

June 28, 2007

**VIA E-MAIL & DELIVERED**

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Nova Scotia Securities Commission  
New Brunswick Securities Commission  
Office of the Attorney General, Prince Edward Island  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Department of Justice,  
Government of the Northwest Territories  
Registrar of Securities, Government of Yukon  
Registrar of Securities, Legal Registries Division,  
Department of Justice, Government of Nunavut

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c/o Mr. John Stevenson  
Secretary  
Ontario Securities Commission  
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Madame Anne-Marie Beaudoin  
Directrice du secrétariat de l'Autorité  
Autorité des marchés financiers  
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Montréal, PQ H4Z 1G3

Dear Sirs/Mesdames:

**Re: Request for Comments - Proposed Repeal and Replacement of MI 52-109, Forms 52-109F1, 52-109FT1, Forms 52-109F2 and 52-109 FT2 and Companion Policy 52-109CP - *Certification of Disclosure in Issuers' Annual and Interim Filings* (the "Proposed Amendments" or "NI 52-109")**

TSX Group Inc. ("TSX Group" or "we") welcomes the opportunity to comment on behalf of both Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX Venture") on the Proposed Amendments published by the Canadian Securities Administrators (the "CSA") on March 30, 2007. Unless otherwise indicated, capitalized terms have the meanings as defined in the Proposed Amendments.

TSX Group and the CSA share fundamental objectives. We both desire fair and efficient Canadian capital markets that serve as an accessible source of public capital to finance Canadian innovation and growth. We therefore strongly support the CSA in their efforts to ensure our regulatory environment is adapted to and reflects the size and unique nature of Canada's capital markets. We support the CSA's decision not to proceed with a requirement for external auditor attestation of management's evaluation of the issuer's internal controls over financial reporting ("ICFR") for issuers, similar to section 404 of the *Sarbanes-Oxley Act of 2002* ("SOX").

We have reviewed the Proposed Amendments and respectfully request that:

- TSX Venture issuers be exempted from the requirement to evaluate the effectiveness of ICFR at the end of the financial year and the enhanced certification and disclosure requirements resulting from this evaluation;
- smaller TSX issuers should be able to avail themselves of the ICFR design accommodation set out in NI 52-109;
- the CSA create or support a task force that will develop an internal control framework for small to medium size ("SME") issuers; and
- TSX Venture issuers graduating to TSX be exempted from the requirement to evaluate the effectiveness of ICFR and the resulting certification and disclosure requirements for a period of one year from graduation to TSX.

In addition to our comments in this letter, please see Appendix 6 for our responses to the questions outlined in the request for comment.

### **Competitive Environment**

Canadian capital markets generally cater to SME issuers. Generally, we view a SME issuer as an issuer with a market capitalization of C\$500 million or less. We provide this metric as an indication of the importance of these issuers to our capital markets. Canadian issuers tend to access the public equity market at an earlier stage in company growth than is the norm in the U.S. capital markets. While private equity usually still plays an important role in supporting the growth of smaller companies, even at this early stage, public capital is a viable option for SME issuers in Canada.

The London Stock Exchange's Alternative Investment Market ("AIM") and the Australian Stock Exchange ("ASX") are principally SME capital markets. The U.S. capital market, comprised in large part by New York Stock Exchange ("NYSE") and NASDAQ listed issuers, is comparatively more of a large issuer capital market. Please refer to Appendix 1 for a comparison of the size distribution of TSX, TSX Venture, NYSE, NASDAQ, AIM and ASX listed issuers as at May 31, 2007.

To date, securities regulators in the United Kingdom and Australia, home jurisdictions for AIM and ASX respectively, have not moved to adopt SOX-like rules. These countries, among other things, do not require ICFR or disclosure control certification. For reference, we attach as

Appendix 2 a summary highlighting some of the differences between the governance and financial reporting requirements imposed on TSX, TSX Venture, AIM, and ASX issuers.

Securities regulators for AIM and ASX have taken an alternative regulatory approach to financial reporting and related governance from that taken in the United States and Canada. This approach appears not to have affected investor confidence, discouraged investors from investing in these markets, or hampered issuers from raising capital.

AIM is the fastest growing market for SME issuers. For example, in 2006, AIM added 462 issuers (124 of them issuers from outside the United Kingdom). In addition, AIM financings grew by approximately 75% in 2006, from C\$18.7 billion in 2005 to C\$32.7 billion in 2006. For the first five months of 2007, AIM has added 101 listings (26 of them from outside the United Kingdom) and AIM financings having topped C\$14.5 billion for the same period.<sup>1</sup>

The ASX listed 244 new issuers in 2006 and 100 new issuers in the first five months of 2007<sup>2</sup>. Total ASX financings for 2006 were C\$52.7 and C\$28.7 billion for the five months ended May 31, 2007<sup>3</sup>.

