

13.1.2 Notice and Request for Comment - Application to Amend Recognition Order of TSX Group Inc. and TSX Inc.

**NOTICE AND REQUEST FOR COMMENT**

**APPLICATION TO AMEND RECOGNITION ORDER OF TSX GROUP INC. AND TSX INC.**

**Background**

TSX Group Inc. (TSX Group) and TSX Inc. have applied to the Commission to amend and restate the recognition order of TSX Group and TSX Inc. dated September 3, 2002 (Recognition Order) to amend the definition of independent director in paragraphs 1(b) and 8(c).

The Commission is publishing for comment the application of TSX Group and TSX Inc. We are seeking comment on all aspects of the application and related documents.

**Current definition of independent director in Recognition Order**

Currently, an independent director is defined in paragraphs 1(b) (for TSX Group) and 8(c) (for TSX Inc.) of the Recognition Order. The current definition in paragraph 1(b) (which is substantially identical to paragraph 8(c)) is:

An independent director is a director that is not:

- associated with an entity desiring access to the trading facilities of TSX whose application is accepted by TSX (Participating Organization) within the meaning of TSX Group's by-laws;
- an officer or employee of TSX Group or its affiliates or an associate of such officer or employee;
- a person who owns or controls, directly or indirectly, over 10% of TSX Group; or
- an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of TSX Group.

**Proposed amendment**

TSX Group and TSX Inc. propose that the definition of independent director in paragraphs 1(b) and 8(c) of the Recognition Order be deleted and replaced with the definition of independent director set out in section 1.4 of Multilateral Instrument 52-110 *Audit Committees* and the requirement that the board of directors adopt standards for determining when a director could be considered independent.

The proposed board standards would identify classes of individuals who are considered to have a material relationship with TSX Group or TSX Inc. and therefore are not considered to be independent. For example, an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of a Participating Organization is considered to have a material relationship with TSX Group and TSX Inc. and is therefore considered not to be independent. However, the board of directors may determine that an individual who at first instance is considered to have a material relationship is nonetheless independent if the board of directors is satisfied that the relationship will not reasonably interfere with the exercise of the individual's independent judgment. If the board of directors makes this determination, it must notify the Commission.

**Comment Process**

You are asked to provide your comments in writing and delivered on or before May 20, 2005 addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Suite 1901, Toronto, Ontario, M5H 3S8.

We request that you submit a diskette containing an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Following the comment period, staff will consider the comments received. Subject to comments received, Staff will recommend that an amended and restated recognition order be granted to TSX Group and TSX Inc. generally in the same form set out in the materials.

Questions may be referred to:

Cindy Petlock  
Manager, Market Regulation  
(416) 593-2351  
cpetlock@osc.gov.on.ca

Susan Greenglass  
Assistant Manager, Market Regulation  
(416) 593-8140  
sgreenglass@osc.gov.on.ca

April 22, 2005

April 20, 2005

**DELIVERED AND VIA EMAIL**

Ms Cindy Petlock  
Manager, Capital Markets  
Ontario Securities Commission  
Suite 1903, Box 55  
20 Queen Street West  
Toronto, ON M5H 3S8

Dear Ms Petlock:

**Re: Application to Amend Recognition Order of TSX Group Inc. and TSX Inc.**

**A. Relief Sought**

Pursuant to section 144 of the *Securities Act* (Ontario), TSX Group Inc. (TSX Group) and TSX Inc. hereby make application to amend and restate the recognition orders of TSX Group and TSX Inc. dated September 3, 2002 to amend the definition of an independent director in paragraphs 1(b) and 8(c).

**B. Submissions**

TSX Group and TSX Inc. propose that paragraphs 1(b) and 8(c) be deleted and replaced with the definition of an independent director as set out in Multilateral Instrument 52-110 - Audit Committees (MI 52-110), and the requirement that the board of directors adopt standards for determining when a director can be considered independent. We propose that the board of directors of TSX Group and TSX Inc. will initially adopt the standards set out in Schedules "B" and "C", respectively. These standards may be amended from time to time with the prior approval of the Commission.

