

July 24, 2002

**VIA FACSIMILE & EMAIL**

Alberta Securities Commission  
300 - 5th Avenue SW  
4th Floor  
Calgary, Alberta  
T2P 3C4

British Columbia Securities Commission  
701 West Georgia Street  
9th Floor, Pacific Centre  
Vancouver, BC  
V7Y 1L2

Attention: Stephen Sibold, QC, Chair

Attention: Douglas Hyndman, Chair

Dear Sirs:

**Re: Canadian Venture Exchange Inc.  
Application to Amend Recognition Orders**

We are applying on behalf of Canadian Venture Exchange Inc. ("CDNX Inc."), currently carrying on business as TSX Venture Exchange, for an order continuing, on revised terms and conditions, the recognition order by the Alberta Securities Commission (the "ASC") of CDNX Inc. dated July 31, 2001 and an order continuing, on revised terms and conditions, the recognition order by the British Columbia Securities Commission (the "BCSC") of CDNX Inc. dated July 31, 2001 (collectively, the "Existing Recognition Orders") to reflect: (i) the name changes of CDNX Inc. to "TSX Venture Exchange Inc." ("TSX Venture Exchange") and "The Toronto Stock Exchange Inc." to "TSX Inc."; (ii) the provision of certain regulation functions to TSX Venture Exchange by Market Regulation Services Inc. ("RS Inc."); and (iii) the reorganization of TSX Inc. (the "Reorganization") in connection with which: (a) TSX Inc. will become a wholly-owned subsidiary of a new holding company, TSX Group Inc. ("TSX Group") and TSX Venture Exchange will continue to be a wholly-owned subsidiary of TSX Inc.; and (b) TSX Group will provide certain corporate services to TSX Inc. and TSX Venture Exchange. Following the Reorganization, TSX Group intends to conduct an initial public offering.

**Name Changes**

It is intended that "Canadian Venture Exchange Inc." will change its name to "TSX Venture Exchange Inc./Bourse de croissance TSX Inc." shortly. CDNX Inc. has received approval of the name change from its sole shareholder, TSX Inc. Effective July 10, 2002, "The Toronto Stock Exchange Inc./Bourse de Toronto Inc." changed its name to "TSX Inc." The shareholders of The Toronto Stock Exchange Inc. approved the name change at the annual and special shareholders' meeting on July 9, 2002.

## **Reorganization**

Pursuant to the Reorganization, TSX Group will own 100% of TSX Inc. TSX Inc. will continue to own all of the shares of the TSX Venture Exchange. Thus, immediately after the completion of the Reorganization, TSX Inc. will be wholly-owned by TSX Group, and TSX Venture Exchange will be wholly-owned by TSX Inc. As in the existing structure, the legal entity (TSX Inc.) that operates the Toronto Stock Exchange will continue to own the legal entity (TSX Venture Exchange) that operates the TSX Venture Exchange.

Upon completion of the Reorganization, TSX Venture Exchange will continue to operate separately and distinctly from TSX Inc. as the specialized exchange in Canada for junior and emerging issuers and TSX Venture Exchange and TSX Inc. will continue to be recognized and regulated separately as exchanges and each will maintain its recognition, or exemption from recognition, as an exchange or stock exchange from the relevant securities commissions. After the Reorganization, TSX Venture Exchange will continue to operate its offices in Calgary, Vancouver, Winnipeg, Montreal and Toronto.

The Reorganization will not result in any changes to the performance by TSX Venture Exchange of its corporate finance services and functions and regulation functions, or to TSX Venture Exchange's corporate governance structure, access requirements, financial viability commitments or systems sustainability, other than as referred to in the draft recognition orders. The TSX Venture Exchange trading system is currently owned and operated by TSX Inc. Pursuant to the Reorganization, TSX Group will provide certain corporate services, such as financial services, accounting, payroll, human resources, administration, legal and corporate information technology services, to TSX Inc. and TSX Venture Exchange.

## **Regulation Functions**

RS Inc. has been retained to provide certain market regulation services to TSX Venture Exchange as a regulation services provider under National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules. In connection with the recognition of RS Inc., the ASC and BCSC approved the agreement between RS Inc. and TSX Venture Exchange. Under that agreement, RS Inc. acts as TSX Venture Exchange's agent in the provision of certain market regulation services to TSX Venture Exchange. TSX Venture Exchange will continue to perform all other regulation functions not performed by RS Inc., including its corporate finance and issuer regulation functions. TSX Venture Exchange will not perform these functions through any other party, including any of its affiliates or associates, without prior approval of the ASC and BCSC.

TSX Venture Exchange will ensure that its members, participating organizations and listed issuers are appropriately sanctioned or disciplined for violations of its rules, policies and other similar instruments. TSX Venture Exchange will provide notice to the ASC and BCSC of any violation of securities legislation of which it becomes aware in the ordinary course operation of its business. In addition, TSX Venture Exchange will advise the ASC and BCSC in writing on at least a quarterly basis (or any other basis as the ASC and BCSC may agree in writing) of all significant issues arising from issuer non-compliance with TSX Venture Exchange

rules, policies and other similar instruments and of all significant exemptions or waivers of corporate finance policies and will provide to the ASC and BCSC various information related thereto. Provisions to this effect have been added in new paragraphs 13 - 15 to Schedule "A" to the recognition orders.

### **Regulatory Oversight**

TSX Venture Exchange will comply with the regulatory oversight requirements in the attached draft recognition orders. In particular, TSX Venture Exchange will comply with the review and approval procedures established from time to time by the ASC and BCSC regarding TSX Venture Exchange rules, policies and other similar instruments. TSX Venture Exchange will file with the ASC and BCSC all rules, policies and other similar instruments adopted by its board.

### **Corporate Governance**

Each of TSX Inc., TSX Group and TSX Venture Exchange will have its own board of directors. Immediately following the Reorganization and continuing through the initial public offering of TSX Group, the board of directors of each of TSX Group, TSX Inc. and TSX Venture Exchange will consist of the same individuals. This will not necessarily always be the case in the future.

The recognition orders will continue to provide that at least 25% of the board of directors of TSX Venture Exchange will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market. To provide clarity regarding the independence of TSX Venture Exchange's board of directors, TSX Venture Exchange and staff at the ASC and BCSC have agreed to insert a definition of independent director at paragraph 20 to Schedule "A" to the recognition orders.

### **Fitness**

TSX Venture Exchange has agreed with staff at the ASC and BCSC to insert a new paragraph 22 to Schedule "A" to the recognition orders that sets out a requirement regarding the fitness of officers and directors of TSX Venture Exchange.

### **Financial Viability**

In addition to existing covenants to maintain sufficient financial and other resources for the performance of its functions, additional financial information will be provided. Annual audited financial statements of TSX Venture Exchange will be filed with the ASC and BCSC within 90 days of its financial year end, and quarterly financial statements will be filed with the ASC and BCSC within 60 days of the end of each financial quarter, or any shorter periods provided in Alberta or British Columbia securities laws for reporting issuers to file their financial statements.

## **Outsourcing**

Provisions relating to material outsourcing of business functions by TSX Venture Exchange to third parties have been inserted as paragraph 35 of Schedule “A” to the recognition orders. TSX Venture Exchange is required to proceed in accordance with industry best practices in implementing any such material outsourcing arrangements.

