

TSX Venture Exchange

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July 27, 2006

## **VIA EMAIL AND COURIER**

British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 W. Georgia Street Vancouver, BC V7Y 1L2

Attention: Mr. Mark Wang

Dear Mr. Wang:

Re: BCSC Oversight Review of TSX Venture Exchange Inc. (the "Report")

We have received the Report which outlines the findings made by the British Columbia Securities Commission (the "BCSC") in its Oversight Review of TSX Venture Exchange Inc. ("TSXV") and we are pleased to provide our responses thereto. The section headings and "BCSC Staff's Recommendations" set out below correspond to those found in the Report. All terms not defined herein shall the meanings ascribed thereto in the Report.

## Compliance and Disclosure Overview

#### 1. Introduction

BCSC Staff's Recommendations:

None.

TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# 2. Purpose and scope

BCSC Staff's Recommendations:

None.

TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## 3. Reporting Structure

BCSC Staff's Recommendations:

No action is necessary.

In light of the BCSC staff's recommendations, no response is necessary.

## 4. Staffing and training

#### **BCSC Staff's Recommendations:**

BCSC staff recommend that TSX Venture consider whether staffing levels in Calgary and Montreal are adequate or whether higher workloads are temporary, or whether work can be completed more efficiently. *Priority: Low* 

#### TSXV Response:

TSXV regularly reviews its staffing requirements to ensure that compliance matters are being reviewed and resolved in a timely fashion. At this time, we are satisfied that staffing levels are adequate in the C&D department. During the review period, staff changes occurred in the Calgary office which did not occur in the Vancouver office. As acknowledged by BCSC staff in their review, these staffing shortages did not affect the timely resolution of C&D files but rather, impacted only on the timely closing of such files. TSXV's general practice is that if workloads increase for a short period in one office, C&D will transfer files to another office to ensure timely completion of files. However, C&D does not follow the same process of transferring files where the only outstanding matter is the formal closing of that file, as that is more efficiently handled by the staff member who conducted the original review. Assuming that the BCSC approves TSXV's submission of May 1, 2006 to permit the sharing of certain staff resources with the C&D department of TSX, C&D also hopes to be able to resolve temporary fluctuations in workloads by transferring some files to TSX staff in appropriate circumstances. With respect to the Montreal files, we previously recognized the need for additional French speaking resources, which formed one basis for our application to the BCSC to permit us to share a French speaking Manager employed TSX C&D. Once this approval is obtained, we expect that the workflow from the Montreal office will be completed more efficiently.

## 5. Communication with other TSX Venture departments

## BCSC Staff's Recommendations:

No action is necessary.

# TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# 6. Reporting to the Commission

#### BCSC Staff's Recommendations:

No action is necessary.

In light of the BCSC staff's recommendations, no response is necessary.

# 7. Liaison with other regulators

# BCSC Staff's Recommendations:

No action is necessary.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## 8. Hearings

## BCSC Staff's Recommendations:

No action is necessary. BCSC staff will assess the fairness and efficiency of the hearing process in the next oversight review.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# **Compliance and Disclosure Processes**

#### 1. Introduction

## BCSC Staff's Recommendations:

None.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# 2. Purpose and scope

**BCSC Staff's Recommendations:** 

None.

TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## 3. Tier maintenance reviews/inter-tier movement

#### (a) Process

# BCSC Staff's Recommendations:

No action is necessary.

In light of the BCSC staff's recommendations, no response is necessary.

#### (b) Tier maintenance reviews files

#### BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture ensure that C&D staff responsible for TMR review files include adequate documentation of the work performed, the decisions made, and the rationale behind decisions and actions taken. BCSC staff also recommend that management document their review and approval on each file or establish alternative procedures to ensure their staff have properly conducted their TMR reviews. In addition, sufficient information should be recorded in the files to enable assessment of the timeliness of completion of TMR reviews. *Priority: Medium* 

#### TSXV Response:

#### Documentation:

Historically, where the findings of the TMR review did not result in any deficiencies, TSXV staff did not document any comments to this effect. In the future, TSXV will ensure that work performed, all decisions made, and the rationale behind all decisions and actions taken for all TMRs files are documented.