TSX Inc.'s original recognition order was obtained in the context of the demutualization of the Toronto Stock Exchange and has been amended and restated to reflect various subsequent events. With recent and proposed changes to corporate governance policies and rules, and changes arising as a result of TSX Group becoming a reporting issuer, TSX Group and TSX Inc. have reviewed the terms and conditions of their recognition orders to consider changes to be made to reflect their business reality of operating a diversified business and the changing governance environment. We attach a draft amended and restated recognition order as Schedule "A". The proposed changes are blacklined in Schedule "A" and are discussed below.

In addition to complying with its recognition order, as a reporting issuer, TSX Group is currently also required to comply with the following director independence requirements when selecting directors and appointing committee members:

- (a) its articles and by-laws;
- (b) MI 52-110;
- (c) the Toronto Stock Exchange Company Manual; and
- (d) the *Business Corporations Act* (Ontario).

Upon their coming into force, TSX Group will, in addition to the requirements in the Toronto Stock Exchange Company Manual become subject to:

- (a) proposed National Instrument 58-101 - Disclosure of Corporate Governance Practices; and
- (b) proposed National Policy 58-201 - Corporate Governance Guidelines.

With the additional independence requirements imposed by their recognition orders, TSX Group and TSX Inc. are facing overlapping requirements which are causing practical difficulties in engaging qualified individuals to serve as directors. We submit that these overlapping requirements are contrary to the best interests of these corporations and potentially conflict with the general principles of fair representation on their boards prescribed in the recognition orders. So far as we are aware, no other public company in Canada has this additional and more restrictive layer of regulation respecting the independence of its directors.

It is a basic and fundamental principle of corporate law that TSX Group and TSX Inc. directors have an overriding duty to act honestly, fairly and with a view to the best interests of TSX Group and TSX Inc., respectively. In discharging this duty, directors

are obliged to put the interests of TSX Group or TSX Inc. first and to make decisions independent of any personal interests with which they may be associated. In assessing the best interests of TSX Group and TSX Inc., their directors must consider a multitude of factors relevant to their business. The recognition orders are foremost of these as it is only by compliance with them that TSX Group and TSX Inc. are permitted to operate their business.

TSX Group's recognition order requires it to ensure that the functions of TSX Inc. are carried out in a manner that is consistent with the public interest. The discipline for TSX Group and TSX Inc. to ensure that the public interest is protected exists because the failure to do so would result in a loss of confidence in our capital markets. Investor confidence is central to the success of Canadian capital markets. Accordingly, it is in the best interests of TSX Group and TSX Inc., as the operator of Canada's primary stock markets, to protect the public interest. All directors must accordingly act and be motivated in discharging their fiduciary obligations to act in a manner which preserves the public interest.

We believe that the MI 52-110 independence standard coupled with the proposed board standards is a better test for independence than the test that is currently applied under the existing recognition orders. The proposed board standards identify classes of individuals who are considered to have a material relationship with the corporation and are therefore considered not to be independent. For example, an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of a Participating Organization is considered to have a material relationship with the corporation and therefore considered not to be independent. The board of directors may, however, determine that certain individuals who at first instance are considered to have a material relationship with the corporation (under section 4 of the board standards) are nonetheless independent if the board of directors is satisfied that the material relationship will not reasonably interfere with the exercise of the individual's independent judgment. This process provides the flexibility that may be necessary in certain cases.

**C. Enclosures**

We enclose the following:

- (a) the draft amended and restated recognition orders of TSX Group Inc. and TSX Inc. (blacklined to show the proposed changes) attached as Schedule "A";
- (b) proposed board standards on the independence of directors for TSX Group as attached as Schedule "B"; and
- (c) proposed board standards on the independence of directors for TSX Inc. attached as Schedule "C".

