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Dear Members of the Canadian Securities Administrators:

Re: Request for Comment- Proposed Multilateral Instrument 52-111 *Reporting On Internal Control Over Financial Reporting* and Companion Policy 52-111CP (the "Proposed Internal Control Instrument")

and

Proposed Repeal and Replacement of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and Related Forms (the "Revised Certification Instrument")

(collectively, the "Proposals")

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 Proposals, as published by certain members of the Canadian Securities Administrators (the "CSA") on February 4, 2005.

TSX Group Inc. and the CSA share several fundamental objectives. We both desire a fair and efficient Canadian capital market, as well as an accessible source of public capital to finance Canadian innovation and growth. Because of these common goals, we have been supportive of CSA initiatives to improve investor confidence in Canada, and have recognized that such initiatives have strengthened our capital market. We have also historically supported CSA initiatives that have harmonized our corporate governance regime with the U.S. in order to ensure that Canadian capital markets remain competitive with the U.S.

As we review the Proposals, we are fortunate to have the U.S. experience to learn from, with their recent implementation of Section 404 of the *Sarbanes Oxley Act* ("SOX 404"). The Securities and Exchange Commission (the "SEC") has acknowledged the problems associated with SOX 404 for smaller issuers through the SEC's delay in the implementation of SOX 404 for issuers with a public float less than U.S.$75 million, and for foreign private issuers. While we continue to support harmonization with the U.S. where appropriate, the experiences that have resulted from the implementation of SOX 404 have indicated that complete harmonization is clearly not appropriate for the Canadian market.

For these reasons, we support two important elements of the Proposals which differ from SOX 404: the exclusion of certain issuers from the Proposed Internal Control Instrument, and the staggered implementation dates for all other issuers based on size. The exclusion of certain issuers recognizes that the cost of compliance with the Proposed Internal Control Instrument will exceed the public interest benefit for smaller issuers. As well, the staggered implementation allows

for more guidance to be available to smaller issuers, based on the experiences of larger issuers, and allows for costs of compliance to be spread out over time.

For the same reasons however, the Exchanges do not agree with the proposed requirement that all TSX issuers must comply with the Proposed Internal Control Instrument - we believe that smaller TSX issuers should also be excluded. There is insufficient data to determine that the public interest case has been made for auditor attestation for all sizes of issuers in Canada**.**

Despite the benefits of harmonization with the U.S., Canadian initiatives should support the Canadian public interest on a stand-alone basis. The CSA must assess the costs and benefits of proposed initiatives in Canada, and should proceed with great caution where it cannot be shown with reasonable assurance that benefits will exceed the costs of compliance. The profile of Canadian public issuers is not the same as that of the U.S. – Canada's market is characteristic of small-cap companies, particularly those in the mineral and resource exploration and development sectors.

Since a cost vs. benefit analysis for the Canadian capital market is an important tool for analyzing the Proposed Internal Control Instrument , we commend the Ontario Securities Commission ("OSC") on the preparation of the paper entitled *The Costs and Benefits of Management Reporting and Auditor Attestation on Internal Controls over Financial Reporting* (the "Internal Control CBA"). Among the many papers and media articles that have been published on the costs vs. benefits debate of SOX 404, the Internal Control CBA is one with a Canadian perspective: it is based on Canadian issuers, listed on a Canadian exchange and analyzes potential costs for Canadian issuers.

The Internal Control CBA identifies a significant population of small TSX issuers for which the quantifiable benefits of the Proposed Internal Control Instrument fall well short of the expected benefits. We do not believe that the non-quantifiable benefits from the Proposed Internal Controls Instrument justify imposing such a cost burden on the shareholders of these small issuers for the sake of harmonized regulation with U.S. issuers.

We also believe the cost estimates in the Internal Control CBA would be increased significantly if the research took into account the higher than expected costs that are arising from the implementation of SOX 404. The U.S. experiences with SOX 404 have been reported at length in the financial press and through surveys and studies by organizations such as Financial Executives International. Recent reports also indicate that compliance with SOX 404 has caused delays in annual and interim financial reporting for many U.S. issuers.

This additional cost burden may also impair the competitiveness of our capital market in comparison to non-U.S. markets, such as the London Stock Exchange and the Alternative Investment Market ("AIM") in London, U.K., where there is less regulation.