#### Review by Management:

In light of the high volume of TMR reviews conducted annually, the lower level of risk associated with this component of C&D's work and the level of experience of staff who perform this function, TSXV considers it appropriate to continue with its existing policy of having staff involve management in TMR reviews only in complex circumstances, rather than have all TMR reviews approved by C&D management. However, TSXV will review its current processes to determine if additional procedures could be implemented to provide assurance that TMR reviews are in general being conducted properly.

## Timeliness:

All TMR reviews, whether completed manually or on-line, are logged into the Access database, which automatically records the date that a TMR review is entered into the database. In almost all instances, TMRs completed online are completed the same day. For those TMR reviews that are done manually and subsequently logged into the Access database, TSXV staff has been reminded to log each TMR at the commencement of each review. This procedure will enable better tracking of the timeliness of completion of the TMR review.

#### 4. Reinstatement reviews

# (a) Process

## BCSC Staff's Recommendations:

No action is necessary.

## TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## (b) Reinstatement review files

# **BCSC Staff's Recommendations:**

BCSC staff recommend that TSX Venture ensure that C&D staff responsible for reinstatement reviews including adequate documentation of the work performed, the decisions made, and the rationale behind decisions and actions taken. *Priority: Medium* 

# TSXV Response:

Staff has been reminded that a reinstatement review checklist must be completed and saved in the TSXV's document management information system together with all the relevant supporting documents for all reinstatements handled by C&D staff. A Team Manager or Manager will sign each checklist to indicate approval to reinstate has been granted, prior to the reinstatement bulletin being disseminated.

# 5. Capital pool company reviews

#### (a) Process

## BCSC Staff's Recommendations:

No action is necessary.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# (b) Capital pool company files

## BCSC Staff's Recommendations:

No action is necessary.

#### **TSXV** Response:

#### 6. Listed issuer surveillance files

# (a) Process

## BCSC Staff's Recommendations:

No action is necessary.

## TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## (b) SINC files

## BCSC Staff's Recommendations:

BCSC staff recommend that C&D consider modifying the service standard for closing files so the performance measurement is more meaningful. *Priority: Low* 

## TSXV Response:

At the beginning of 2006, C&D implemented an additional file closing service standard that has been incorporated into each C&D staff member's annual performance assessment.

## 7. Director/Officer suitability review

#### (a) Process

## BCSC Staff's Recommendations:

No action is necessary.

# TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## (b) Director/Officer suitability files

#### BCSC Staff's Recommendations:

BCSC staff recommend that C&D document SINC case recommendations and the reasons for them in all cases. *Priority: Medium* 

#### TSXV Response:

TSXV's SINC case file form is in the process of being revised to incorporate mandatory fields that must be completed before the system will allow a file to be closed. Staff has been reminded to either provide a summary of all material recommendations together with reasons in the "Closing Information" section of each SINC case file form, or else provide a cross reference to the appropriate related case "Notepad" documenting such information.

## (c) PIF reviews

## **BCSC Staff's Recommendations:**

BCSC staff recommend that C&D assess its PIF review process to ensure that it handles PIF reviews in a timely manner. BCSC staff also recommend that C&D management ensure that staff enter adequate notes into the database to track correspondence sent and received from individuals under review. *Priority: Low* 

## TSXV Response:

Effective February 2006, TSXV implemented a new Lotus Notes based PIF database. This new database permits TSXV management to generate various tracking and transaction ageing reports that enable management to better monitor backlogs at each stage of the PIF processing cycle. Currently, there are no material delays or significant backlogs. PIF staff have been reminded to enter details in the comments section of each PIF record following each instance of follow-up with individuals.