## **Related Party Transactions**

TSX Venture Exchange has agreed with staff of the ASC and BCSC that Schedule “A” to the recognition orders contain a new provision regarding related party transactions, to further ensure the ongoing financial soundness of TSX Venture Exchange. Such new paragraph (paragraph 36 of Schedule “A” to the recognition orders) will require that any material agreement or transaction entered into between TSX Venture Exchange and TSX Group or TSX Inc. or any affiliate or associate of TSX Group or TSX Inc. will be on terms and conditions that are at least as favourable to TSX Venture Exchange as market terms and conditions. Through these terms and conditions, TSX Venture Exchange has effectively adopted the core principle of the *Bank Act* with respect to related party rules.

## **TSX Group and TSX Inc. Joint Undertaking**

TSX Group and TSX Inc. are prepared to provide a joint undertaking to the ASC and BCSC.

TSX Group is prepared to undertake to advise the ASC and BCSC if it applies or intends to apply for an amendment to the order of the Ontario Securities Commission to permit TSX Group to own, directly or indirectly, less than all of the issued and outstanding voting shares of TSX Inc. TSX Group is also prepared to undertake to create and maintain a committee to advise on all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of TSX Group and/or TSX Venture Exchange in relation thereto.

Each of TSX Group and TSX Inc. is prepared to undertake to the ASC and BCSC that it will allocate sufficient financial and other resources to TSX Venture Exchange to ensure that TSX Venture Exchange can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the TSX Venture Exchange recognition order, and that each will do everything in its control to cause TSX Venture Exchange to carry out its activities as a recognized exchange and to comply with the terms and conditions of its recognition orders. These and other commitments regarding change in operations or ownership, systems and access to information, are provided in the TSX Group and TSX Inc. draft joint undertakings, attached as Schedules “C” and “D” hereto.

## **Summary**

It is submitted that the continued recognition of TSX Venture Exchange as an exchange in each of Alberta and British Columbia following: (i) the name changes of CDNX Inc. to TSX Venture Exchange and of The Toronto Stock Exchange Inc. to TSX Inc.; (ii) the

provision of certain regulation functions to TSX Venture Exchange by RS Inc.; and (iii) the Reorganization of TSX Inc., is in the public interest.

## Enclosures

In support of this application, we are enclosing the following:

1. a verification from CDNX Inc. confirming our authority to prepare and file this application and confirming the truth of the facts contained herein;
2. a draft order by the ASC continuing TSX Venture Exchange's recognition on revised terms and conditions, attached as Schedule "A";
3. a draft order by the BCSC continuing TSX Venture Exchange's recognition on revised terms and conditions, attached as Schedule "B";
4. a draft joint undertaking of TSX Group and TSX Inc. to the ASC, attached as Schedule "C"; and
5. a draft joint undertaking of TSX Group and TSX Inc. to the BCSC, attached as Schedule "D".

If you have any questions regarding this matter, please contact the undersigned at 416.865.7516.

Yours very truly,

Sharon C. Pel

DD/sb  
Enclosures

cc: Leonard Petrillo, *TSX*  
Michael Ptasznik, *TSX*  
Linda Hohol, *TSX Venture Exchange*  
Patricia Johnston, *ASC*  
Denise Hendrickson, *ASC*  
Louyse Gauvin, *BCSC*  
Cindy Petlock, *OSC*  
David Linder, *ASC*  
Don Murray, *MSC*  
Carmen Crepin, *CVMQ*  
Richard Balfour, *Torys*  
Deanna Dobrowsky, *Torys*

## **SCHEDULE “A”**

### **Draft Recognition Order (Alberta)**

#### **ALBERTA SECURITIES COMMISSION**

IN THE MATTER OF the Securities Act, R.S.A 2000, c. S-4 (the “Act”)

- and -

IN THE MATTER OF TSX Venture Exchange Inc.

#### **RECOGNITION**

(Subsection 62(2)) and Section 214)

1. WHEREAS by recognition order dated November 26, 1999 (the “First Recognition Order”) the Alberta Securities Commission (the “Commission”) recognized the Canadian Venture Exchange Inc., as an exchange in Alberta under subsection 52(2) of the Securities Act S.A. 1981, c. S-6.1, as amended;
2. AND WHEREAS the Commission revoked and replaced the First Recognition Order with a revised recognition order dated July 31, 2001 (the “Second Recognition Order”) following the acquisition of the Canadian Venture Exchange Inc. by The Toronto Stock Exchange Inc.;
3. AND WHEREAS The Toronto Stock Exchange Inc. has changed its name to TSX Inc. (“TSX”) and the Canadian Venture Exchange Inc. has changed its name to TSX Venture Exchange Inc./Bourse de croissance TSX Inc. (“TSX Venture Exchange”);
4. AND WHEREAS TSX will complete a reorganization (the “Reorganization”) pursuant to which
  - 4.1 TSX will become a wholly owned subsidiary of a new holding company, TSX Group Inc. (“TSX Group”), and TSX Venture Exchange will continue to be a wholly owned subsidiary of TSX, and
  - 4.2 TSX Group will provide certain corporate services, such as financial services, accounting, payroll, human resources, administration, legal and corporate information technology services, to TSX and TSX Venture Exchange;
5. AND WHEREAS following the Reorganization, TSX Group intends to conduct an initial public offering;
6. AND WHEREAS TSX Venture Exchange applied to the Commission to amend the Second Recognition Order to reflect the Reorganization, its change of name and the arrangement by which Market Regulation Services Inc. has been retained as TSX Venture

Exchange’s regulation services provider for the performance of certain market regulation functions;

- 7. AND WHEREAS the Commission considers it appropriate to continue its recognition of TSX Venture Exchange as an exchange in Alberta following the Reorganization and to set out in an order the revised terms and conditions of TSX Venture Exchange’s continued recognition as an exchange;
- 8. AND WHEREAS TSX Venture Exchange will continue to be subject to the joint regulatory oversight of the Commission and the British Columbia Securities Commission;
- 9. AND WHEREAS TSX Group, TSX and TSX Venture Exchange have agreed to the terms and conditions of this order;
- 10. AND WHEREAS based on the application by TSX Venture Exchange, including the representations, undertakings and acknowledgements made to the Commission by TSX Group and TSX in connection with TSX Venture Exchange’s application, the Commission is satisfied that the continued recognition of TSX Venture Exchange as an exchange in Alberta following the Reorganization is in the public interest;
- 11. IT IS HEREBY ORDERED that TSX Venture Exchange will continue to be recognized as an exchange in Alberta under subsection 62(2) of the Act effective on the closing of the Reorganization provided TSX Venture Exchange meets and continues to meet the revised terms and conditions set out in Schedule “A”. Such recognition will continue until the Commission, after giving TSX Venture Exchange an opportunity to be heard, revokes it.
- 12. IT IS HEREBY FURTHER ORDERED that the Second Recognition Order is revoked and replaced by this order.

DATED at the City of Calgary )  
 )  
 in the Province of Alberta ) \_\_\_\_\_  
 )  
 this day of August, 2002 ) \_\_\_\_\_

**Schedule “A”  
to the Recognition Order of TSX Venture Exchange  
dated August •, 2002**

**National Junior Exchange**

1. TSX Venture Exchange will operate a national exchange for junior issuers under a separate brand identity and separately from the national exchange for senior issuers operated by TSX and TSX Group.

**Local Presence**

2. TSX Venture Exchange will maintain an office in Calgary through which it will
  - (a) provide corporate finance services to, and perform corporate finance functions for, its listed issuers and applicants for listing; and
  - (b) perform issuer regulation functions.
3. TSX Venture Exchange will obtain, solicit and provide regional input on the development of listing and other corporate finance requirements for its listed issuers and applicants for listing.