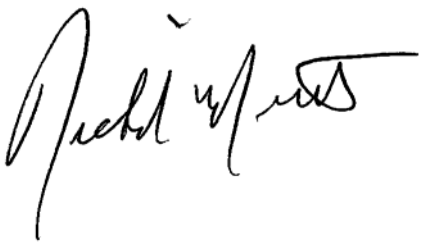
Perhaps most importantly however, capital that could be put to use growing a smaller Canadian enterprise through exploration of mineral or oil and gas reserves, or in commercializing biotechnology research findings, may be compromised for the sake of compliance costs for which there is no demonstrated benefit. More than 50% of the world's public mining companies are listed on the Exchanges, and it is in the best interests of Canadian capital markets for this to continue to be the case.

We therefore recommend that smaller TSX issuers be excluded from the Proposed Internal Control Instrument, in addition to the exclusion of TSX Venture issuers. While the number of excluded TSX issuers may appear to be significant, these issuers represent a very small proportion of total market capitalization and secondary market trading. We would support such exclusion based on one of several possible bright line tests, and we suggest that the size test be consistent with an existing size test, such as the current size test of U.S. $75 million public float currently applied to issuers using the Multijurisdictional Disclosure System. We also suggest requiring additional disclosure as is necessary for excluded issuers, to enhance the transparency of which issuers are not required to comply**.**

In addition to our comments in this letter, please also see Appendix 1 for our responses to the questions outlined in the Request for Comment.

Thank you for the opportunity to comment on the Proposals. If you wish to discuss any of the comments in more detail, we would be pleased to respond.

Yours very truly,



Richard W. Nesbitt
Chief Executive Officer

cc: Rik Parkhill, President, TSX Markets
Linda Hohol, President, TSX Venture Exchange

APPENDIX 1
Specific Request for Comments

SUMMARY OF INTERNAL CONTROL MATERIALS

Scope of Application

1. ***Do you agree that the Proposed Internal Control Instrument should apply to all reporting issuers other than investment funds and venture issuers? If not, which issuers do you believe should be subject to the Proposed Internal Control Instrument?***

   The table set out below under "5. Summary of Proposed Internal Control Materials – Effective date and transition" provides a breakdown of issuers by market capitalization, which may be helpful in preparing your response to this question.

   While we agree that the Proposed Internal Control Instrument should not apply to venture issuers or investment funds, we also strongly believe that the Proposed Internal Control Instrument should not apply to small TSX issuers. Our proposed threshold for exclusion is outlined below.

   The table set out under question 5 of this Request for Comment shows that although Canadian-based issuers with a market capitalization of less than Cdn$75 million make up 36% of the number of Canadian-based issuers on TSX, this group only represents 1% of the total market capitalization. The table shows that, if smaller TSX issuers are excluded, the bulk of the market capitalization on TSX will continue to be made up of TSX issuers who must comply with either the Proposals or SOX 404. As such, the objective of improving investor confidence through more rigorous financial reporting and reduced risk of significant financial misstatements is met when small TSX issuers are excluded.

   In addition, the Internal Control CBA states on page 56:

   > "3.1.1 Optimal Cut-off Point for Regulatory Exemption
   >
   > While the choice of exchange may be a simple delineator for any permitted exemption, **the economic determinant is size (emphasis is ours)**. Using the data we have, CRA was able to estimate an optimal cut-off size for exempting TSX-listed issuers from either the auditor attestation requirement or from both requirements."

   We recommend that the Proposed Internal Control Instrument should not apply to TSX issuers with a public float of less than U.S.$75 million.

   The threshold of U.S.$75 million is similar to the threshold used for the Multijurisdictional Disclosure System ("MJDS") with the U.S. By using this threshold, we maintain consistency and transparency in the use of a size test, and reduce any perceived risk of the MJDS being revoked by the SEC in the U.S. In addition, by using this cutoff point, issuers that are

eligible to access MJDS will be subject to similar investor confidence regulations as are in force in the U.S.

In the interest of improved transparency, we also recommend maintaining the currently proposed exchange threshold which excludes venture issuers. In fact, their exclusion confirms that the CSA acknowledges the argument that the costs outweigh the benefits of compliance for small Canadian issuers.

2. ***Do you believe that venture issuers should be subject to different requirements relating to internal control over financial reporting beyond what is required by the Revised Certification Materials? If so, what should be the nature of any different requirements?***

   We do not believe that venture issuers should be subject to different requirements relating to internal control over financial reporting beyond what is currently proposed in the Revised Certification Materials. However, since venture issuers, and potentially small TSX issuers, will still be required to certify as to the design of internal controls over financial reporting, and as to the design and evaluation of disclosure controls, we recommend additional guidance to assist them in such design and evaluation.