Yours very truly,

"original signed by Sharon Pel"

Sharon C. Pel  
SCP/gd  
Encls.

cc: Susan Greenglass, OSC  
Wayne Fox, *TSX Group Inc.*  
Richard Nesbitt, *TSX Group Inc.*  
Lang Evans, *BCSC*  
Patty Johnston, *ASC*  
Jacinthe Bouffard, *AMF*

**Schedule "A"**

**IN THE MATTER OF**

**THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,**

**AS AMENDED (the "Act")**

**and**

**IN THE MATTER OF**

**TSX GROUP INC. AND TSX INC.**

**AMENDMENT TO RECOGNITION ORDER**

**(Section 144)**

**WHEREAS** the Commission issued an order dated April 3, 2000 granting and continuing the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange pursuant to section 21 of the Act;

**AND WHEREAS** the Commission issued an amended and restated order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. ("RS Inc.") to perform its market regulation functions (~~"Previous Order"~~);

**AND WHEREAS** the Commission ~~has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order~~ issued an amended and restated order dated September 3, 2002 to reflect the name change of TSE to TSX Inc. ("TSX") and a reorganization under which TSX ~~will become~~ became a wholly-owned subsidiary of TSX Group Inc., a newly formed holding company ("TSX Group") ("TSX Group"), a holding company, and granted TSX Group recognition as a stock exchange pursuant to section 21 of the Act, in each case effective on the closing of the reorganization ("Previous Order");

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect changes to the definition of an independent director;

**IT IS ORDERED**, pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

**IN THE MATTER OF**

**THE SECURITIES ACT, R.S.O. 1990**

**CHAPTER S. 5, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF**

**TSX GROUP INC. AND TSX INC.**

**RECOGNITION ORDER**

**(Section 21)**

**WHEREAS** the Commission granted and continued the recognition of The Toronto Stock Exchange Inc. ("TSE") as a stock exchange on April 3, 2000 following the continuance of the TSE under the Business Corporations Act (Ontario);

**AND WHEREAS** the Commission granted the TSE an amended and restated recognition order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. ("RS Inc.") as a regulation services provider ("RSP") under National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules ("ATS Rules");

**AND WHEREAS** ~~the TSE has changed its name to TSX Inc. ("TSX");~~ **AND WHEREAS** TSX will complete Commission granted the TSE an amended and restated recognition order dated September 3, 2002 to reflect the name change of TSE to TSX and a reorganization under which TSX will become became a wholly-owned subsidiary of TSX Group Inc., a newly formed holding company ("TSX Group");

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect changes to the definition of an independent director;

AND WHEREAS following the reorganization, TSX Group intends to conduct an initial public offering;

~~AND WHEREAS~~ the Commission has received certain representations and acknowledgements from TSX and TSX Group in connection with TSX's application for continued recognition as a stock exchange and TSX Group's application for recognition as a stock exchange; ~~AND WHEREAS~~ the Commission considers it appropriate to set out in an order the terms and conditions of TSX's continued recognition as a stock exchange each of TSX's and TSX Group's continued recognition as a stock exchange, which terms and conditions are set out in Schedule "A" attached;

AND WHEREAS TSX and TSX Group have agreed to the terms and conditions applicable to each of them set out in Schedule "A";

AND WHEREAS the Commission has determined that continuing to recognize TSX and ~~recognizing~~ TSX Group ~~are~~ is not prejudicial to the public interest;

The Commission hereby amends ~~the TSE~~ each of TSX's and TSX Group's recognition as a stock exchange so that the recognition pursuant to section 21 of the Act continues with respect to TSX and ~~grants~~ TSX Group ~~recognition as a stock exchange pursuant to section 21 of the Act~~, in each case effective ~~on the closing of the reorganization~~, subject to the terms and conditions attached as Schedule "A", on the date hereof.

April 3, 2000, as amended on January 29, ~~2002 and~~ 2002, on September 3, ~~2002, 2002,~~ and on ~~•~~ 2005.

"Howard Wetston" \_\_\_\_\_ "Paul Moore"

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**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**PART I--TSX GROUP**

**1. CORPORATE GOVERNANCE**

(a) TSX Group's governance structure shall provide for:

(i) Fair and meaningful representation on its board of directors and any governance committee thereof, having regard to, among other things, TSX Group's ownership of TSX;

(ii) Appropriate representation of independent directors on TSX Group's committees; and

(iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of TSX Group generally.