**Public interest**

4. TSX Venture Exchange will operate in the public interest.
5. TSX Venture Exchange will maintain rules, policies, and other similar instruments (“Rules”) that
  - (a) are not contrary to the public interest;
  - (b) regulate all aspects of its business and affairs; and
  - (c) are appropriate to foster a vibrant and effective market for junior issuers.
6. More specifically, TSX Venture Exchange will ensure that
  - (a) the Rules are designed to
    - (i) ensure compliance with applicable securities legislation;
    - (ii) prevent fraudulent and manipulative acts and practices;
    - (iii) promote just and equitable principles of trade;
    - (iv) foster co-operation and co-ordination with entities engaged in regulating, clearing, settling, processing information about, and facilitating

transactions in, securities; and

- (v) provide for appropriate sanction or discipline for violation of its rules for all persons under the jurisdiction of TSX Venture Exchange and for its listed issuers;
- (b) the Rules do not
    - (i) permit unreasonable discrimination between those seeking and granted access to the listing, trading and other services of TSX Venture Exchange;
    - (ii) impose any burden on competition that is not reasonably necessary or appropriate; and
  - (c) the Rules are designed to ensure that the business of TSX Venture Exchange is conducted in a manner that affords protection to investors.

### **Regulatory Functions**

7. TSX Venture Exchange will continue to perform its corporate finance and issuer regulation functions, including
  - (a) setting listing and other corporate finance requirements for its listed issuers and applicants for listing;
  - (b) monitoring the conduct and activities of its listed issuers for compliance with its rules; and
  - (c) making decisions under its Rules about its listed issuers, persons associated with its listed issuers and applicants for listing and providing for a review or appeal process for these decisions.
8. TSX Venture Exchange is and remains responsible for performing market regulation functions, including setting requirements governing the conduct of its members and participating organizations, monitoring their conduct and enforcing the requirements of TSX Venture Exchange governing their conduct.
9. TSX Venture Exchange has retained and, except with prior Commission approval, will continue to retain Market Regulation Services Inc. (“RS”) as a regulation services provider to provide, as its agent, certain regulation services that have been approved by the Commission. TSX Venture Exchange will provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS and by TSX Venture Exchange. Any amendment to this list will be subject to prior Commission approval.
10. TSX Venture Exchange will continue to perform all other regulation functions not performed by RS, including its corporate finance and issuer regulation functions. TSX Venture Exchange will not perform these functions through any other party, including any

of its affiliates or associates, without prior Commission approval. For greater, certainty, any outsourcing of a business function that is done in accordance with paragraph 35 does not contravene this paragraph.

11. Management of TSX Venture Exchange will at least annually assess the performance by RS of its regulation services and submit a report to the board of TSX Venture Exchange with any recommendations for improvements. TSX Venture Exchange will give the Commission a copy of each report and advise the Commission of any actions it proposes to take as a result.
12. TSX Venture Exchange
  - (a) will provide the Commission with an annual report in the form and with the information specified by the Commission from time to time; and
  - (b) will not, without prior Commission approval, make any significant changes to the manner in which it provides and performs corporate finance services and functions and performs issuer regulation functions.
13. TSX Venture Exchange, through RS or otherwise, will ensure that its members, participating organizations and listed issuers are appropriately sanctioned or disciplined for violations of its Rules. In addition, TSX Venture Exchange will provide notice to the Commission of any violation of securities legislation of which it becomes aware in the ordinary course operation of its business.
14. TSX Venture Exchange will advise the Commission on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant issues arising from issuer non-compliance with TSX Venture Exchange Rules, and provide information in a form acceptable to the Commission on the issuers or other persons involved, the nature of the issues and the action taken or being taken by it to deal with the situation.
15. TSX Venture Exchange will advise the Commission in writing on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant exemptions or waivers of corporate finance policies and provide information on the issuers involved, the nature of the waivers or exemptions and the reasons for granting the waivers or exemptions.

### **Regulatory Oversight**

16. TSX Venture Exchange will
  - (a) comply with the Rule review and approval procedures established from time to time by the Commission and the BCSC,
  - (b) file with the Commission all Rules adopted by its board,
  - (c) comply with the compliance or regulatory review program established from time

to time by the Commission, and

- (d) permit the Commission to have access to and inspect, or provide to the Commission, all data and information in its possession that is required for the assessment by the Commission of the performance by TSX Venture Exchange of its regulation functions and its compliance with the terms of this Order.

### **Corporate governance**

- 17. To ensure diversity of representation, TSX Venture Exchange will ensure that
  - (a) its board is composed of individuals that provide a proper balance between the interests of the different entities using its services and facilities; and
  - (b) a reasonable number and proportion of its directors are independent directors, as provided in paragraph 20.
- 18. TSX Venture Exchange's governance structure will provide for
  - (a) fair and meaningful representation, having regard to its nature and structure, on the board and any board or advisory committee;
  - (b) appropriate representation on the board and any board committees of persons that are independent directors;
  - (c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for its directors, officers and employees generally.
- 19. At least 25% of the directors of TSX Venture Exchange will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market.
- 20. At least 50% of the directors of TSX Venture Exchange will be independent directors, and an independent director is a director that is not
  - (a) associated with any member or participating organization of TSX Venture Exchange, as defined in TSX Venture Exchange's by-law;
  - (b) an officer or employee of TSX Venture Exchange or its affiliates, or an associate of that officer or employee;
  - (c) a person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange; or
  - (d) an associate, director, officer or employee of any person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange (other than a director of TSX Group or TSX).

If at any time TSX Venture Exchange fails to meet this threshold, it will promptly remedy the situation.

21. TSX Venture Exchange will not, without prior Commission approval, implement any significant changes to the governance structure and practices of its board, including significant changes to the composition and terms of reference of its board committees and advisory committees.

### **Fitness**

22. TSX Venture Exchange will take reasonable steps to ensure that each officer and director of TSX Venture Exchange is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

### **Access**

23. TSX Venture Exchange requirements will not unreasonably prohibit or limit access to its trading facilities by properly registered dealers that are members of a self-regulatory organization or exchange recognized in Canada and that satisfy the requirements of TSX Venture Exchange.
24. TSX Venture Exchange will not unreasonably prohibit or limit access to its services.
25. TSX Venture Exchange will maintain written standards separate from TSX for granting access to trading on its facilities.
26. TSX Venture Exchange will keep separate records of
  - (a) each grant of access and, for each entity granted access to its facilities, the reasons for granting access; and
  - (b) each denial or limitation of access and the reasons for denying or limiting access to any applicant.

### **Due Process**

27. TSX Venture Exchange shall ensure that
  - (a) its requirements, the limitations or conditions it imposes on access to its trading and listing facilities, and the decisions it makes to deny access are fair and reasonable;
  - (b) the parties are given notice and an opportunity to be heard or make representations; and
  - (c) it keeps a record, gives reasons and provides for reviews of its decisions.

**Fees**

28. TSX Venture Exchange will have a fair and appropriate process for setting fees and will determine the fees it imposes on its listed issuers, applicants for listing, members, participating organizations and other market participants.
29. These fees will
  - (a) be allocated on an equitable basis as among the parties noted in paragraph 28;
  - (b) not have the effect of creating barriers to access;
  - (c) be balanced with its need to have sufficient revenues to satisfy its responsibilities; and
  - (d) be fair, reasonable and appropriate.

**Financial Viability**

30. TSX Venture Exchange will have sufficient financial and other resources for the performance of its functions in a manner that is consistent with the public interest and the terms and conditions of this order.
31. TSX Venture Exchange will file with the Commission annual audited financial statements prepared in accordance with generally accepted accounting principles in Canada (Canadian GAAP) and accompanied by the report of an independent auditor within 90 days of its financial year end or any shorter period provided in Alberta securities laws for reporting issuers to file their financial statements.
32. TSX Venture Exchange will file with the Commission quarterly financial statements prepared in accordance with Canadian GAAP within 60 days of the end of each financial quarter or any shorter period provided in Alberta securities laws for reporting issuers to file their financial statements.