Management's Assessment of Internal Controls Over Financial Reporting

Management

3. ***Should the term "management" be formally defined? If so, what would be an appropriate definition?***
   We do not believe it is necessary to define "management" in the Proposed Internal Control Instrument. The CEO and CFO, or the persons performing similar functions if the issuer does not have such officers, should have the discretion to determine who would constitute "management" for purposes of evaluating, along with the CEO and CFO, the effectiveness of an issuer's internal control over financial reporting. Issuers subject to the Proposed Internal Control Instrument represent various sizes and organizational structures and given those differences, we believe that the CEO and CFO of the issuer are best suited to make the determination of who would comprise "management" for this purpose.

4. ***If "management" is not defined, is the guidance in the Proposed Internal Control Policy adequate and appropriate?***
   The guidance currently proposed in the Companion Policy is adequate.

Scope of Evaluation

5. ***Is the guidance set out in the Proposed Internal Control Policy with respect to the scope of the evaluation of internal control over financial reporting in relation to each of the circumstances set out above adequate and appropriate?***

We are concerned there is insufficient guidance with respect to the scope of internal control evaluation for smaller TSX issuers (those issuers with limited formal structures for internal control over financial reporting).

Suitable Control Framework

6. ***Are there any other control frameworks that should be identified in the Proposed Internal Control Policy as satisfying the criteria for a suitable control framework?***

   We are concerned that a suitable control framework has not been identified for smaller issuers. The apparent lack of such a framework has two significant implications. First, absent a framework, it becomes difficult, if not impossible, to measure a public interest benefit associated with the internal control report for a smaller issuer. Second, smaller issuers may find it unduly difficult and cost prohibitive to attempt meaningful compliance with the Proposed Internal Control Instrument. There should be an identified framework that is constructed with the specific nature of smaller public companies in mind. Without one, the following negative implications will likely result.

   First, in order to develop a suitable, or modify another current framework, smaller TSX issuers would have to bear the additional and disproportionate cost of trial and error with respect to that framework in the short term. It is unclear whether the staggered implementation dates will help mitigate this problem.

   Second, since venture issuers, and possibly small TSX issuers, will also still be required to design internal controls over financial reporting under the Revised Certification Instrument, they may look to the three identified control frameworks as standards for the purposes of complying with certification.

   In the alternative, should small TSX issuers be required to comply with the Proposed Internal Control Instrument, we recommend that compliance be deferred for small TSX issuers until a suitable control framework is identified for issuers that have limited formal structures for internal control over financial reporting. We understand that the Committee of Sponsoring Organizations of the Treadway Commission in the U.S. is developing guidance for small issuers. We recommend that this guidance be studied with reference to whether it would be equally applicable and practical for small TSX issuers. If it is not found to be practical for small TSX issuers. we recommend that such a suitable framework be developed in Canada for this purpose.

7. ***Are there any specific aspects of the identified control frameworks on which additional guidance is required to assist in their application by issuers that have limited formal structures for internal control over financial reporting?***

Each of three identified control frameworks is inadequate with respect to smaller issuers. Additional guidance is required to assist in their application for smaller issuers.

We understand that The Canadian Institute of Chartered Accountants (the "CICA"), publisher of the Risk Management and Governance series, has acknowledged an opportunity exists to add to the series specific guidance for smaller issuers. We recommend that the CSA work with the CICA to assist in the creation of such guidance. With the staggered implementation dates currently proposed, there is sufficient time to research such guidance and to consider the research findings on how it will affect smaller issuers' internal control reports.

Until such guidance is created, we also recommend that Companion Policy 52-109CP be amended to expressly say that the suitable control frameworks described in the Proposed Internal Control Policy have not been endorsed for purposes of any certifications provided by venture issuers under the Revised Certification Instrument.

Evidence

8. ***Is the guidance in the Proposed Internal Control Policy regarding the content of the evidence adequate and appropriate?***

   The guidance is not adequate in respect of issuers that have limited formal structures for internal control over financial reporting. Issuers lacking formal structures tend to rely heavily on management supervisory types of controls to achieve internal control over financial reporting. It is considerably more difficult to document the testing of management supervisory type controls and thus to create evidence, either in written or non-written form, which can be stored and retrieved upon request.

9. ***Are the requirements in the Proposed Internal Control Instrument regarding the manner in which the evidence must be maintained adequate and appropriate? Is the guidance in the Proposed Internal Control Policy regarding the manner in which the evidence may be maintained adequate and appropriate?***

   Our response to Question 8 above describes our concerns about a smaller issuer's ability to create evidence that must be maintained.

10. ***Is the requirement in the Proposed Internal Control Instrument on the period of time during which the evidence must be maintained adequate and appropriate?***

    We have no comment.