TSX added 197 issuers (24 foreign) in 2006 and 85 issuers (10 foreign) for the first five months of 2007, respectively. Total financings on TSX were C\$42 billion and C\$23 billion for 2006 and the five months ended May 31, 2007, respectively.

TSX Venture added 186 issuers (4 foreign) for the year 2006 and 98 issuers (3 foreign) in the first five months of 2007. Total financings on TSX Venture were C\$8 billion for 2006 and C\$4 billion for the first five months ended May 31, 2007, respectively.

While AIM and ASX have had successes, the U.S. capital markets appear to have grown at a slower pace. One measure of growth is the number new initial public offerings (“IPOs”) in a year, as outlined in Appendix 3. In this respect, U.S. IPO numbers (including non-SME issuer IPOs) have not kept pace with Europe. The proportion of European IPOs to U.S. IPOs between 2002-2004 is roughly 1.85:1. Starting in 2005, following a major part of the SOX implementation in 2004, the proportion increases to over 3.0:1.

Canada has implemented several SOX initiatives, other than the auditor attestation requirements of SOX section 404, such as audit committee rules, auditor oversight and financial statement and disclosure control certification. The proportion of European IPOs to Canadian IPOs has moved from roughly 1.2:1 in 2002 and 2003 to over 2.2:1 in 2005 and 2006. Canadian capital markets have shown reasonable growth to this point when compared to the U.S. but less so when compared to Europe.

Historically, the CSA has looked first to regulatory developments in the U.S. capital markets when developing its requirements. This makes sense given Canada’s ties to the U.S. However, despite its close proximity to Canada, we should recognize that the U.S. is designing its regulation to meet the needs of a non-SME market and that following the implementation of SOX, the U.S. capital market appears to be losing business (both SME and larger capitalization

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<sup>1</sup> AIM Fact Sheets on London Stock Exchange Website Online: <<http://www.londonstockexchange.com>>. 2005 and 2006 financings converted to Canadian dollars using the 2006 average British pound to Canadian dollar exchange rate.

<sup>2</sup> ASX Website <<http://www.asx.com.au>>

<sup>3</sup> World Federation of Stock Exchanges online: <<http://www.world-exchanges.org>>.

issuers) to global capital markets. We believe the CSA should pay careful attention to regulatory initiatives and approaches in other SME capital markets such as Australia and the United Kingdom. This is particularly important if, in fact, SOX legislation is dissuading participants from the U.S. capital markets (a situation that we should avoid in Canada).

We believe the success of AIM and ASX has, in part, stemmed from the fact that each market has a regulatory regime deeply focussed on the needs of a SME capital market and that SME issuers are finding the U.S. capital markets, with SOX legislation, less attractive.

### **TSX Venture Issuer Exemption**

We acknowledge and commend the CSA's efforts to strike a balance between the costs of regulation on venture issuers (as such term is defined in securities legislation) with the overall benefits to the Canadian capital markets of enhanced reliability of financial reporting incorporated in NI 52-109. We are, however, of the view that the costs of compliance associated with the evaluation of the effectiveness of ICFR and the related certification and disclosure obligations contained in the Proposed Amendments will be considerable for TSX Venture issuers and will outweigh the perceived investor protection benefits. Moreover, we are concerned that the growing cost of regulation may drive issuers away from our venture market to foreign markets with regulatory regimes more tailored to SME issuers or may delay issuers going public, which reduces Canadian investment prospects.

We strongly support the CSA's efforts to develop regulatory approaches that take into account the profile of the junior Canadian public equity market. There have been several instances in which Canadian regulators have adapted corporate governance, financial reporting and other disclosure requirements to reflect the fact that this market is a distinct market from the senior equity market. Among other things, venture issuers are not required to file an annual information form, they have longer financial reporting deadlines than senior equity market reporting issuers, they have different requirements with respect to audit committee composition, and, generally, they have less detailed disclosure obligations with respect to audit committee and other corporate governance matters. Please refer to Appendix 2 for a synopsis of the differences in selected governance and financial reporting standards between TSX and TSX Venture. These distinctions recognize the unique nature of TSX Venture and the vital contribution it makes to the Canadian economy. We believe a similar distinction is warranted with respect to the ICFR proposals.

In addition to securities law requirements relating to corporate governance and financial reporting, TSX Venture actively oversees its issuers and imposes its own governance and financial reporting standards, aimed at, among other things, fostering investor confidence. TSX Venture also imposes financial listings tests, ongoing listing rules and rigorous background checks on all directors and officers of TSX Venture issuers. The sum total of the foregoing is that TSX Venture already represents one of the strongest regulatory regimes for junior issuers in the world. We believe the current regime is strong and that the costs of compliance with the Proposed Amendments will outweigh the perceived benefits associated with increasing management's focus on ICFR.