~~(b) TSX Group shall ensure that at least fifty per cent (50%) of its directors shall be independent. An independent director is a director that is not, on an annual basis and each time that an individual joins the board of directors, that at least fifty per cent (50%) of its directors are independent. For purposes of this recognition order, a director is independent if he or she is independent within the meaning of section 1.4 of Multilateral Instrument 52-110--Audit Committees, as amended from time to time. The board of directors will adopt standards which may be amended from time to time with the prior approval of the Commission, setting out criteria to determine whether individuals are independent, including criteria to determine whether an individual has a material relationship with TSX Group and is therefore considered not to be independent. These standards will be made available on the TSX website.~~

~~(i) associated with an entity desiring access to the trading facilities of TSX whose application is accepted by TSX ("Participating Organization") within the meaning of TSX Group's by-laws;~~

~~(ii) an officer or employee of TSX Group or its affiliates or an associate of such officer or employee;~~

~~(iii) a person who owns or controls, directly or indirectly, over 10% of TSX Group; or~~

~~(iv) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of TSX Group.~~

In the event that at any time TSX Group fails to meet such requirement, it shall promptly remedy such situation.

**2. FITNESS**

TSX Group will take reasonable steps to ensure that each officer or director of TSX Group 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.

**3. ALLOCATION OF RESOURCES**

(a) TSX Group will, subject to paragraph 3(b) hereof and for so long as TSX carries on business as a stock exchange, 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 Part II of this Schedule "A".

(b) TSX Group will notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to TSX 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 Part II of this Schedule "A".

**4. FINANCIAL INFORMATION**

TSX Group will file with the Commission unaudited quarterly consolidated financial statements of TSX Group within 60 days of each quarter end and audited annual consolidated financial statements of TSX Group within 90 days of each year, or such shorter periods as are mandated for reporting issuers to file such financial statements under the Act.

## 5. COMPLIANCE

TSX Group will carry out its activities as a stock exchange recognized under section 21 of the Act. TSX Group will do everything within its control to cause TSX to carry out its activities as a stock exchange recognized under section 21 of the Act and to comply with the terms and conditions in Part II of this Schedule "A".

## 6. ACCESS TO INFORMATION

(a) TSX Group will and will 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 of TSX of its regulation functions and the compliance of TSX with the terms and conditions in Part II of this Schedule "A".

(b) TSX Group will permit the Commission to have access to and to inspect all data and information in its possession that is required for the assessment by the Commission of the compliance of TSX Group with the terms and conditions in Part I of this Schedule "A".

## 7. SHARE OWNERSHIP RESTRICTIONS

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.

## PART II--TSX

### 8. CORPORATE GOVERNANCE

(a) To ensure diversity of representation, TSX will ensure that the composition of its board of directors provides a proper balance between the interests of the different entities using its services and facilities.

(b) TSX's governance structure shall provide for:

(i) Fair and meaningful representation on its board of directors and any governance committee thereof, in the context of the nature and structure of TSX;

(ii) Appropriate representation of independent directors on TSX's committees; and

(iii) Appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of TSX generally.

~~(c) In recognition that the protection of the public interest is a primary goal of TSX, TSX shall ensure, on an annual basis and each time that an individual joins the board of directors, that at least fifty per cent (50%) of its directors shall be independent. An independent director is a director that is not:~~ For purposes of this recognition order, a director is independent if he or she is independent within the meaning of section 1.4 of Multilateral Instrument 52-110--Audit Committees, as amended from time to time. The board of directors will adopt standards which may be amended from time to time with the prior approval of the Commission, setting out criteria to determine whether individuals are independent, including criteria to determine whether an individual has a material relationship with TSX and is therefore considered not to be independent. These standards will be made available on the TSX website.