Internal Control Report

11. ***Is it appropriate to require disclosure of any limitations in management's assessment of the effectiveness of an issuer's internal control over financial reporting extending into a joint venture, VIE or acquired business? If not, are there alternative ways***

of providing transparency with respect to any limitations in management's assessment?

Yes – it is appropriate to require disclosure of such limitations. Disclosure of the limitations in the internal control report is appropriate, given that the issuer can describe in full detail the extent of such limitations and the reasons why, rather than simply signifying that such limitations exist (i.e. in the certification forms).

12. ***Are there any other circumstances under which management may reasonably limit its assessment? Should disclosure of these circumstances be required?***

The CSA should consider the limitations imposed upon one or more issuers who are the subject of a merger, amalgamation, arrangement, or take-over (or reverse take-over), particularly where the management and board of the resulting issuer are new/different to the resulting entity.

Exemptions

13. ***Are the exemptions from the Proposed Internal Control Instrument appropriate?***

We have no comment.

14. ***Are there any other classes of issuers that should be exempt from the Proposed Internal Control Instrument?***

We have no comment.

Effective Date and Transition

15. ***Is the phased-in implementation of the Proposed Internal Control Instrument appropriate?***

The phased-in implementation is welcomed, however, as outlined in Question 1, we recommend a cut-off point for compliance, rather than delayed compliance, for small TSX issuers.

16. ***Does the phased-in implementation adequately address the concerns regarding the cost and limited availability of appropriate expertise within reporting issuers and among external advisors and auditors? If not, how can these concerns are addressed?***

The phased-in implementation does not adequately address the cost and limited resource concerns, and will not sufficiently ease the burden on smaller issuers. While we agree with the phase-in, it would be useful to delay compliance for Canadian issuers who are not already complying with SOX 404, until the CSA has had sufficient time to study and digest the impact of SOX on SEC registrants. As this Proposed Internal Control Instrument is largely based on SOX 404, we should learn from the U.S. experience. If one of the benefits of the Proposed Internal Control Instrument is alignment of our regulatory regimes, we should ensure that we take into account all additional guidance from the U.S. experience.

ANTICIPATED COSTS AND BENEFITS – PROPOSED INTERNAL CONTROL MATERIALS

17. Are there any costs or benefits associated with the Proposed Internal Control Materials that have not been identified in the Internal Control CRA? If so, what are they?

Subsequent to completion of the Internal Control CBA, there has been a continuous stream of new information in the public media, indicating that estimates of the cost to execute SOX 404 audits are higher than were initially expected. At the same time, increased demand for auditors is rising, affecting the cost of all audits. Therefore, if the Internal Control CBA were to be prepared today, we believe the cost estimates contained in the Internal Control CBA would likely be significantly higher.

Recent U.S. experience should be also taken in account: (i) in determining who should be subject to the Proposed Internal Control Instrument; and (ii) whether changes need to be made to the Proposed Internal Control Instrument and the proposed auditing standard in order to reduce the costs of compliance.

The Canadian market is different from the U.S. market – ours is a small-cap market, known for small, venture type issuers, particularly in mining exploration, and oil and gas. Compliance with the Proposed Internal Control Instrument by these companies could result in critical capital being redirected to compliance over financial reporting, rather than towards, for example, exploration, for companies that are still in capital expenditure mode.

Opportunity costs because of competitive burden – will likely prevent junior issuers in the venture market from growing and graduating to the senior exchange, and may serve to limit the growth potential of such issuers. In effect, the exchange threshold will create a competitive barrier for the Canadian market. Other markets such as AIM, will have a competitive advantage in the small issuer market, given that regulatory compliance costs will not be as high in that market.

18. Do you believe that the benefits (both quantifiable and unquantifiable) justify the costs of compliance (both quantifiable and unquantifiable) for:

a. ***issuers with a market capitalization of less than $75 million?***

No. Please see our comments to Question 2. We believe that at this threshold, the costs of compliance will clearly outweigh the benefits.

b. ***issuers with a market capitalization of $75 million or more but less than $250 million?***

It is possible that the benefits of compliance may justify the costs at this threshold, but we have not seen enough data to clearly show this relationship.

c. issuers with a market capitalization of $250 million or more but less than $500 million?

It is possible that the benefits of compliance may justify the costs at this threshold, but we have not seen enough data to clearly show this relationship.

d. *issuers with a market capitalization of greater than $500 million?*

It is possible that the benefits of compliance may justify the costs at this threshold, but we have not seen enough data to clearly show this relationship.

e. *all issuers?*

No. We have not seen positive data to show us that the costs of the Proposed Internal Control Instrument will justify the benefits.

