



Thursday April 5, 2007

Via E-Mail and Facsimile

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

c/o

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Dear Members of the Canadian Securities Administrators:

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (NI 44-101) and Related Companion Policy & Other Affected Instruments and Policies

TSX Group Inc. welcomes the opportunity to comment on behalf of both Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSX Venture) (collectively, the Exchanges) on NI 41-101, as published by the Canadian Securities Administrators (CSA).

I. GENERAL COMMENTS

The Exchanges support the CSA's efforts to further harmonize the overall prospectus regime with that of the current continuous disclosure regime. Harmonization of the long form prospectus rules is the next logical step towards doing so. However, we are concerned with the exclusion of Ontario from the application of various provisions in NI 41-101 and the impact that exclusion may have on achieving true harmonization and its resulting benefits. Any opportunity to improve

April 5, 2007

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (NI 44-101) and Related Companion Policy & Other Affected Instruments and Policies



Page 2 of 4

the ability of issuers to access equity markets on a more timely and cost efficient basis, while maintaining appropriate investor protections, should be taken advantage of.

We understand that there may be certain rule making authority limitations under the *Securities Act* (Ontario) (OSA) which prevent the implementation of various provisions in NI 41-101. If that is the only obstacle to achieving full harmonization, we would encourage the Ontario Securities Commission (OSC) to move forward with making the necessary amendments to the OSA in order to obtain the rule making authority required to eliminate exclusions from the application of NI 41-101 in Ontario. However, to the extent that the exclusions are based on policy reasons, which justify Ontario's lack of rule making authority in those areas, we would encourage the CSA to work towards harmonization in such a manner that allows for full participation of all jurisdictions.

II. REQUEST FOR COMMENTS ON THE PROPOSED INSTRUMENT

Certificate Requirements

The Exchanges generally support the rationale for expanding the class of persons subject to liability under a prospectus offering where there is a demonstrated need for such expansion and where it is done within reason. Demonstrated accountability is necessary to promote investor confidence in equity offerings in our capital markets.

The CSA believe that a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. In addition, if they receive proceeds from the distribution, they should be liable for any misrepresentations. They have defined the term "substantial beneficiary of the offering" for this purpose, which basically covers anyone who, directly or indirectly, holds or held within the one year preceding the offering, or after the offering is reasonably expected to acquire: (a) "control" of the issuer or significant business, or 20% or more voting rights, and (b) receives, directly or indirectly, 20% or more of the proceeds of the distribution.

Except in Ontario, NI 41-101 will now require all "substantial beneficiaries of the offering" to certify the prospectus. In addition, and except in Ontario, regulators will have the discretion to require control persons, selling security holders and other persons to certify a prospectus in certain circumstances. Such circumstances have not been described.

With respect to the substantial beneficiaries proposal, the proposed definition of "substantial beneficiary of an offering" is extremely broad and will affect persons who may not be in the best position to be giving such assurances to investors. Specifically, the one year retroactive application of the definition is unnecessary and could, in fact, increase uncertainty for those investors who wish to take significant ownership positions in issuers. While we understand the intention behind this proposal, we encourage the CSA to find an alternative way of expanding liability to those who may have been responsible for any misrepresentations.

In addition, giving the regulator discretion to require control persons, selling security holders and other persons to certify a prospectus may also affect persons or entities who are not in a position to be doing same. In many cases, these persons or entities will only be significant security holders who may not have had board representation and were not employees or members of management. When combined with the substantial beneficiaries proposal, this may have the effect of blurring lines of independence, governance and corporate law separateness of entities.

April 5, 2007

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (NI 44-101) and Related Companion Policy & Other Affected Instruments and Policies



Page 3 of 4

The potential, yet unintended, result may be the creation of a barrier to accessing equity capital in Canada – either through increased time and costs required to provide such certification, or by encouraging issuers to find other ways to access capital privately. We trust that the CSA will consider whether this level of liability exists in other jurisdictions, and whether adding this proposal would reduce Canada's competitiveness in global capital markets.