~~(i) associated with a Participating Organization within the meaning of TSX's by-laws;~~

~~(ii) an officer or employee of TSX or its affiliates or an associate of such officer or employee;~~

~~(iii) a person who owns or controls, directly or indirectly, over 10% of TSX; or~~

~~(iv) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of TSX (other than a director of TSX Group).~~

In the event that at any time TSX fails to meet such requirement, it shall promptly remedy such situation.



**9. FEES**

(a) Any and all fees imposed by TSX on its Participating Organizations shall be equitably allocated. Fees shall not have the effect of creating barriers to access and shall be balanced with the criteria that TSX have sufficient revenues to satisfy its responsibilities.

(b) TSX's process for setting fees shall be fair and appropriate.

**10. ACCESS**

(a) The requirements of TSX shall permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy TSX's criteria to access the trading facilities of TSX.

(b) Without limiting the generality of the foregoing, TSX shall:

(i) establish written standards for granting access to trading on its facilities;

(ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and

(iii) keep records of:

(A) each grant of access including, for each entity granted access to its trading facilities, the reasons for granting such access; and

(B) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

**11. FITNESS**

TSX will take reasonable steps to ensure that each officer or director of TSX 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.

**12. FINANCIAL VIABILITY**

(a) TSX shall maintain sufficient financial resources for the proper performance of its functions.

(b) TSX shall maintain: (i) a liquidity measure greater than or equal to zero; (ii) a debt to cash flow ratio less than or equal to 4.0/1; and (iii) a financial leverage ratio less than or equal to 4.0/1. For this purpose:

(i) liquidity measure is:

(working capital + borrowing capacity)

- 2 (adjusted budgeted expenses + adjusted capital expenditures - adjusted revenues)

where:

(A) working capital is current assets minus current liabilities,

(B) borrowing capacity is the principal amount of long term debt available to be borrowed under loan or credit agreements that are in force,

(C) adjusted budgeted expenses are 95% of the expenses (other than depreciation and other non-cash items) provided for in the budget for the current fiscal year,

(D) adjusted capital expenditures are 50% of average capital expenditures for the previous three fiscal years, and

(E) adjusted revenues are 80% of revenues plus 80% of investment income for the previous fiscal year,

(ii) debt to cash flow ratio is the ratio of total debt to EBITDA (or earnings before interest, taxes, depreciation and amortization) for the most recent 12 months, and

(iii) financial leverage ratio is the ratio of total assets to shareholders' equity,

in each case as calculated on a consolidated basis and consistently with the consolidated financial statements of TSX.

(c) On a quarterly basis (along with the financial statements required to be filed pursuant to paragraph 17), TSX shall report to the Commission the monthly calculation of the liquidity measure and debt to cash flow and financial leverage ratios, the appropriateness of the calculations and whether any alternative calculations should be considered.

(d) If TSX fails to maintain any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio in any month, it shall immediately report to the Commission or its staff.

(e) If TSX fails to maintain any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will immediately deliver a letter advising the Commission or its staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the problem, and TSX will not, without the prior approval of the Director, make any capital expenditures not already reflected in the financial statements, or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been eliminated for at least six months.

(f) TSX shall not enter into any agreement or transaction either (i) outside the ordinary course of business or (ii) with TSX Group or any subsidiary or associate of TSX Group if it expects that, after giving effect to the agreement or transaction, TSX is likely to fail to maintain the liquidity measure, the debt to cash flow ratio or the financial leverage ratio.

### **13. REGULATION**

(a) TSX shall continue to retain RS Inc. as an RSP to provide, as agent for TSX, certain regulation services which have been approved by the Commission. TSX shall provide to the Commission, on an annual basis, a list outlining the regulation services provided by RS Inc. and the regulation services performed by TSX. All amendments to those listed services are subject to the prior approval of the Commission.

(b) In providing the regulation services, as set out in the agreement between RS Inc. and TSX (Regulation Services Agreement), RS Inc. provides certain regulation services to TSX as the agent of TSX pursuant to a delegation of TSX's authority in accordance with Section 13.0.8(4) of the Toronto Stock Exchange Act and will be entitled to exercise all the authority of TSX with respect to the administration and enforcement of certain market integrity rules and other related rules, policies and by-laws.