Moreover, because many TSX Venture issuers do not generate revenue, investors in TSX Venture issuers tend to rely on information, other than financial statements, such as drill results and clinical trial results, in making their investment decisions. Therefore, for the foregoing

reasons, as detailed below, we respectfully request that the CSA exempt TSX Venture issuers from the requirement to evaluate the effectiveness of ICFR at the end of the financial year and to disclose in their annual MD&A their conclusions about the effectiveness of ICFR based on this evaluation. We propose that the exemption referred to above would be revisited after a three-year period from the date of implementation of the Proposed Amendments, following a CSA review of the effects of the implementation of the enhanced certification and disclosure requirements of NI 52-109 on TSX issuers, especially smaller TSX issuers.

#### *Distinct Nature of TSX Venture Market*

The TSX Venture market is unique in its own right. It has had a long history of small issuers successfully raising small amounts of public capital at an earlier stage than senior market issuers. These are higher risk enterprises, both in terms of business risk but also in terms of the absence of classical internal controls, such as segregation of duties. While there are compensating controls such as management supervisory controls, shareholders know and accept that those controls are thoroughly dependent on trust in officer and director integrity and tone at the top. This market has its own listing, corporate governance and other requirements that are tailored to emerging companies. This market is branded separately from the senior market, which among other things, provides a bright-line notice to investors of the distinct and higher risk profile of this market.

Given the smaller management and overall staff complement that is typical of a TSX Venture issuer, we believe the ICFR design accommodation requirements will impose a significant burden on TSX Venture issuers. TSX Venture issuers will likely be relying on design accommodation on an ongoing basis with little or no likelihood they will be able to remediate such internal control deficiency. This situation tends to emphasize the unique nature of this market and the need to differentiate it through proportionate regulation. As previously outlined, the CSA has adopted different standards of regulation for the venture and senior Canadian equity markets and we respectfully submit that exempting TSX Venture listed issuers from the Proposed Amendments would not impair investor confidence in the venture market.

#### *Robust Regulatory Regime*

The corporate governance and financial reporting securities law requirements that apply to TSX Venture listed issuers are more robust than similar requirements that apply to issuers on AIM or ASX. Generally, TSX Venture issuers must comply with more stringent requirements covering, among other things, audit committee composition, including independence and financial literacy requirements and quarterly financial reporting requirements. Currently, the CEO and CFO of a TSX Venture issuer must certify, both in conjunction with its interim and annual filings (which generally refer to financial statements and related MD&A), that: (i) the issuer's financial statements and related MD&A are free from misstatement; (ii) the issuer's financial information fairly presents its financial condition, results from operations and cash flows; (iii) they have designed disclosure controls and procedures ("DC&P") and on an annual basis have evaluated the effectiveness of the issuer's DC&P and disclosed the conclusions about the effectiveness of DC&P in the issuer's annual MD&A; and (iv) they have designed ICFR and have disclosed in the issuer's MD&A any recent changes in the issuer's ICFR.

In addition, TSX Venture imposes the following governance standards on its listed issuers: (i) detailed filing requirements and reviews on all listings, financings, acquisitions, restructurings and other transactions; (ii) review of the continuous disclosure record, including financial

statements by a dedicated compliance and disclosure department; (iii) review of suitability of all directors and officers to ensure the individuals have the relevant business experience, appropriate public company experience and a history of regulatory compliance (both legal and financial); (iv) a requirement that the CFO must be “financially literate” within the meaning of Multilateral Instrument 52-110 - *Audit Committees* (“MI 52-110”); (v) a requirement that a majority of the members of the audit committee are independent (this is a more stringent requirement than that imposed by MI 52-110); (vi) mandatory separation of office for the CEO and CFO (except in the case of Capital Pool Companies and issuers on the TSX Venture NEX board; and (vii) a requirement that all cheques must be signed by two authorized signatories of the issuer.

We believe that TSX Venture issuers are subject to robust regulatory and exchange governance and financial reporting requirements. In fact, the TSX Venture regime is already much more robust in many aspects than those in place in markets such as the ASX, AIM and the Canadian Trading and Quotation System. We are concerned that if the enhanced certification and disclosure requirements in the Proposed Amendments were imposed on TSX Venture issuers, it would create a barrier to entry and therefore erode this market’s global competitiveness.

#### *Cost of Compliance*

While the elimination of the auditor attestation requirement in the context of certification of ICFR will address some of the cost concerns of issuers, we believe that in the case of TSX Venture issuers, the costs of compliance with the Proposed Amendments will be greater than the benefits to be derived in the form of enhanced reliability of financial reporting. Many TSX Venture issuers are at the start-up, development or exploration stage. Due to the size of these issuers and their relatively unsophisticated financial systems, less reliance is placed on internal controls and more emphasis is focused on substantive procedures related to the preparation of financial statements. In addition, these issuers often lack the resources required to comply with the enhanced certification requirements and, as a result, they could be forced to seek the guidance of external accounting, auditing and legal advisors to discharge their increased regulatory obligations. This would likely represent a significant cost to the issuer, both financially and in terms of the time and resources that must be devoted to compliance, instead of using those resources to grow the business.

