the following:*

- *a one year seasoning requirement to ensure eligible issuers have filed required CD for a minimum period and to allow for regulators to review such CD;*
- *a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD; and a restriction on types of eligible securities to disallow securities which may not be supported by the issuer's CD;*
- *a restriction on types of eligible securities to disallow securities which may not be supported by the issuer's CD?*

Do you think these are appropriate?

We recommend the second and third options noted above. Rather than restrict new, but potentially compliant issuers, from using the system for a seasoning period, the objective may be better achieved by penalizing non-compliant issuers.

7. *Do you believe that a marketing regime triggered on the issuance of a press release or other public notice announcing a proposed offering is workable and would be utilized by issuers and dealers? If so, should the press release or public notice be required on "the issuer forming a reasonable expectation that an offering will proceed" or on some other event?*

   It is crucial that the marketing regime be triggered by some form of public disclosure. While the suggested trigger is somewhat subjective, it may prevent premature disclosure that may occur if the trigger is based on more objective measures such as the engagement of an agent. Further, this trigger may also assist in preventing illegal insider trading in advance of a public announcement of the offering. We also recommend that notice be provided to the market in the event the transaction is not completed within a reasonable period.

Thank you for the opportunity to comment on the proposed repeal and replacement of NI 44-101. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Sincerely,

TSX INC.

"Rik Parkhill"

TSX VENTURE EXCHANGE

"Linda Hohol"