#### BCSC Staff's Recommendations:

BCSC staff also recommend that C&D consider modifying its service standard. In the case of an incomplete or deficient PIF, a better performance measure may be how quickly C&D staff send initial correspondence to the individual requesting resolution of deficiencies, and once all deficiencies are resolved, how quickly a research request is sent to RS (the latter performance measure would also apply to PIFs received without deficiencies). C&D could also measure how quickly they close files after receiving a research report from RS. *Priority: Low* 

#### TSXV Response:

With the implementation of the new database referred to above, TSXV is now able to generate various reports which enables C&D management to better monitor the progress of PIF reviews and the achievement of agreed performance targets. TSXV will review its Outstanding PIF Deficiencies Report and other tracking reports for further potential improvements.

# **Access to Trading**

#### 1. Introduction

#### BCSC Staff's Recommendations:

None.

# TSXV Response:

## 2. Purpose and scope

# BCSC Staff's Recommendations:

None.

# TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## 3. Benchmarks or performance measures

## BCSC Staff's Recommendations:

BCSC staff recommend that the TSX Venture consider establishing benchmarks or performance measures for its process and sub-processes related to its review and approval of trading access applicants, including members, POs, traders, and direct access providers. *Priority: Low* 

# TSXV Response:

TSXV will review its process and sub-processes related to the review and approval of trading access applicants, including members, POs, traders, and direct access providers, and consider whether relevant benchmarks or performance measures can be established.

## 4. Regular access to trading

# (a) Written standards for granting access and an opportunity to be heard

#### BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture includes written standards for granting access to trading in its rulebook as required by the recognition order. Further, BCSC staff recommend that TSX Venture harmonizes its standards for granting access with those of the TSX, by including the standards for imposing conditions on members, and the applicant's right to be heard. *Priority: Medium* 

#### TSXV Response:

TSXV will review its rulebook and will make the necessary revisions to ensure that its rulebook contains all mandated rules regarding access to trading. As part of this review, TSXV will review the TSX's standards for granting access, including the standards for imposing conditions on members, and the applicant's right to be heard, with a view to harmonizing, where appropriate, the TSXV and TSX standards.

# (b) Membership or participating organization application review and approval process

## BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture examines its partner, director, and officer suitability review process with the IDA to identify and eliminate duplicate procedures, or to better coordinate their efforts. *Priority: Low* 

## TSXV Response:

TSXV will examine its partner, director, and officer suitability review process to determine if the IDA and TSXV are duplicating procedures. TSXV will strive to eliminate any such duplicate procedures, and to better coordinate efforts in this area with the IDA.

#### BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture ensures that there is adequate documentation on each file to support a decision to grant, deny, or limit access. Further, evidence to demonstrate that the access was properly pre-authorized such as approval dates and access activation dates should be on file. *Priority: Medium* 

#### TSXV Response:

TSXV will review, and update as necessary, its current written procedures regarding the process to grant, deny, or limit access to require that each file contains adequate documentation, including approval dates and access activation dates.

#### BCSC Staff's Recommendations:

A comprehensive set of written procedures and the use of checklists, promotes awareness of the process, facilitates compliance with established procedures, leads to reasonable and consistent decisions, and ensures accountability. BCSC staff recommend that TSX Venture formalizes its procedures for reviewing and approving membership/PO applications, and enabling access. *Priority: Medium* 

#### **TSXV** Response:

TSXV will review, and update as necessary, its current written procedures for reviewing and approving membership/PO applications and enabling access.

#### (c) Trader application review and approval process

# **BCSC Staff's Recommendations:**

BCSC staff recommend that TSX Venture revises its procedures to obtain and retain the proof of completion of the CSC for all trader application approvals that require it. *Priority: Low* 

TSXV will investigate the feasibility of obtaining and retaining the proof of completion of the CSC for all trader application approvals that require it.