#### *Investment Decisions not Generally Based on Financial Statements*

Furthermore, in the case of many TSX Venture issuers, investment decisions are not generally made based on the issuer’s financial statements, as these entities are not necessarily revenue generating at this early stage of development. Typically, these decisions are being made on the basis of the strength of the issuer’s management and its future prospects, such as mineral reserves and resources, proven reserves and probable reserves in the resource sector and clinical trial results and intellectual property rights attaching to drugs, compounds, processes and other assets in the biotechnology sector.

#### *TSX Venture Performance*

TSX Venture is operating well. It has been a major contributor to the Canadian economy. TSX Venture has produced approximately 350 graduates to TSX since 2000. It is our view that TSX Venture represents a carefully designed balance between regulatory protection and access to

capital. We believe the ICFR proposals represent increased costs to our issuers without proportionate regulatory benefit.

### **TSX Venture Graduates - Transitional Issues**

In conjunction with a TSX Venture exemption, we respectfully request that TSX Venture issuers who graduate to TSX should be exempted from the requirement to evaluate the effectiveness of ICFR and the resulting certification and disclosure obligations for a period of one year from graduation to TSX. We believe that a delay in the implementation of these requirements is necessary so that these issuers can plan for and comply with NI 52-109 in a cost efficient manner. Please refer to Appendix 4 for the number of TSX Venture who have graduated to TSX since 2000.

### **ICFR Design Accommodation for Smaller TSX issuers**

The Proposed Amendments contemplate that an issuer, other than a venture issuer, may in certain circumstances apply for relief if it believes it has a reportable deficiency relating to design that it cannot remediate. In order to promote certainty, transparency and reduce issuer costs, we request that rather than relying on regulatory relief, smaller TSX issuers should be able to avail themselves of the ICFR design accommodation set out in the Proposed Amendments based on threshold levels discussed below. It is important to note that extending this relief to TSX issuers does not necessarily mean that these issuers will necessarily avail themselves of this accommodation. It does, however, give these smaller TSX issuers the ability to make decisions with respect to internal control remediation appropriate to the size of their business.

While smaller TSX issuers generally have more established businesses than TSX Venture issuers, many of these issuers, in particular those in the resource and biotechnology sectors have profiles similar to TSX Venture issuers. Therefore, we believe they will face the same challenges as TSX Venture issuers in complying with NI 52-109. For example, many smaller TSX issuers are still in the development stage and accordingly are not generating revenue. Investors in these smaller TSX issuers, like investors in TSX Venture issuers, do not generally base investment decisions on the issuer's financial statements. To the extent they do rely on financial statements, the most meaningful financial statement item on which they focus is cash and, more specifically, the burn rate of cash. Investors in the resource sector tend to focus on the issuer's exploration results, proven and probable reserves and investors in the biotechnology sector tend to rely on clinical trial results and intellectual property rights.

Generally, TSX issuers with smaller market capitalizations have limited staff and often rely heavily on a small complement of senior management. This gives rise to segregation of duties challenges and the potential for management override of controls. In addition, these issuers may not have the in-house expertise in the areas of financial reporting and control that larger TSX issuers have. We believe these smaller issuers would not be able to comply with the Proposed Amendments without incurring costs disproportionate to their relative size, which may include, among other things, hiring additional personnel or external advisors. The increased cost of regulatory compliance has the effect of diverting the issuer's management and financial resources away from growing the business and could deter new issuers from listing on TSX. We do not think this is the appropriate balance the CSA is striving to achieve with the Proposed Amendments.

For the foregoing reasons, we believe that ICFR design accommodation should be granted to TSX issuers that fall below certain revenue and market capitalization thresholds. We respectfully propose, for your consideration, two threshold tests for the purposes of determining eligibility requirements. Under the first threshold test, issuers with annual audited revenue of \$2 million **OR** less or a market capitalization of \$75 million or less at the end of the issuer's financial year would be entitled to rely on ICFR design accommodation. Using data available at May 31, 2007, we estimate that approximately 468 TSX issuers subject to NI 52-109 would fall within this category. As outlined in Appendix 1, as at May 31, 2007, 92% of TSX Venture issuers, for whom ICFR design accommodation has been proposed by the CSA, have a market capitalization of \$75 million or less.