Personal Information Form and Authorization

Except in Ontario, NI 41-101 is proposing to require a form of personal information form (CSA PIF), in the form provided under Schedule 1 to Appendix A of NI 41-101, to be completed and filed for directors, officers, promoters and directors & officers of an investment fund manager, and except in Ontario, substantial beneficiaries of the offering, at the time of filing the preliminary prospectus.

The Exchanges have required certain individuals and persons associated with their listed issuers to complete personal information forms (Exchange PIF) upon initial listing of an issuer, or to assess the continued listing of an entity or suitability of a person.

The Exchanges understand that certain CSA members currently require that the Exchange PIF be used for their own purposes in connection with prospectus offerings, and to that extent, the Exchanges have accommodated such CSA members, at their request.

Specifically, the Exchanges have the following comments and concerns on the CSA PIF proposal:

- ♦ The CSA PIF proposed in NI 41-101 is substantially similar to the Exchange PIF, with some minor differences; for example, the CSA PIF does not require a criminal record information consent. Given the similarities in the form of PIF, the Exchanges question the need for individuals to potentially be required to submit two forms of PIF in connection with a prospectus offering. This could result in unnecessary duplication and confusion, adding to the costs and time required to raise equity in Canada. As such, the CSA may want to reconsider the extent of the CSA PIF and whether it is necessary in its current form for the purposes, it is required. In the alternative, the CSA could consider relying on the submission of the Exchange PIF to the CSA members, subject to our other comments in this letter regarding the Exchange PIF. In addition, the Exchanges question the need for such frequency in filing of the CSA PIF, particularly for issuers and individuals actively engaged in prospectus offerings.
- ♦ The Exchanges would like to confirm that, subject to the ordinary course rule review protocols for each of TSX and TSX Venture, the Exchanges will continue to have the discretion to amend their respective Exchange PIFs from time to time, with no implications as to how such changes may affect the CSA PIF.
- ♦ We also ask for confirmation that, regardless of whatever action taken or decision made by the CSA as a result of their review of a CSA PIF, it will not affect nor prevent any actions or decisions made by the Exchanges on the same individual. The Exchanges must continue to have the discretion to find an individual unsuitable, notwithstanding that no determination or a different determination is made by a CSA member based on their own CSA PIF review. In addition, the Exchanges seek clarification on how detrimental information relating to an individual will affect that issuer or any other issuer that individual is associated with.
- ♦ The Exchanges recommend that additional clarification be added for the filing requirements for delivery of a CSA PIF by an issuer. For example, as currently drafted,

April 5, 2007

Re: Proposed National Instrument 41-101 *General Prospectus Requirements* (NI 44-101) and Related Companion Policy & Other Affected Instruments and Policies



Page 4 of 4

there is no stated time limit on the age of a previously filed CSA PIF or Exchange PIF, when filed with a statutory declaration with a CSA member. Based on our experience, this type of procedural detail is required in order to minimize confusion and to prevent delays with filings by issuers.

- ♦ On the first page of Schedule 1 to Appendix A of NI 41-101, the references to TSX and TSX Venture as divisions of TSX Inc. and TSX Venture Exchange Inc., respectively, are unnecessary and should be removed. The CSA should refer to each of the Exchanges as they normally do in other instruments under securities laws.

Distribution of Securities Under a Prospectus to an Underwriter

NI 41-101 will now require that compensation options or warrants to an underwriter be limited to, in the aggregate, less than 5% of the number or principal amount of securities distributed under the offering.

While the Exchanges support any increased certainty with respect to fees and expenses associated with a prospectus offering, we recognize that market forces play an important role in the fees and expenses associated with equity offerings. The Exchanges ask that the CSA be cognisant of the built-in limits applied by market forces to underwriter compensation, particularly in connection with smaller issuers like those in the TSX Venture market. We trust that the CSA members will complete sufficient analysis on this particular proposal, particularly on TSX Venture equity offerings, prior to moving forward with such a limit. Any analysis should consider the effect such a limit may have on the cash portion of underwriter compensation, and on compensation securities that may be issued privately outside of the prospectus. In addition, we suggest that this issue may be better dealt with by the Investment Dealers Association.

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

Sincerely,

TSX Inc.

"Rik Parkhill"

TSX Venture Exchange Inc.

"Linda Hohol"