#### BCSC Staff's Recommendations:

BCSC staff recommend that the reviewer consistently initials and dates the sign-off section of the trader application. *Priority: Low* 

# TSXV Response:

TSXV will revise its procedure to require that the reviewer consistently initials and dates the sign-off section of the trader application.

# BCSC Staff's Recommendations:

A comprehensive set of written procedures and the use of checklists, promotes awareness of the process, facilitates compliance with established procedures, leads to reasonable and consistent decisions, and ensures accountability. BCSC staff recommend that TSX Venture formalizes its procedures for reviewing and approving trader applications, and enabling access. *Priority: Low* 

#### TSXV Response:

TSXV will review, and update where necessary, its current written procedures for reviewing and approving trading applications and enabling access.

#### BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture reviews its rulebook to determine whether references made to the assistant approved trader category are still relevant. *Priority: Low* 

#### TSXV Response:

TSXV will review its rulebook to determine whether references made to the assistant approved trader category are still relevant and make any necessary changes as a result of such review.

## 5. Direct market access

#### (a) Written procedures for direct market access

#### BCSC Staff's Recommendations:

No action is necessary. BCSC staff will assess the adequacy of the DMA procedures manual in the next oversight review.

#### TSXV Response:

## (b) Requirements for granting direct market access

## **BCSC Staff's Recommendations:**

No action is necessary.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# (c) BCSC conditions imposed on TSX Venture's DMA rules

# (i) Compliance with BCSC condition 1 – confirm existing DMA clients were subject to properly executed agreements

## BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture ensures that the system interconnect agreements for all existing DMA clients are properly executed and have all the provisions required by Rule C.2.52 (3). Further, the TSX Venture should evidence its review and decisions in all cases. *Priority: High-Medium* 

#### TSXV Response:

TSXV is in the process of undertaking a one-time review of the system interconnect agreements for all existing DMA clients to ensure that they are properly executed and have all the provisions required by Rule C.2.52 (3). This review is targeted for completion by September 30, 2006. Documentation related to this review, including documentation of TSXV's decisions and determinations made in connection with the review, will be retained.

# (ii) Compliance with BCSC condition 2 – plan to discharge responsibility to ensure compliance by DMA clients

# BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture submit its completed internal written procedures for DMA monitoring and detection to BCSC staff for review.

#### TSXV Response:

TSXV is in the process of documenting its internal written procedures and responsibilities for DMA monitoring and detection, with a targeted completion date of September 30, 2006. TSXV will provide the procedures to BCSC staff when completed.

# (iii) Compliance with BCSC condition 3 – implement a unique client trader identification (ID) system

## BCSC Staff's Recommendations:

No action is necessary.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# (d) DMA provider application review and approval process

# (i) One-time approval of existing DMA providers

## BCSC Staff's Recommendations:

No action is necessary.

#### **TSXV** Response:

In light of the BCSC staff's recommendations, no response is necessary.

# (ii) New DMA provider applications

## **BCSC Staff's Recommendations:**

TSX Venture should formalize the procedures and responsibilities, and use checklists or other similar tools. *Priority: Medium* 

## **TSXV** Response:

TSXV is in the process of documenting its internal written procedures and responsibilities for DMA provider applications, with a targeted completion date of September 30, 2006.

#### BCSC Staff's Recommendations:

TSX Venture should document and retain on file all work performed to support the decision to approve, reject, or impose conditions on access. *Priority: Medium* 

#### TSXV Response:

TSXV is in the process of documenting its internal written procedures and responsibilities for DMA access matters, with a targeted completion date of September 30, 2006. These procedures will provide for the documentation and retention of the work performed to support the decision to approve, reject, or impose conditions on access.