Alternatively, the threshold could be framed to extend this relief to TSX issuers with annual audited revenue of \$2 million or less **AND** market capitalization of \$300,000,000 or less. Based on May 31, 2007 available data, 172 TSX issuers subject to NI 52-109 would be eligible to rely on ICFR design accommodation. As at May 31, 2007, 5% of the total TSX issuer market capitalization is comprised of issuers with a market capitalization of \$300,000,000 or less.

We include for your reference, as Appendix 5, the breakdown of the number of issuers at May 31, 2007 under both proposed threshold scenarios, as well as at other revenue and market capitalization levels. We would be pleased to provide you with any other statistics that would be of assistance to you in your deliberation of this matter.

### **Absence of a Framework for SME Issuers**

We support the decision not to mandate the use of a control framework in the design and evaluation of the effectiveness of ICFR. Notwithstanding the easing of this requirement, we are concerned, however, that SME issuers do not have adequate tools available to them that will enable them to comply with the enhanced certification requirements without engaging external advisors. Many of these issuers have limited in-house financial control expertise and therefore need detailed guidance as to what constitutes appropriate control criteria, from which they can design and subsequently evaluate ICFR. We are of the view that the guidance published by The Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in July 2006 entitled *Internal Control Over Financial Reporting - Guidance for Smaller Public Companies* (the "COSO Guidance"), does not make the COSO framework (which was designed for larger issuers) significantly more practical for a SME issuer. Nor do we believe it would constitute meaningful, practical guidance for SME issuers. We have reviewed the Canadian Institute of Chartered Accountants publication *Internal Control: The Next Wave of Certification-Helping Smaller Public Companies with Certification and Disclosure about Design of Internal Control over Financial Reporting* published in April 2007. While we think it will be useful to issuers, it is not a framework and therefore we do not believe it will fill the gap created by the absence of a framework for SME issuers. In the absence of a suitable framework for SME issuers, we do not think issuers will be able to comply with the enhanced certification requirements.

We are concerned that issuers may not be comfortable disclosing that they have not adopted a framework, nor would most SME issuers have the expertise or desire to assume the responsibility for determining the sufficiency of control criteria to be used in the design and evaluation of ICFR. Accordingly, they may rely on a framework that is not suited for their control environment, which could result in issuers using part of a framework but rejecting other elements of such framework. This practice raises the disclosure issue as to whether the issuer



has, in fact, used a control framework in designing ICFR. With the advent of civil liability in several Canadian jurisdictions, it is important for SME issuers and their officers and directors to have a suitable framework against which ICFR can be designed and evaluated. The absence of such a framework increases the uncertainty surrounding what would constitute a reasonable investigation to support a due diligence defence in the event of proceedings under civil liability legislation for secondary market disclosures. The result will likely be to force issuers to perform additional procedures, hire external consultants or some combination thereof, which will disproportionately increase the cost of compliance with NI 52-109 for SME issuers.

As outlined in Appendix 1, a significant portion of our Canadian capital markets is made up of SME issuers. These issuers represent a very significant portion of our business and the overall Canadian economy. We believe the frameworks outlined in the Proposed Amendments including the COSO Guidance, will add value to issuers with a more robust staff complement, and internal control framework than exists in many SME issuers. For example, the COSO Guidance makes several references to an internal audit function; however, very few SME issuers have such a function. In addition, while the COSO Guidance is helpful in coping with segregation of duty issues in a 300-employee company, these techniques are not likely to add value to a SME issuer with a fraction of the number of employees.

In summary, the available guidance does not take into account the organizational structure and staff complement that characterizes many SME issuers. If the goals of NI 52-109 are to be met, then the management of SME issuers must have the appropriate tools that will assist them in designing and evaluating ICFR. We respectfully submit that the CSA must create or support a task force to develop a principles-based internal control framework for SME issuers. We believe this task force should include, among others, Canadian public accounting and risk management professionals, issuers and investors. We would be pleased to collaborate with the CSA in the development of a SME framework. We recognize that striking the right balance between principles-based and prescriptive guidance is a challenging task. Any such framework must be significantly detailed to provide guidance to issuers that do not have extensive internal control/risk management functions, and flexible enough to apply to a variety of economic sectors. In the absence of such guidance, these issuers may be burdened with significant compliance costs (both internal and advisory), a situation the CSA desired to avoid in moving away from auditor attestation of ICFR.

We would very much welcome the opportunity to discuss any of the foregoing with you in more detail. Please do not hesitate to contact us.