**Systems Security, Capacity and Sustainability**

33. For each of its systems that supports order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, TSX Venture Exchange will
  - (a) on a reasonably frequent basis and, in any event, at least annually,
    - (i) make reasonable current and future capacity estimates;
    - (ii) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

- (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
  - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters; and
  - (v) establish reasonable contingency and business continuity plans;
- (b) on an annual basis, cause to be performed an independent review, in accordance with established audit procedures and standards, of its current systems technology plans and whether there are appropriate processes in place to manage the impact of changes in technology on the exchange and parties interfacing with exchange systems and obtain a written report of the review. This will include an assessment of its controls for ensuring that each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, complies with paragraph (a) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and
- (c) promptly notify the Commission of material systems failures and changes.
34. If securities of issuers that are listed on TSX Venture Exchange trade on systems operated by TSX, TSX Venture Exchange will be considered to have met the requirements set out under subparagraphs a and b of paragraph 33 if TSX meets the equivalent requirements contained in the order continuing the recognition of TSX and recognizing the TSX Group issued by the OSC in conjunction with the reorganization.

### **Outsourcing**

35. In any material outsourcing of any of its business functions with parties other than TSX Group or an affiliate or associate of TSX Group, TSX Venture Exchange will proceed in accordance with industry best practices. Without limiting the generality of the foregoing, TSX Venture Exchange will
- (a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of material outsourcing arrangements;
  - (b) in entering into any material outsourcing arrangement
    - (i) assess the risk of the arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX Venture Exchange, and
    - (ii) execute a contract with the service provider addressing all significant elements of the arrangement, including service levels and performance standards;

- (c) ensure that any contract implementing material outsourcing arrangement that is likely to impact on TSX Venture Exchange's regulation functions gives the TSX Venture Exchange, its agents and the Commission access to, and the right to inspect, all data and information maintained by the service provider that TSX Venture Exchange is required to share under paragraph 39 or that the Commission requires to assess how TSX Venture Exchange is performing its regulation functions and how TSX Venture Exchange complies with these terms and conditions; and
- (d) monitor the performance of the service provider under any material outsourcing arrangement.

### **Related Party Transactions**

36. Any material agreement or transaction entered into between TSX Venture Exchange and
- (a) TSX Group or TSX, or
  - (b) any affiliate or associate of TSX Group or TSX

will be on terms and conditions that are at least as favourable to TSX Venture Exchange as market terms and conditions.

### **Change in Operations or Ownership**

37. TSX Venture Exchange will not cease to operate or suspend, discontinue or wind-up all or a significant portion of its operations, or dispose of all or substantially all of its assets, without
- (a) providing the Commission at least six months' prior notice of its intention; and
  - (b) complying with any terms and conditions that the Commission may impose in the public interest for the orderly discontinuance of its operations or the orderly disposition of its assets.
38. TSX Venture Exchange will not cease to be wholly owned or directly controlled by TSX or indirectly wholly owned or controlled by TSX Group without TSX Venture Exchange
- (a) providing the Commission at least three months' prior notice of its intention; and
  - (b) complying with any terms and conditions that the Commission may impose in the public interest.

### **Information Sharing**

39. TSX Venture Exchange will share information of a regulatory nature and will otherwise co-operate with the Commission and its staff, other exchanges and self-regulatory organizations recognized in Canada, and Canadian regulatory authorities responsible for

the supervision or regulation of securities, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

**Clearing and Settlement**

40. TSX Venture Exchange will have rules that impose a requirement on its members and participating organizations to have appropriate arrangements in place for clearing and settlement.

**Commission Approval**

41. When seeking the approval of the Commission under these terms and conditions, TSX Venture Exchange will comply with the procedures established from time to time by the Commission for the joint regulatory oversight of TSX Venture Exchange.

## **SCHEDULE “B”**

### **Draft Recognition Order (British Columbia)**

#### **Recognition Order**

##### **TSX Venture Exchange Inc.**

#### **Section 24(b) of the Securities Act, RSBC 1996, c. 418**

On November 26, 1999, the Commission recognized the Canadian Venture Exchange Inc. (CDNX) as an exchange in British Columbia under section 24(2) of the Act (COR#99/323).

On July 31, 2001, the Commission ordered the continued recognition of CDNX as an exchange in British Columbia under section 24(2) of the Act under certain terms and conditions effective on the closing of a transaction whereby CDNX became a wholly owned subsidiary of The Toronto Stock Exchange Inc. (TSE) and became a for-profit corporation (COR#01/086), and revoked COR#99/323.

The TSE changed its name to TSX Inc. (TSX) and CDNX changed its name to TSX Venture Exchange Inc./Bourse de croissance TSX Inc. (TSX Venture Exchange).

TSX will complete a reorganization. Under the reorganization,

1. TSX will become a wholly owned subsidiary of a new holding company, TSX Group Inc. (TSX Group), and TSX Venture Exchange will continue to be a wholly owned subsidiary of TSX; and
2. TSX Group will provide corporate services, such as financial services, accounting, payroll, human resources, administration, legal and corporate information technology services, to TSX and TSX Venture Exchange.

Following the reorganization, TSX Group intends to conduct an initial public offering.

The Commission received representations, acknowledgements and undertakings from TSX Venture Exchange, TSX and TSX Group in connection with TSX Venture Exchange's application for continued recognition as an exchange.

The Commission considers it appropriate to set out in an order revised terms and conditions of the continued recognition of TSX Venture Exchange as an exchange in British Columbia following the reorganization.

TSX Venture Exchange, TSX and TSX Group have agreed to the terms and conditions set out in the order.

TSX Venture Exchange will be subject to the joint regulatory oversight of the Commission and the Alberta Securities Commission (ASC).

Based on the application of TSX Venture Exchange, including the representations, undertakings and acknowledgements made by TSX and TSX Group to the Commission in connection with the application, the Commission is satisfied that the continued recognition of TSX Venture Exchange following the reorganization will not be prejudicial to the public interest.

The Commission orders the continued recognition of TSX Venture Exchange as an exchange in British Columbia under section 24(b) of the Act effective on the closing of the reorganization provided TSX Venture Exchange meets and continues to meet the revised terms and conditions set out in Schedule A. Recognition will continue until the Commission, after giving TSX Venture Exchange an opportunity to be heard, revokes it.

This order revokes and replaces COR#01/086.

\*\*\*\*\* \*\*, 2002

Douglas M. Hyndman  
Chair

Ref: COR#01/086

## Schedule A

### National junior exchange

1. TSX Venture Exchange will operate a national exchange for junior issuers under a separate brand identity and separately from the national exchange for senior issuers operated by TSX and TSX Group.

### Local presence

2. TSX Venture Exchange will maintain an office in Vancouver through which it will
  - (a) provide corporate finance services to, and perform corporate finance functions for, its listed issuers and applicants for listing; and
  - (b) perform issuer regulation functions.
3. TSX Venture Exchange will obtain, solicit and provide regional input on the development of listing and other corporate finance requirements for its listed issuers and applicants for listing.