## BCSC Staff's Recommendations:

TSX Venture should record the date of the member's or PO's request for system connectivity so that it can effectively monitor this process. *Priority: Low* 

TSXV is in the process of documenting its internal written procedures and responsibilities for DMA access matters, with a targeted completion date of September 30, 2006. These procedures will provide for the recording of the date of the member's or PO's request for system connectivity.

# (e) Assignment and termination of unique client trader IDs and access privileges

#### BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture prepares a plan to ensure its members and POs are disclosing their DMA clients accurately, completely, and promptly to the Exchange. *Priority: High-Medium* 

## TSXV Response:

Since the first quarter of 2005, TSXV has established a procedure pursuant to which TSXV has complete control over the assignment to members and POs of unique trader IDs for their clients. In April 2006, TSXV implemented a process for the management of the termination of unique client trader IDs whereby TSXV requests confirmation (twice a year) from POs and members of their respective list of unique client trader IDs. TSXV is in the process of documenting its internal written procedures and responsibilities for DMA monitoring and detection, with a targeted completion date of September 30, 2006. As part of this process, TSXV will review its current procedure to determine if any changes need to be made.

#### (f) Monitoring and detection of non-compliance by DMA clients

# (i) DMA client listing provided to RS for market surveillance and enforcement

## **BCSC Staff's Recommendations:**

BCSC staff recommend that TSX Venture examines its DMA client trader ID tracking and verification process for alternatives or enhancements that will improve TSX Venture's control over the accuracy, completeness and timely update of the RS list. *Priority: High-Medium* 

#### **TSXV** Response:

Since April 2006, TSXV has established a procedure that provides for the concurrent transmission by email to RS of changes to the list of unique client trader IDs. TSXV is in the process of documenting its internal written procedures and responsibilities for DMA monitoring and detection, with a targeted completion date of September 30, 2006. These written procedures will provide for

the concurrent transmission by email to RS of changes to the list of unique client trader IDs.

# BCSC Staff's Recommendations:

Further, TSX Venture should retain evidence to demonstrate that it has promptly sent the DMA client list and updates to RS. *Priority: Medium* 

## TSXV Response:

Since April 2006, TSXV has implemented a procedure that requires the retention of all email notifications that are sent to RS updating the list of unique client trader IDs. TSXV is in the process of documenting its internal written procedures and responsibilities for DMA monitoring and detection, with a targeted completion date of September 30, 2006. These written procedures will provide for the retention of all email notifications that are sent to RS updating the list of unique client trader IDs.

# (ii) Annual verification of DMA client trader ID listing

#### BCSC Staff's Recommendations:

No action is necessary. BCSC staff will assess the adequacy of the annual verification process in the next oversight review.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## (iii) Annual review of system interconnect agreements

# **BCSC Staff's Recommendations:**

No action is necessary. BCSC staff will assess the adequacy of the annual review of system interconnect agreements in the next oversight review.

#### TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## (iv) Biennial system connectivity review

## BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture ensures that its files clearly and consistently evidence how a member's response does or does not satisfy each Exchange requirement reviewed. Further, for the deficiencies identified, the file should evidence the resolution process, which includes the Exchange's acceptance of the member's proposed action plan, the actions taken by the member to resolve the deficiency, and the Exchange's conclusion

on whether the deficiency has been satisfactorily addressed. *Priority: Low* 

## TSXV Response:

TSXV is in the process of documenting its internal written procedures and responsibilities for DMA monitoring and detection, with a targeted completion date of September 30, 2006. These procedures will provide that the file contain evidence: (i) whether a member's response does or does not satisfy each TSXV requirement reviewed; and (ii) the resolution process for any deficiencies, including TSXV's acceptance of the member's proposed action plan, the actions taken by the member to resolve the deficiency, and TSXV's conclusion on whether the deficiency has been satisfactorily addressed.