Sincerely,

**TSX VENTURE EXCHANGE INC.**

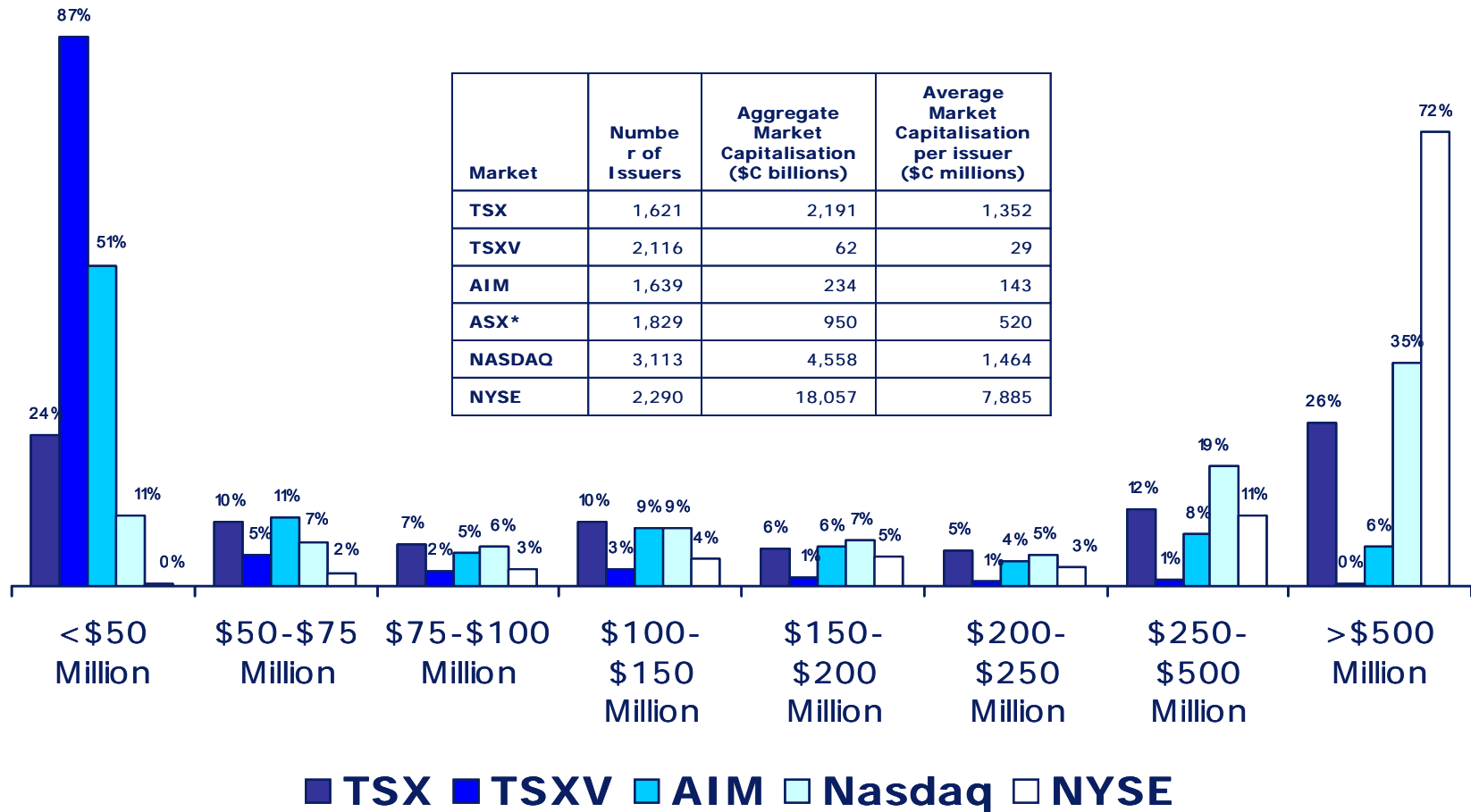


**TSX INC.**



**Appendix 1**  
**Size Distribution of Listed Companies**  
**TSX, TSX Venture, NYSE, NASDAQ AIM and ASX**  
**As at December 31, 2006**

**Size Distribution of Listed Companies by Exchange**



As at May 31, 2007. Includes all issuers, including investment funds and ETFs  
 \*ASX data as at December 31, 2006. Size distribution of listed companies is not available.

## Appendix 2

### Selected Governance & Financial Reporting Standards for TSX, TSX Venture, LSE, AIM and ASX

<u>Governance</u>	<u>TSX</u> <sup>1</sup>	<u>TSX Venture</u> <sup>2</sup>	<u>LSE</u>	<u>AIM</u>	<u>ASX</u>
Minimum number of independent directors	Disclose only	2	No minimum	No minimum	Disclose only
Nominating/corporate governance committee	Disclose only	Disclose only	Disclose only	No	Disclose only
Independence on nomination/corporate governance committee charter	Disclose only	Disclose only	Disclose only	No	Disclose only
Nominating/corporate governance committee charter	No, but disclose responsibilities	Disclose only	No, but disclose how executed Disclose only, including responsibilities	No	Disclose only
Compensation committee	Disclose only	Disclose only		No	Disclose only
Compensation committee charter	No, but disclose responsibilities	Disclose only	Disclose only	No	Disclose only
Disclosure of other corporate governance practices	Yes	Disclose only	Yes	No	Yes
Code of business conduct and ethics	Disclose, plus material departures	Disclose only	No	No	Disclose only

<sup>1</sup> Specific disclosure against enumerated heads of governance best practices.