(c) TSX shall provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report shall be in such form as may be specified by the Commission from time to time.

(d) TSX shall continue to perform all other regulation functions not performed by RS Inc. TSX shall not perform such regulation functions through any other party, including its affiliates or associates. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 23 does not contravene this paragraph.

(e) Management of TSX (including the Chief Executive Officer) shall at least annually assess the performance by RS Inc. of its regulation functions and report thereon to the Board of TSX, together with any recommendations for improvements. TSX shall provide the Commission with copies of such reports and shall advise the Commission of any proposed actions arising therefrom.

### **14. SYSTEMS**

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, TSX shall:

(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;

(v) establish reasonable contingency and business continuity plans;

(b) annually, cause to be performed an independent review and written report, 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. This will include an assessment of TSX's controls for ensuring that each of its systems that support order entry, order routing, execution, data fees, trade reporting and trade comparisons, capacity and integrity requirements is in compliance 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.

#### **15. PURPOSE OF RULES**

(a) TSX shall, subject to the terms and conditions of this Recognition Order and the jurisdiction and oversight of the Commission in accordance with Ontario securities laws, through RS Inc. and otherwise, establish such rules, policies and other similar instruments ("Rules") that are necessary or appropriate to govern and regulate all aspects of its business and affairs.

(b) In particular, TSX shall ensure that:

(i) the Rules are designed to:

(A) ensure compliance with securities legislation;

(B) prevent fraudulent and manipulative acts and practices;

(C) promote just and equitable principles of trade;

(D) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and

(E) provide for appropriate discipline;

(ii) the Rules do not:

(A) permit unreasonable discrimination among clients, issuers and Participating Organizations; or

(B) impose any burden on competition that is not reasonably necessary or appropriate; and

(iii) the Rules are designed to ensure that TSX's business is conducted in a manner so as to afford protection to investors.

#### **16. RULES AND RULE-MAKING**

(a) TSX shall comply with the existing protocol between TSX and the Commission, as it may be amended from time to time, concerning Commission approval of changes in its Rules.

(b) All Rules of general application, and amendments thereto, adopted by TSX must be filed with the Commission.

#### **17. FINANCIAL STATEMENTS**

TSX shall file unaudited quarterly financial statements (consolidated and unconsolidated) within 60 days of each quarter end and audited annual financial statements (consolidated and unconsolidated) within 90 days of each year end or such shorter period as is mandated for reporting issuers to file such financial statements under the Act.

#### **18. SANCTION RULES**

TSX shall ensure, through RS Inc. and otherwise, that its Participating Organizations and its listed issuers are appropriately sanctioned for violations of the Rules. In addition, TSX will provide notice to the Commission of any violations of securities legislation of which it becomes aware in the ordinary course operation of its business.

#### **19. DUE PROCESS**

TSX shall ensure that the requirements of TSX relating to access to the trading and listing facilities of TSX, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions for appeals.

#### **20. INFORMATION SHARING**

TSX shall co-operate by the sharing of information and otherwise, with the Commission and its staff, the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

#### **21. LISTED COMPANY RULES**

TSX shall ensure, through RS Inc. and otherwise, that it has appropriate review procedures in place to monitor and enforce issuer compliance with the Rules.

#### **22. SELF-LISTING CONDITIONS**

TSX shall be subject to the terms and conditions relating to the listing on TSX of TSX Group as are set out in the attached Appendix I, as amended from time to time.

#### **23. OUTSOURCING**

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 shall proceed in accordance with industry best practices. Without limiting the generality of the foregoing, TSX shall:

(a) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such material outsourcing arrangements;

(b) in entering into any such material outsourcing arrangement:

(i) assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by TSX; and

(ii) execute a contract with the service provider addressing all significant elements of such arrangement, including service levels and performance standards;

(c) ensure that any contract implementing such material outsourcing arrangement that is likely to impact on TSX's regulation functions provide in effect for TSX, its agents and the Commission to be permitted to have access to and to inspect all data and information maintained by the service provider that TSX is required to share under paragraph 20 or that is required for the assessment by the Commission of the performance of TSX of its regulation functions and the compliance of TSX with the terms and conditions in Part II of this Schedule "A"; and

(d) monitor the performance of the service provided under any such material outsourcing arrangement.