### Public interest

4. TSX Venture Exchange will operate in the public interest.
5. TSX Venture Exchange will maintain rules, policies, and other similar instruments (rules) that
  - (a) are not contrary to the public interest;
  - (b) regulate all aspects of its business and affairs; and
  - (c) are appropriate to foster a vibrant and effective market for junior issuers.
6. More specifically, TSX Venture Exchange will ensure that
  - (a) the rules are designed to
    - (i) ensure compliance with applicable securities legislation;
    - (ii) prevent fraudulent and manipulative acts and practices;
    - (iii) promote just and equitable principles of trade;
    - (iv) foster co-operation and co-ordination with entities engaged in regulating, clearing, settling, processing information about, and facilitating transactions in, securities; and

- (v) provide for appropriate sanction or discipline for violation of its rules for all persons under the jurisdiction of TSX Venture Exchange and for its listed issuers;
- (b) the rules do not
  - (i) permit unreasonable discrimination between those seeking and granted access to the listing, trading and other services of TSX Venture Exchange;
  - (ii) impose any burden on competition that is not reasonably necessary or appropriate; and
- (c) the rules are designed to ensure that the business of TSX Venture Exchange is conducted in a manner that affords protection to investors.

### **Regulation functions**

7. TSX Venture Exchange will continue to perform its corporate finance and issuer regulation functions, including
  - (a) setting listing and other corporate finance requirements for its listed issuers and applicants for listing;
  - (b) monitoring the conduct and activities of its listed issuers for compliance with its rules; and
  - (c) making decisions under its rules about its listed issuers, persons associated with its listed issuers and applicants for listing and providing for a review or appeal process for these decisions.
8. TSX Venture Exchange is and remains responsible for performing market regulation functions, including setting requirements governing the conduct of its members and participating organizations, monitoring their conduct and enforcing the requirements of TSX Venture Exchange governing their conduct.
9. TSX Venture Exchange has retained and, except with prior Commission approval, will continue to retain Market Regulation Services Inc. (RS) as a regulation services provider to provide, as its agent, certain regulation services that have been approved by the Commission. TSX Venture Exchange will provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS and by TSX Venture Exchange. Any amendment to this list will be subject to prior Commission approval.
10. TSX Venture Exchange will continue to perform all other regulation functions not performed by RS, including its corporate finance and issuer regulation functions. TSX Venture Exchange will not perform these functions through any other party, including any of its affiliates or associates, without prior Commission approval. For greater certainty,

any outsourcing of a business function that is done in accordance with paragraph 35 does not contravene this paragraph.

11. Management of TSX Venture Exchange will at least annually assess the performance by RS of its regulation services and submit a report to the board of TSX Venture Exchange with any recommendations for improvements. TSX Venture Exchange will give the Commission a copy of each report and advise the Commission of any actions it proposes to take as a result.
12. TSX Venture Exchange
  - (a) will provide the Commission with an annual report in the form and with the information specified by the Commission from time to time; and
  - (b) will not, without prior Commission approval, make any significant changes to the manner in which it provides and performs corporate finance services and functions and performs issuer regulation functions.
13. TSX Venture Exchange, through RS or otherwise, will ensure that its members, participating organizations and listed issuers are appropriately sanctioned or disciplined for violations of its rules. In addition, TSX Venture Exchange will provide notice to the Commission of any violation of securities legislation of which it becomes aware in the ordinary course operation of its business.
14. TSX Venture Exchange will advise the Commission on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant issues arising from issuer non-compliance with TSX Venture Exchange rules, and provide information in a form acceptable to the Commission on the issuers or other persons involved, the nature of the issues and the action taken or being taken by it to deal with the situation.
15. TSX Venture Exchange will advise the Commission in writing on at least a quarterly basis (or any other basis as the Commission may agree to in writing) of all significant exemptions or waivers of corporate finance policies and provide information on the issuers involved, the nature of the waivers or exemptions and the reasons for granting the waivers or exemptions.

### **Regulatory oversight**

16. TSX Venture Exchange will comply with the rule review and approval procedures established from time to time by the Commission and the ASC. TSX Venture Exchange will file with the Commission all rules adopted by its board.

### **Corporate governance**

17. To ensure diversity of representation, TSX Venture Exchange will ensure that

- (a) its board is composed of individuals that provide a proper balance between the interests of the different entities using its services and facilities; and
  - (b) a reasonable number and proportion of its directors are independent directors, as provided in paragraph 20.
18. TSX Venture Exchange's governance structure will provide for
- (a) fair and meaningful representation, having regard to its nature and structure, on the board and any board or advisory committee;
  - (b) appropriate representation on the board and any board committees of persons that are independent directors;
  - (c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for its directors, officers and employees generally.
19. At least 25% of the directors of TSX Venture Exchange will, at all times, be persons that have expertise in or are associated with the Canadian public venture capital market.
20. At least 50% of the directors of TSX Venture Exchange will be independent directors, and an independent director is a director that is not
- (a) associated with any member or participating organization of TSX Venture Exchange, as defined in TSX Venture Exchange's by-laws;
  - (b) an officer or employee of TSX Venture Exchange or its affiliates, or an associate of that officer or employee;
  - (c) a person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange; or
  - (d) an associate, director, officer or employee of any person who owns or controls, directly or indirectly, over 10% of TSX Venture Exchange (other than a director of TSX Group or TSX).

If at any time TSX Venture Exchange fails to meet this threshold, it will promptly remedy the situation.

21. TSX Venture Exchange will not, without prior Commission approval, implement any significant changes to the governance structure and practices of its board, including significant changes to the composition and terms of reference of its board committees and advisory committees.

**Fitness**

22. TSX Venture Exchange will take reasonable steps to ensure that each officer and director of TSX Venture Exchange is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

**Access**

23. TSX Venture Exchange requirements will not unreasonably prohibit or limit access to its trading facilities by properly registered dealers that are members of a self-regulatory organization or exchange recognized in Canada and that satisfy the requirements of TSX Venture Exchange.
24. TSX Venture Exchange will not unreasonably prohibit or limit access to its services.
25. TSX Venture Exchange will maintain written standards separate from TSX for granting access to trading on its facilities.
26. TSX Venture Exchange will keep separate records of
  - (a) each grant of access and, for each entity granted access to its facilities, the reasons for granting access; and
  - (b) each denial or limitation of access and the reasons for denying or limiting access to any applicant.

**Due process**

27. TSX Venture Exchange shall ensure that
  - (a) its requirements, the limitations or conditions it imposes on access to its trading and listing facilities, and the decisions it makes to deny access are fair and reasonable;
  - (b) the parties are given notice and an opportunity to be heard or make representations; and
  - (c) it keeps a record, gives reasons and provides for reviews of its decisions.

**Fees**

28. TSX Venture Exchange will have a fair and appropriate process for setting fees and will determine the fees it imposes on its listed issuers, applicants for listing, members, participating organizations and other market participants.
29. These fees will

- (a) be allocated on an equitable basis as among the parties noted in paragraph 28;
- (b) not have the effect of creating barriers to access;
- (c) be balanced with its need to have sufficient revenues to satisfy its responsibilities;  
and
- (d) be fair, reasonable and appropriate.

### **Financial viability**

- 30. TSX Venture Exchange will have sufficient financial and other resources for the performance of its functions in a manner that is consistent with the public interest and the terms and conditions of this order.
- 31. TSX Venture Exchange will file with the Commission annual audited financial statements prepared in accordance with generally accepted accounting principles in Canada (Canadian GAAP) and accompanied by the report of an independent auditor within 90 days of its financial year end or any shorter period provided in British Columbia securities legislation for reporting issuers to file their financial statements.
- 32. TSX Venture Exchange will file with the Commission quarterly financial statements prepared in accordance with Canadian GAAP within 60 days of the end of each financial quarter or any shorter period provided in British Columbia securities legislation for reporting issuers to file their financial statements.