<sup>2</sup> Disclosure of achievement of broad governance objectives generally.

<b><u>Audit committee/financial statements Governance</u></b>	<b><u>TSX</u></b>	<b><u>TSX Venture</u></b>	<b><u>LSE</u></b>	<b><u>AIM</u></b>	<b><u>ASX</u></b>
Mandatory audit committee (AC)	Yes	Yes	Comply or explain <sup>1</sup>	No	Yes for S&P/ASX index and top 300
AC Members Independent	All	Majority independent <sup>2</sup>	Comply or explain	No	Majority for S&P/ASX index and top 300
AC Charter	Yes	Yes	Comply or explain	No	Recommended
Minimum AC complement	3	3 <sup>2</sup>	2 or 3, depending on size	No	3, if in S&P/ASX index
AC Member financial literacy	All	Disclose only	Not required	Not required	All, if in S&P/ASX index
AC Members financial expert	Not required	Not required	1 recommended	No	1, if in S&P/ASX index
CEO/CFO Certification of financial statements	Yes	Yes	No	No	No
CEO/CFO Certification of ICFR					
- design	Yes	Yes	No	No	No
- evaluation	Proposed	Proposed	No	No	No
Annual statements due (days)	90 <sup>3</sup>	120 <sup>3</sup>	180	180	60
Interim statements due (days)	45 <sup>3,4</sup>	60 <sup>3,4</sup>	120 <sup>4</sup>	90 <sup>4</sup>	60 <sup>4</sup>
Audited financial statements required for business acquisitions	Yes	Yes	Variable	Yes	Yes
Auditor oversight by public inspection	Yes	Yes	Yes	Yes	Yes

<sup>1</sup> Comply or explain means that issuers not meeting a prescribed standard must disclose the fact, and provide an explanation why the standard was not met.

<sup>2</sup> These are TSX Venture requirements; not securities law requirements.

<sup>3</sup> Financial statements must be accompanied by management's discussion and analysis of financial position and results.

<sup>4</sup> In Canada, interim financial statements must be filed for each of the first, second and third quarters. In other jurisdictions, only a half-year interim financial statement is required.

### Appendix 3

#### Number of IPOs by Market

Year	U.S. <sup>1</sup>	Europe <sup>2</sup>	Canada <sup>3</sup>
2002	94	173	141
2003	79	149	124
2004	233	433	232
2005	197	603	272
2006	199	653	268

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<sup>1</sup> Hoover's IPO Central, online <<http://www.hoovers.com>>.

<sup>2</sup> PriceWaterhouseCoopers, IPO Watch Europe.

<sup>3</sup> TSX and TSX Venture listings concurrent with an IPO

## Appendix 4

### TSX Venture Graduates

<u>Year</u>	<u># of Graduates</u>
2007 to May 31 <sup>st</sup>	34
2006	67
2005	46
2004	58
2003	47
2002	25
2001	26
2000	45

**Appendix 5**  
**Distribution of TSX Issuers at Various Revenue and Market Capitalization Levels**

**Threshold Option 1 - Revenue Level or Market Capitalization**  
**Market Capitalization**

<b>Revenue</b>	<b>≤ \$25M</b>	<b>≤ \$50M</b>	<b>≤ \$75M</b>	<b>≤ \$100M</b>	<b>≤ \$150M</b>	<b>≤ \$200M</b>	<b>≤ \$250M</b>	<b>≤ \$300M</b>
≤ \$1M	268	365	440	493	588	648	711	750
≤ \$2M	302	395	468	517	610	665	726	765
≤ \$3M	323	411	483	531	620	673	732	770
≤ \$5M	347	428	496	543	632	684	742	779
≤ \$10M	393	465	524	568	648	698	752	789

**Threshold Option 2 - Revenue Level and Market Capitalization**  
**Market Capitalization**

<b>Revenue</b>	<b>≤ \$25M</b>	<b>≤ \$50M</b>	<b>≤ \$75M</b>	<b>≤ \$100M</b>	<b>≤ \$150M</b>	<b>≤ \$200M</b>	<b>≤ \$250M</b>	<b>≤ \$300M</b>
≤ \$1M	33	64	88	105	124	134	145	152
≤ \$2M	34	69	95	116	137	152	165	172
≤ \$3M	39	79	106	128	153	170	185	193
≤ \$5M	49	96	127	150	175	193	209	218
≤ \$10M	58	114	154	180	214	234	254	263

Compiled using data as at May 31, 2007. Total number of TSX issuers subject to NI 52-109 - 1300, which excludes investment funds and ETFs.