#### **24. RELATED PARTY TRANSACTIONS**

Any material agreement or transaction entered into between TSX and TSX Group or any subsidiary or associate of TSX Group shall be on terms and conditions that are at least as favourable to TSX as market terms and conditions.

#### **25. CLEARING AND SETTLEMENT**

The Rules impose a requirement on Participating Organizations to have appropriate arrangements in place for clearing and settlement through a clearing agency recognized by the Commission.

## APPENDIX I

### Listing-Related Conditions

#### 1. UNDERLYING PRINCIPLES

- 1.1. TSX carries on the business of the Toronto Stock Exchange.
- 1.2. TSX Group proposes to become a listed company on TSX, which will be wholly-owned by TSX Group.
- 1.3. TSX will report to the Director (the "Director") of the Ontario Securities Commission ("OSC") or other members of the staff of the OSC certain matters provided for in this Appendix I (the "Listing-Related Procedures") with respect to TSX Group or certain other TSX-listed issuers that raise issues of conflict of interest or potential conflict of interest for TSX.
- 1.4. The purpose of this reporting process is to ensure that TSX follows appropriate standards and procedures with respect to the initial and continued listing of TSX Group and Competitors, to ensure that TSX Group is dealt with appropriately in relation to, and Competitors are treated fairly and not disadvantaged by, TSX Group's listing on TSX. For purposes of these Listing-Related Procedures, "Competitor" means any person, the consolidated business and operations or the disclosed business plans of which are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material line of business of TSX Group or its affiliates.

#### 2. INITIAL LISTING ARRANGEMENTS

- 2.1. TSX will review, in accordance with its procedures, the TSX Group initial listing application. A copy of the application will be provided by TSX to the OSC's Director, Corporate Finance at the same time that the application is filed with TSX.
- 2.2. Upon completing its review of the application and after allowing TSX Group to address any deficiencies noted by TSX, TSX will provide a summary report to the OSC's Director, Corporate Finance, with its recommendation for listing approval, if made. The summary report will provide details of any aspects of the application that were atypical as well as any issues raised in the process that required the exercise of discretion by TSX. Any related staff memoranda, analysis, recommendations and decisions not included in the summary report will be attached for review by the OSC's Director, Corporate Finance. A copy of TSX's current listing manual will also be provided to the OSC's Director, Corporate Finance.
- 2.3. The OSC's Director, Corporate Finance will have the right to approve or disapprove the listing of the TSX Group shares. In the event of disapproval, TSX Group will have the opportunity to address the concerns of the OSC's Director, Corporate Finance and may resubmit an amended application for listing, or amended parts thereof, to TSX, which will provide a revised summary report and any new materials to the OSC's Director, Corporate Finance in accordance with section 2.2, along with a copy of the amended application.

#### 3. CONFLICTS COMMITTEE

- 3.1. TSX will establish a committee (the "Conflicts Committee") that will review any matters brought before it regarding a conflict of interest or potential conflict of interest relating to the continued listing on TSX of TSX Group or the initial listing or continued listing of Competitors (each, a "Conflict of Interest"). Without limiting the generality of the above sentence, continued listing matters include the following:
  - (a) matters relating to the continued listing of TSX Group or a Competitor or of a listing of a different class or series of securities of TSX Group or a Competitor than a class or series already listed;
  - (b) any exemptive relief applications of, or approvals applied for by, TSX Group or a Competitor;
  - (c) any other requests made by TSX Group or a Competitor that require discretionary involvement by TSX; and
  - (d) any listings matter related to a TSX-listed issuer or listing applicant that asserts that it is a Competitor.
- 3.2. Notwithstanding section 3.1, where a Competitor certifies to TSX that information required to be disclosed to the Conflicts Committee or TSX in connection with an initial listing or continued listing matter of the Competitor is competitively sensitive and the disclosure of that information would in its reasonable view put it at a competitive disadvantage with respect to TSX Group, TSX will refer the matter to the Director, requesting that the Director review issues relating to the competitively sensitive information. The Conflicts Committee shall consider all other aspects of the matter in accordance with the procedures set out in section 3.8. In addition, at any time that a Competitor believes that it is not being treated fairly by TSX as a result of TSX being in a conflict of interest position, TSX will refer the matter to the Director.