### **System security, capacity and sustainability**

- 33. For each of its systems that supports order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, TSX Venture Exchange will
  - (a) on a reasonably frequent basis and, in any event, at least annually,
    - (i) make reasonable current and future capacity estimates;
    - (ii) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
    - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
    - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters; and
    - (v) establish reasonable contingency and business continuity plans;

- (b) on an annual basis, cause to be performed an independent review, in accordance with established audit procedures and standards, of its current systems technology plans and whether there are appropriate processes in place to manage the impact of changes in technology on the exchange and parties interfacing with exchange systems and obtain a written report of the review. This will include an assessment of its controls for ensuring that each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, complies with paragraph (a) above. Senior management will conduct a review of a report containing the recommendations and conclusions of the independent review; and
  - (c) promptly notify the Commission of material systems failures and changes.
34. If securities of issuers that are listed on TSX Venture Exchange trade on systems operated by TSX, TSX Venture Exchange will be considered to have met the requirements set out under sub-paragraph (a) and (b) of paragraph 33 if TSX meets the equivalent requirements contained in the order continuing the recognition of TSX and recognizing TSX Group issued by the OSC in conjunction with the reorganization.

### **Outsourcing**

35. In any material outsourcing of any of its business functions, with parties other than TSX Group or an affiliate or associate of TSX Group, TSX Venture Exchange will proceed in accordance with industry best practices. Without limiting the generality of the foregoing, TSX Venture Exchange will
- (a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of material outsourcing arrangements;
  - (b) in entering into any material outsourcing arrangement
    - (i) assess the risk of the arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX Venture Exchange; and
    - (ii) execute a contract with the service provider addressing all significant elements of the arrangement, including service levels and performance standards;
  - (c) ensure that any contract implementing a material outsourcing arrangement that is likely to impact on TSX Venture Exchange's regulation functions gives the TSX Venture Exchange, its agents and the Commission access to, and the right to inspect, all data and information maintained by the service provider that TSX Venture Exchange is required to share under paragraph 39 or that the Commission requires to assess how TSX Venture Exchange is performing its regulation functions and how TSX Venture Exchange complies with these terms and conditions; and

- (d) monitor the performance of the service provider under any material outsourcing arrangement.

### **Related party transactions**

36. Any material agreement or transaction entered into between TSX Venture Exchange and

- (a) TSX Group or TSX, or
- (b) any affiliate or associate of TSX Group or TSX

will be on terms and conditions that are at least as favourable to TSX Venture Exchange as market terms and conditions.

### **Change in operations or ownership**

37. TSX Venture Exchange will not cease to operate or suspend, discontinue or wind-up all or a significant portion of its operations, or dispose of all or substantially all of its assets, without

- (a) providing the Commission at least six months' prior notice of its intention; and
- (b) complying with any terms and conditions that the Commission may impose in the public interest for the orderly discontinuance of its operations or the orderly disposition of its assets.

38. TSX Venture Exchange will not cease to be wholly owned or directly controlled by TSX or indirectly wholly owned or controlled by TSX Group without TSX Venture Exchange

- (a) providing the Commission at least three months' prior notice of its intention; and
- (b) complying with any terms and conditions that the Commission may impose in the public interest.

### **Information sharing**

39. TSX Venture Exchange will share information of a regulatory nature and will otherwise co-operate with the Commission and its staff, other exchanges and self-regulatory organizations recognized in Canada, and Canadian regulatory authorities responsible for the supervision or regulation of securities, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

### **Clearing and settlement**

40. TSX Venture Exchange will have rules that impose a requirement on its members and participating organizations to have appropriate arrangements in place for clearing and settlement.

**Commission approval**

41. When seeking the approval of the Commission under these terms and conditions, TSX Venture Exchange will comply with the procedures established from time to time by the Commission for the joint regulatory oversight of TSX Venture Exchange.

## SCHEDULE "C"

### Joint Undertaking of TSX Inc. and TSX Group Inc. to the Alberta Securities Commissions

[Letterhead of TSX Inc. and TSX Group Inc.]

●, 2002

#### DELIVERED BY FAX AND COURIER

Stephen P. Sibold, Q.C.  
Chair  
Alberta Securities Commission  
400, 300 - 5<sup>th</sup> Avenue S.W.  
Stock Exchange Tower  
Calgary, Alberta  
T2P 3C4

Dear Sir:

**Re: Continued Recognition of TSX Venture Exchange Inc. ("TSX Venture Exchange"), formerly Canadian Venture Exchange Inc. in conjunction with the Reorganization of TSX Inc. ("TSX") ("Reorganization") and Initial Public Offering of TSX Group Inc. ("TSX Group")**

TSX (formerly The Toronto Stock Exchange Inc.) and TSX Group have seen a copy of the order ("Order") of the Alberta Securities Commission (the "Commission") for the continued recognition of TSX Venture Exchange as an exchange under section 62(2) of the *Securities Act*. TSX and TSX Group are aware of the terms and conditions of the Order and agree with the terms and conditions of the Order.

In support of the Order, TSX and TSX Group represent, acknowledge and undertake to the Commission as set out below. TSX and TSX Group understand that the Commission is relying on these representations, acknowledgements and undertakings in issuing the Order.

#### **Performance of TSX Venture Exchange Functions**

1. Each of TSX and TSX Group represents that, subject to paragraph 3, it will allocate sufficient financial and other resources to TSX Venture Exchange to ensure that TSX Venture Exchange can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the Order.
2. Each of TSX and TSX Group represents that it will do everything in its control to cause TSX Venture Exchange to carry out its activities as an exchange recognized under section 24(b) of the Act and to comply with the terms and conditions of the Order.

3. Each of TSX and TSX Group undertakes to notify the Commission:
  - (a) at least six months before it voluntarily allocates financial and other resources to TSX Venture Exchange in a way that could reasonably be expected to prevent TSX Venture Exchange from carrying out its functions in a manner that is consistent with the public interest and the terms and conditions set out in the Order; and
  - (b) immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TSX Venture Exchange to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the Order.
4. Each of TSX and TSX Group acknowledges that the Ontario Securities Commission (“OSC”) has agreed to promptly advise the Commission in writing, if the OSC
  - (a) becomes concerned about the financial viability of TSX Group or TSX;
  - (b) is advised by TSX Group that TSX Group will not allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the order continuing the recognition of TSX and recognizing TSX Group issued by the OSC in conjunction with the Reorganization (“OSC Recognition Order”);
  - (c) is advised by TSX that TSX has failed to satisfy the financial tests set out in the OSC Recognition Order; or
  - (d) is considering revoking or revokes the OSC Recognition Order.

#### **Change in Operations or Ownership**

5. Each of TSX and TSX Group undertakes not to cause or permit TSX Venture Exchange to cease to operate or suspend, discontinue or wind-up all or a significant portion of TSX Venture Exchange’s operations, or dispose of all or substantially all of TSX Venture Exchange’s assets, without
  - (a) providing the Commission at least six months’ prior notice of its intention; and
  - (b) complying with any terms and conditions that the Commission may impose in the public interest for the orderly discontinuance of the operations or the orderly disposition of the assets of TSX Venture Exchange.
6. Each of TSX and TSX Group undertakes not to complete or authorize a transaction that would result in TSX Venture Exchange ceasing to be wholly-owned or directly controlled by TSX without
  - (a) providing the Commission at least three months’ prior notice of its intention; and

- (b) complying with any terms and conditions that the Commission may impose in the public interest.
7. TSX Group undertakes to advise the Commission if it applies or intends to apply for an amendment to the attached order of the Ontario Securities Commission (**Schedule 1**) to permit TSX Group to own, directly or indirectly, less than all of the issued and outstanding voting shares of TSX.
  8. TSX acknowledges that the OSC will promptly advise the Commission in writing if the OSC becomes aware of an impending change of control of TSX or of an intention by TSX to cease operations or dispose of all or substantially all of its assets.