## Appendix 6

### Specific requests for comment

1. Do you agree with the definition of “reportable deficiency” and the proposed related disclosures? If not, why not and how would you modify it?

We agree with the definition of “reportable deficiency” and the proposed related disclosures. We note the terminology is different from that adopted in the U.S. for purposes of Section 404 of SOX. Our interpretation of this definition is that it is not the substantive equivalent of a “material weakness” which is the disclosure standard under Section 404 of SOX and that the threshold for disclosure would be higher under the proposed “reportable deficiency” definition. We think that it would be helpful to include in the Proposed Policy (as part of Section 8.1 - ICFR - reportable deficiency), some guidance around the CSA’s interpretation of the different threshold requirements, if any, between reporting under the Canadian and SOX regimes. We have reviewed the guidance in Part 8 of the Proposed Policy regarding the identification of a reportable deficiency and we are of the view that this guidance is too high level to be of meaningful assistance to SME issuers with limited internal financial reporting and control expertise. For example, Section 8.3, which outlines strong indicators of a reportable deficiency, detail the most extreme situations. While we understand that certifying officers must use their judgment in determining whether a reportable deficiency exists, SME issuers would benefit from the inclusion of indicators that may exist in a control environment with limited staff, where segregation of duties is difficult to achieve, the potential for management override of controls may exist, or the existence of operations over many geographic locations.

2. Do you agree that the ICFR design accommodation should be available to venture issuers? If not, please explain why you disagree.

As we have outlined in our comment letter, we are requesting that TSX Venture issuers be exempt for the enhanced certification and disclosure requirements of NI 52-109 and therefore these issuers would not avail themselves of this design accommodation. Given the nature of TSX Venture issuers, (in particular, the smaller management team and staff size that is typical of these issuers), we believe the costs involved in order to comply with design accommodation reporting would outweigh the benefits in terms of enhanced disclosure to TSX Venture investors. We do, however, think that it should be open to a smaller TSX issuer, as set out in our comment letter, to avail itself of the ICFR design accommodation. Like TSX Venture issuers, these smaller TSX issuers typically have limited staff and as such segregation of duties can be a control issue. In addition, there may be a concentration of decision-making power and the potential for management override of controls. Also, these smaller TSX issuers tend to have limited expertise in financial reporting and control matters. All of the foregoing can give rise to reportable deficiencies and like TSX Venture issuers, these issuers would not be able to remediate without incurring costs disproportionate to their relative size, which may include, among other things, hiring additional staff or external advisors. We therefore think it is appropriate to grant the issuers relief in the form of ICFR design accommodation.



3. Do you agree that our proposal to provide a scope limitation in the design of DC&P and ICFR for an issuer's interest in a proportionately consolidated investment or variable interest entity is practical and appropriate? If not, please explain why you disagree.

We have no comment on this proposal.

4. Do you agree that our proposal to allow certifying officers to limit the scope of their design of DC&P or ICFR within 90 days of the acquisition of a business is practical and appropriate? If not, please explain why you disagree.

We agree with the CSA proposal to allow certifying officer to limit the scope of their design of DC&P or ICFR following the acquisition of a business. However, we think that it is not practical to expect an issuer would be in a position to certify on DC&P and ICFR 90 days post-acquisition, especially in instances where the business acquired was not previously subject to certification, or the business is to be operated independently of the issuer and will not be subsumed within the issuer's existing control framework. We believe a more realistic period would be one year.

5. Do you agree that our proposal not to require certifying officers to certify the design of ICFR within 90 days after an issuer has become a reporting issuer or following the completion of certain reverse takeover transactions is practical and appropriate? If not, please explain why you disagree.

Please see our response to Question 4.

6. Do you agree that the nature and extent of guidance provided in the Proposed Policy, particularly in Parts 6, 7 and 8, is appropriate? If not, please explain why and how it should be modified.

We strongly support the CSA's efforts to expand the nature and extent of the guidance contained in the Proposed Policy. We note, however, that the guidance as drafted appears to be prescriptive, which may give issuers the impression that if not followed, they will not be in compliance with NI 52-109. In addition, we are of the view that the guidance is written at a very high level. In order to be meaningful to issuers, to the extent possible, the principles articulated should be fleshed out with examples or other indicators, as appropriate. In the absence of a framework, management will be looking to the guidance contained in the Proposed Policy to assist them in discharging their certification and disclosure obligations. Therefore, the guidance must provide appropriate direction to management as to how to comply with NI 52-109, while maintaining a flexible approach that can be adapted to the needs of issuers, large and small. Please refer to our comments in Question 1 and the discussion in our comment letter under the heading **Absence of a Framework for SME Issuers**.

7. Are there any specific topics that we have not addressed in the Proposed Policy on which you believe guidance is required?

We have no comment.