Why*?*

The bulk of research and literature, from both Canada and the U.S., shows that the costs outweigh the benefits for smaller issuers. Further, the Internal Control CBA overwhelmingly supports the same position, that size should be the cut-off for compliance. We recognize that the U.S. $75 million public float threshold we are recommending was not considered by the CSA in its alternatives and is not readily comparable to the research in the Internal Control CBA. However, we believe that is it an appropriate line to draw, based on what we know to date, as to where the benefits of compliance for Canadian listed issuers may exceed the costs.

ALTERNATIVES CONSIDERED – PROPOSED INTERNAL CONTROL MATERIALS

19. Do you agree with our assessment of the identified alternatives?

We commend the CSA for identifying and considering each of the six alternatives. However, for the reasons outlined in Question 1, we recommend the adoption of a slightly modified version of Alternative #3 – the more limited scope of application of the Proposed Internal Control Instrument. We respectfully request the CSA reconsider its current position and adopt this alternative, and allow the exclusion of non-venture issuers based on a public float threshold. We will address the risks identified in the Request for Comment with this alternative below:

Two levels of regulation – Venture issuers and small TSX issuers will still be subject to a stringent corporate governance regime, and under the

Revised Certification Instrument, they will still be required to design internal controls over financial reporting.

Practical and transparency issues – This risk can be minimized through proper disclosure by those TSX issuers not required to comply with the Proposed Internal Control Instrument. Transparency is also improved by the fact that all U.S. interlisted issuers, and MJDS filers, will automatically be required to comply with either SOX 404 or the Proposed Internal Controls Instrument. Practical issues can also be easily addressed – we suggest that the public float threshold should be exceeded for a minimum continuous period, which would then trigger the issuer's requirement to comply with the Proposed Internal Control Instrument for the next fiscal year end, and do so for a prescribed period of time. Upon triggering the requirement to comply, such issuers could also be required to issue a press release and file a similar type document on SEDAR. Adjustments could also be made to the SEDAR issuer profile page to allow for an indication of whether or not the issuer is required to comply with the Proposed Internal Control Instrument.

Reputation of TSX – Although this may be a risk with U.S. investors, the majority of the TSX Canadian-based market capitalization will be required to comply with the Proposed Internal Controls Instrument, and those TSX issuers who are U.S. interlisted or MJDS compliant will also be required to comply. This alternative will enhance market reputation, while maintaining an appropriate balance between costs and benefits of internal controls reporting.

20. What other alternatives, if any, would achieve the objectives identified above?

An alternative that may also relieve the cost burden on small TSX issuers would be to introduce an exemption, under Part 7 of the Proposed Internal Controls Instrument, whereby issuers with a public float of U.S.$75 million could be exempt from compliance upon the receipt of disinterested shareholder approval on a specific resolution put to shareholders.

SUMMARY OF CHANGES TO CURRENT CERTIFICATION MATERIALS

Significant Changes to Current Certification Instrument and Current Certification Forms

Voluntary Filed AIFs

21. Is it necessary or appropriate to require a venture issuer to refile its annual certificates for a financial year when it voluntarily files an AIF for that financial year after it has filed its annual financial statements, annual MD&A and annual certificates for that financial year?

Yes. The annual certificate is worded in the past tense with respect to the annual filings then filed. An AIF filed after annual financial statements will inevitably contain new information, or will summarize existing information in a different context. Absent a re-filed certification, the AIF is not covered by the existing certifications. If the issuer is relying on the AIF as a document incorporated by reference in order to raise capital, or as part of its continuous disclosure record, it will need to be protected by the certifications. Otherwise, there may be a gap in identifying reliance by investors and corresponding liability by the issuer and its CEO and CFO.

22. ***Since the AIF may be voluntarily filed several months after the issuer's annual financial statements and annual MD&A, there may be a significant gap between the time that the annual financial statements and annual MD&A are filed and the time that the annual certificates are refiled. Is this timing gap problematic?***

While we are of the view that a voluntarily filed AIF should be covered in an issuer's certifications, a significant timing gap between the date of filing the original certificate (covering the annual financial statements and the related MD&A) and the re-filed certificate including the AIF may create confusion. It must be clear from the revised certificate, that the representations relating to previously filed documents remain unchanged and that the certificate has been refiled solely to cover the voluntarily AIF. This result may be most clearly obtained, if a separate certificate, covering the voluntarily filed AIF, is required to be filed.

Significant Changes to Current Certification Policy

Guidance Regarding a Certification Extending into Underlying Entities

23. ***Is the guidance regarding the treatment of underlying entities set out in the Revised Certification Policy Adequate and appropriate?***

We have no comment.