### **Systems**

9. If securities of issuers that are listed on TSX Venture Exchange trade on systems operated by TSX or TSX Group, each of TSX and TSX Group undertakes to
  - (a) meet standards equivalent to those set out in sub-paragraphs (a) and (b) of paragraph 33 of Schedule A to the Order for the trading of TSX Venture Exchange listed securities;
  - (b) adopt procedures that do not unreasonably discriminate against TSX Venture Exchange listed securities;
  - (c) provide the same or better market and listed company surveillance tools as were provided by TSX Venture Exchange prior to the transfer of TSX Venture Exchange listed securities to facilities operated by TSX;
  - (d) ensure that capital pool companies and inactive issuers listed on TSX Venture Exchange are specifically designated as such or otherwise differentiated in any trading and market data feed provided by TSX Venture Exchange or by TSX on TSX Venture Exchange's behalf; and
  - (e) use commercially reasonable efforts to ensure that any display of trading and market data information to end-users includes the designation or differentiation referred to in sub-paragraph (d).

### **Access to Information**

10. Each of TSX and TSX Group undertakes to permit and cause its subsidiaries to permit the Commission to have access to and to inspect all data and information in its or their possession that is required for the assessment by the Commission of the performance by TSX Venture Exchange of its regulation functions and the compliance of TSX Venture Exchange with the terms and conditions of the Order.

## Corporate Governance

11. TSX Group undertakes to create and maintain a committee of the Board of Directors of TSX Group, to be named the Public Venture Market Committee (the “Committee”), in a manner consistent with the attached terms of reference (**Schedule 2**). TSX Group further undertakes to refer to the Committee for recommendation and advice all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of TSX Group and/or TSX Venture Exchange in relation thereto.

## General

12. These representations, acknowledgements and undertakings will cease to have effect if
  - (a) the Commission revokes the Order; or
  - (b) TSX Venture Exchange ceases to carry on business after complying with any terms and conditions the Commission may impose.

Yours truly,

Barbara Stymiest  
President and CEO  
TSX Inc. and TSX Group Inc.

cc: Mr. Douglas Hyndman, *BCSC*  
Mr. David A. Brown, *OSC*

Schedule 1 to the Joint Undertaking of TSX Inc. and TSX Group Inc.

Order Pursuant to Section 21.11(4)

IN THE MATTER OF  
THE SECURITIES ACT

R.S.O. 1990, CHAPTER S.5, AS AMENDED (the “Act”)

AND

IN THE MATTER OF  
TSX INC.

and

TSX GROUP INC.

ORDER

(Section 21)

WHEREAS The Toronto Stock Exchange Inc. (the “TSE”) proposes to effect a reorganization whereby a newly incorporated company, TSX Group Inc. (“TSX Group”), will own all of the issued and outstanding voting shares of the TSE, being the entity which currently operates the Toronto Stock Exchange;

AND WHEREAS the TSE has changed its name to TSX Inc. (“TSX”);

AND WHEREAS the Commission’s approval is required, pursuant to section 21.11(1) of the Act, as amended by regulation pursuant to section 21.11(5) of the Act, in order for any person, company or combination of persons or companies acting jointly or in concert to beneficially own or exercise control or direction over more than 10 per cent of any class or series of voting shares of TSX;

AND WHEREAS the Commission may by order, pursuant to section 21.11(4) of the Act, grant the required approval on such terms and conditions as the Commission considers appropriate;

AND UPON considering the submissions of TSX and TSX Group and based upon the representations and undertakings made and given by TSX and TSX Group to the Commission;

AND UPON the Commission being satisfied that the ownership by TSX Group of the entity which operates the Toronto Stock Exchange would not be contrary to the public interest;

The Commission orders that the acquisition by TSX Group of all of the issued and outstanding voting shares of TSX is approved, subject to the following terms and conditions:

1. TSX Group shall continue to own, directly or indirectly, all of the issued and outstanding voting shares of TSX; and
2. the restrictions on share ownership set out in section 21.11(1) of the Act, as amended from time to time by regulation, shall apply to the voting shares of TSX Group, and the articles of TSX Group shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of the net proceeds of the sale or redemption to the person entitled thereto.

DATED ■, 2002.

Schedule 2 to the Joint Undertaking of TSX Inc. and TSX Group Inc.

**TSX GROUP INC.**

**PUBLIC VENTURE MARKET COMMITTEE**

**Terms Of Reference**

**Composition**

The Public Venture Market Committee (the “Committee”) shall be a committee of the board of TSX Group Inc. (the “Corporation”) composed of at least four Directors of the Corporation. The President and CEO of the Corporation may attend all meetings of the Committee in an ex-officio capacity but shall not be entitled to vote. The Board of Directors of the Corporation shall appoint a Chair of the Committee.

The Board of Directors of the Corporation will refer to the Committee all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the Corporation and/or TSX Venture Exchange Inc. in relation thereto.

**Quorum**

A duly constituted quorum shall be a majority of the members on the Committee, present in person or by telephone.

Subject to any resolution of the Board of Directors of the Corporation, the Committee may from time to time determine the manner in which it may act and its procedures generally.

**Frequency of Meetings**

The Committee shall meet at the request of its Chair, but in any event it will meet at least twice per year to consider matters referred to it by the Board of Directors of the Corporation. Notices calling meetings shall be sent to all Committee members and to the President and CEO of the Corporation.

**Responsibilities**

The responsibilities of the Committee shall be as follows:

1. To advise and make recommendations to the Board on all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the Corporation and/or TSX Venture Exchange Inc. in relation thereto.
2. To consider such other matters as the Board of Directors of the Corporation shall determine from time to time.

## SCHEDULE "D"

### Joint Undertaking of TSX Inc./TSX Group Inc. to the British Columbia Securities Commission

[LETTERHEAD OF TSX Inc./TSX Group Inc.]

●, 2002

#### DELIVERED BY FAX AND COURIER

Douglas M. Hyndman  
Chair  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
12th Floor, 701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2

Dear Sir:

**Re: Continued Recognition of TSX Venture Exchange Inc. ("TSX Venture Exchange"), formerly Canadian Venture Exchange Inc. in conjunction with the Reorganization of TSX Inc. ("TSX") ("Reorganization") and Initial Public Offering of TSX Group Inc. ("TSX Group")**

TSX (formerly The Toronto Stock Exchange Inc.) and TSX Group have seen a copy of the order of the British Columbia Securities Commission (the "Commission") for the continued recognition of TSX Venture Exchange as an exchange under section 24(b) of the *Securities Act* (the "Order"). TSX and TSX Group are aware of the terms and conditions of the Order and agree with the terms and conditions of the Order.

In support of the Order, TSX and TSX Group represent, acknowledge and undertake to the Commission as set out below. TSX and TSX Group understand that the Commission is relying on these representations, acknowledgements and undertakings in issuing the Order.

#### *Performance of TSX Venture Exchange Functions*

1. Each of TSX and TSX Group represents that, subject to paragraph 3, it will allocate sufficient financial and other resources to TSX Venture Exchange to ensure that TSX Venture Exchange can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the Order.
2. Each of TSX and TSX Group represents that it will do everything in its control to cause TSX Venture Exchange to carry out its activities as an exchange recognized under section 24(b) of the Act and to comply with the terms and conditions of the Order.