# (v) Coordination with RS

## BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture clearly communicates its decision to RS regardless of whether any further action is required from RS. Further, BCSC staff recommend that TSX Venture retains complete records of the case resolution and any follow-up action proposed and performed. *Priority: High-Medium* 

# **TSXV** Response:

TSXV will clearly communicate its decision to RS regardless of whether any further action is required from them. Further, TSXV will retain complete records of the case resolution and any follow-up action proposed and performed.

## BCSC Staff's Recommendations:

BCSC staff also recommend that TSX Venture ensures that the resolution adequately addresses all key findings of the investigation.

# TSXV Response:

TSXV will ensure that the resolution adequately addresses all key findings of the investigation.

# **Clearing & Settlement**

#### 1. Introduction

# **BCSC Staff's Recommendations:**

None.

## TSXV Response:

# 2. Purpose and scope

# BCSC Staff's Recommendations:

None.

# TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## 3. Clearing & settlement arrangements

#### BCSC Staff's Recommendations:

No action is necessary.

## TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# 4. Buy-in process

# (a) Written procedures and requirements for the buy-in process

#### BCSC Staff's Recommendations:

BCSC staff recommend that TSX Venture keeps its internal and external written buy-in procedures and requirements current. *Priority: Low* 

## TSXV Response:

TSXV will concurrently update its internal and external written buy-in procedures and requirements with any changes in the TSXV buy-in process.

# (b) Timeliness and compliance with established procedures

## BCSC Staff's Recommendations:

No action is necessary.

# TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

# **Systems**

## 1. Introduction

#### BCSC Staff's Recommendations:

None.

## TSXV Response:

# 2. Purpose and scope

# BCSC Staff's Recommendations:

None.

## TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

## 3. Notification to the Commission of material system failures and changes

## BCSC Staff's Recommendations:

BCSC staff require to receive reports of material TSX Venture system outages, delays, slow downs, events, and changes, which are the same as or similar to those given to the OSC. BCSC staff do not expect TSX Group to isolate TSX Venture related items for reporting purposes. However, for simplicity, the BCSC and ASC will rely on the OSC's judgment on optional reports. *Priority: Medium* 

## TSXV Response:

TSXV will continue the process it established in the fourth quarter of 2005 to provide BCSC and ASC staff with notification of significant TSXV system outages, and with the quarterly reports of material TSXV system plans and changes. Please note that TSX has proposed to change the reporting frequency of the TSX regular reports from quarterly to 3 or 2 times per year. Assuming that this change is acceptable to the OSC, TSXV would propose providing the TSXV regular reports to the BCSC and ASC on the same timeframe.

# **Outsourcing of Regulatory Services**

# 1. Introduction

#### BCSC Staff's Recommendations:

None.

#### **TSXV** Response:

In light of the BCSC staff's recommendations, no response is necessary.

# 2. Purpose and scope

#### BCSC Staff's Recommendations:

None.

#### TSXV Response:

## 3. Oversight of regulatory services provided by RS

## BCSC Staff's Recommendations:

BCSC staff recommends that TSX Venture formalizes and documents the process by which it monitors the ongoing performance of regulatory functions by RS. The process should include the assessment methodology, staff responsibilities, file documentation guidelines (on the nature and extent of evidence retained to support the assessment), reporting procedures, and tracking and follow-up procedures on any outstanding issues. BCSC staff will examine the adequacy of this process in the next oversight review. *Priority: Medium* 

## TSXV Response:

TSXV will formalize and document the process by which it monitors the ongoing performance of regulatory functions by RS. The process will include the assessment methodology, staff responsibilities, file documentation guidelines (on the nature and extent of evidence retained to support the assessment), reporting procedures, and tracking and follow-up procedures on any outstanding issues.

# 4. Outsourcing of other regulatory functions

BCSC Staff's Recommendations:

No action is necessary.

TSXV Response:

In light of the BCSC staff's recommendations, no response is necessary.

If you have any questions, please do not hesitate to contact me.

Yours truly,

TSX VENTURE EXCHANGE INC.

Linda Hohol President

Lida Hohol.

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