3. Each of TSX and TSX Group undertakes to notify the Commission:
  - (a) at least six months before it voluntarily allocates financial and other resources to TSX Venture Exchange in a way that could reasonably be expected to prevent TSX Venture Exchange from carrying out its functions in a manner that is consistent with the public interest and the terms and conditions set out in the Order; and
  - (b) immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TSX Venture Exchange to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the Order.
  
4. Each of TSX and TSX Group acknowledges that the Ontario Securities Commission (“OSC”) has agreed to promptly advise the Commission in writing, if the OSC
  - (a) becomes concerned about the financial viability of TSX Group or TSX;
  - (b) is advised by TSX Group that TSX Group will not allocate sufficient financial and other resources to TSX to ensure that TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the order continuing the recognition of TSX and recognizing TSX Group issued by the OSC in conjunction with the Reorganization (“OSC Recognition Order”);
  - (c) is advised by TSX that TSX has failed to satisfy the financial tests set out in the OSC Recognition Order; or
  - (d) is considering revoking or revokes the OSC Recognition Order.

***Change in Operations or Ownership***

5. Each of TSX and TSX Group undertakes not to cause or permit TSX Venture Exchange to cease to operate or suspend, discontinue or wind-up all or a significant portion of TSX Venture Exchange’s operations, or dispose of all or substantially all of TSX Venture Exchange’s assets, without
  - (a) providing the Commission at least six months’ prior notice of its intention; and
  - (b) complying with any terms and conditions that the Commission may impose in the public interest for the orderly discontinuance of the operations or the orderly disposition of the assets of TSX Venture Exchange.
  
6. Each of TSX and TSX Group undertakes not to complete or authorize a transaction that would result in TSX Venture Exchange ceasing to be wholly-owned or directly controlled by TSX without
  - (a) providing the Commission at least three months’ prior notice of its intention; and

- (b) complying with any terms and conditions that the Commission may impose in the public interest.
7. TSX Group undertakes to advise the Commission if it applies or intends to apply for an amendment to the attached order of the Ontario Securities Commission (Schedule 1) to permit TSX Group to own, directly or indirectly, less than all of the issued and outstanding voting shares of TSX.
  8. TSX acknowledges that the OSC will promptly advise the Commission in writing if the OSC becomes aware of an impending change of control of TSX or of an intention by TSX to cease operations or dispose of all or substantially all of its assets.

### *Systems*

9. If securities of issuers that are listed on TSX Venture Exchange trade on systems operated by TSX or TSX Group, each of TSX and TSX Group undertakes to
  - (a) meet standards equivalent to those set out in sub-paragraphs (a) and (b) of paragraph 33 of Schedule A to the Order for the trading of TSX Venture Exchange listed securities;
  - (b) adopt procedures that do not unreasonably discriminate against TSX Venture Exchange listed securities;
  - (c) provide the same or better market and listed company surveillance tools as were provided by TSX Venture Exchange prior to the transfer of TSX Venture Exchange listed securities to facilities operated by TSX;
  - (d) ensure that capital pool companies and inactive issuers listed on TSX Venture Exchange are specifically designated as such or otherwise differentiated in any trading and market data feed provided by TSX Venture Exchange or by TSX on TSX Venture Exchange's behalf; and
  - (e) use commercially reasonable efforts to ensure that any display of trading and market data information to end-users includes the designation or differentiation referred to in sub-paragraph (d).

### *Access to Information*

10. Each of TSX and TSX Group undertakes to permit and cause its subsidiaries to permit the Commission to have access to and to inspect all data and information in its or their possession that is required for the assessment by the Commission of the performance by TSX Venture Exchange of its regulation functions and the compliance of TSX Venture Exchange with the terms and conditions of the Order.

***Corporate Governance***

11. TSX Group undertakes to create and maintain a committee of the Board of Directors of TSX Group, to be named the Public Venture Market Committee (the “Committee”), in a manner consistent with the attached terms of reference (Schedule 2). TSX Group further undertakes to refer to the Committee for recommendation and advice all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of TSX Group and/or TSX Venture Exchange in relation thereto.

***General***

12. These representations, acknowledgements and undertakings will cease to have effect if
  - (a) the Commission revokes the Order; or
  - (b) TSX Venture Exchange ceases to carry on business after complying with any terms and conditions the Commission may impose.

Yours truly,

Barbara Stymiest  
President and CEO  
TSX Inc. and TSX Group

cc: Mr. Stephen P. Sibold, *ASC*  
Mr. David A. Brown, *OSC*

**Schedule 1**

Order Pursuant to Section 21.11(4)

IN THE MATTER OF  
THE SECURITIES ACT

R.S.O. 1990, CHAPTER S.5, AS AMENDED (the “Act”)

AND

IN THE MATTER OF  
TSX INC.

and

TSX GROUP INC.

ORDER

(Section 21)

WHEREAS The Toronto Stock Exchange Inc. (the “TSE”) proposes to effect a reorganization whereby a newly incorporated company, TSX Group Inc. (“TSX Group”), will own all of the issued and outstanding voting shares of the TSE, being the entity which currently operates the Toronto Stock Exchange;

AND WHEREAS the TSE has changed its name to TSX Inc. (“TSX”);

AND WHEREAS the Commission’s approval is required, pursuant to section 21.11(1) of the Act, as amended by regulation pursuant to section 21.11(5) of the Act, in order for any person, company or combination of persons or companies acting jointly or in concert to beneficially own or exercise control or direction over more than 10 per cent of any class or series of voting shares of TSX;

AND WHEREAS the Commission may by order, pursuant to section 21.11(4) of the Act, grant the required approval on such terms and conditions as the Commission considers appropriate;

AND UPON considering the submissions of TSX and TSX Group and based upon the representations and undertakings made and given by TSX and TSX Group to the Commission;

AND UPON the Commission being satisfied that the ownership by TSX Group of the entity which operates the Toronto Stock Exchange would not be contrary to the public interest;

The Commission orders that the acquisition by TSX Group of all of the issued and outstanding voting shares of TSX is approved, subject to the following terms and conditions:

1. TSX Group shall continue to own, directly or indirectly, all of the issued and outstanding voting shares of TSX; and
2. the restrictions on share ownership set out in section 21.11(1) of the Act, as amended from time to time by regulation, shall apply to the voting shares of TSX Group, and the articles of TSX Group shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of the net proceeds of the sale or redemption to the person entitled thereto.

DATED ■, 2002.

**Schedule 2****TSX GROUP INC.****PUBLIC VENTURE MARKET COMMITTEE****Terms Of Reference****Composition**

The Public Venture Market Committee (the “Committee”) shall be a committee of the board of TSX Group Inc. (the “Corporation”) composed of at least four Directors of the Corporation. The President and CEO of the Corporation may attend all meetings of the Committee in an ex-officio capacity but shall not be entitled to vote. The Board of Directors of the Corporation shall appoint a Chair of the Committee.

The Board of Directors of the Corporation will refer to the Committee all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the Corporation and/or TSX Venture Exchange Inc. in relation thereto.

**Quorum**

A duly constituted quorum shall be a majority of the members on the Committee, present in person or by telephone.

Subject to any resolution of the Board of Directors of the Corporation, the Committee may from time to time determine the manner in which it may act and its procedures generally.

**Frequency of Meetings**

The Committee shall meet at the request of its Chair, but in any event it will meet at least twice per year to consider matters referred to it by the Board of Directors of the Corporation. Notices calling meetings shall be sent to all Committee members and to the President and CEO of the Corporation.

**Responsibilities**

The responsibilities of the Committee shall be as follows:

1. To advise and make recommendations to the Board on all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the Corporation and/or TSX Venture Exchange Inc. in relation thereto.
2. To consider such other matters as the Board of Directors of the Corporation shall determine from time to time.