3.3. In any initial listing or continued listing matter of a Competitor, the Competitor may waive the application of these Listing-Related Procedures by providing a written waiver to TSX and the Director. Where a waiver is provided, TSX will deal with the initial listing or continued listing matter in the ordinary course as if no Conflict of Interest exists.

3.4. The Conflicts Committee will be composed of: the Chief Executive Officer of TSX, the general counsel of TSX (the "Committee Secretary"), the senior officer responsible for listings of each of TSX and TSX Venture Exchange Inc., the senior officer responsible for trading operations of TSX, a senior management representative of Market Regulation Services Inc. and two other persons who shall be independent of TSX (as independent is defined in paragraph 1(a) of Schedule "A" of the terms and conditions of the recognition order). At least one such independent member must participate in meetings of the Conflicts Committee, in order for there to be a quorum.

3.5. TSX shall use its best efforts to instruct senior management and relevant staff at TSX, and relevant senior management and staff at RS, in order that they are alerted to, and are able to identify, Conflicts of Interest which may exist or arise in the course of the performance of their functions. Without limiting the generality of the foregoing:

3.5.1. TSX shall provide instruction that any matter concerning TSX Group that is brought to the attention of staff at TSX must be immediately brought to the attention of the Committee Secretary.

3.5.2. TSX shall maintain a list in an electronic format, to be updated regularly and in any event at least monthly and reviewed and approved by the Conflicts Committee at least monthly, of all Competitors that are TSX-listed issuers, and shall promptly after the above-noted approval by the Conflicts Committee provide the current list to managers at TSX and RS who supervise departments that (i) review continuous disclosure; (ii) review requests/applications for exemptive relief; (iii) perform timely disclosure and monitoring functions relating to TSX-listed issuers; and (iv) otherwise perform tasks and/or make decisions of a discretionary nature. In maintaining this list, TSX shall ensure that senior executives in the issuer services division of TSX regularly prepare and review and update the list and provide it promptly to the Conflicts Committee.

3.5.3. TSX shall provide instruction to staff at TSX that any initial listing or continued listing matter or a complaint of a Competitor or of any TSX-listed issuer or listing applicant that asserts that it is a Competitor must be immediately brought to the attention of the Committee Secretary.

3.5.4. TSX shall provide to staff who review initial listing applications and to senior executives in the issuer services division of TSX a summary of the types of businesses undertaken to a significant degree by TSX Group or its affiliates and shall update the list as these businesses change, in order that initial listings staff and senior executives in the issuer services division of TSX may recognize a Competitor.

3.6. The Committee Secretary shall convene a meeting of the Conflicts Committee to be held no later than one business day after a Conflict of Interest has been brought to his or her attention. The Committee Secretary or any member of the Conflicts Committee may also convene a meeting of the Conflicts Committee whenever he or she sees fit, in order to address any conflict issues that may not be related to any one specific matter or issuer.

3.7. TSX shall, at the time a Conflicts Committee meeting is called in response to a Conflict of Interest, immediately notify the OSC's Manager of Market Regulation that it has received notice of a Conflict of Interest and shall provide with such notice: (i) a written summary of the relevant facts; and (ii) an indication of the required timing for dealing with the matter.

3.8. The Conflicts Committee will consider the facts and form an initial determination with respect to the matter. The Conflicts Committee will then proceed as follows depending on the circumstances:

3.8.1. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group or the initial or continued listing of a Competitor on TSX does not exist and is unlikely to arise, it will notify the OSC's Manager of Market Regulation of this determination. If the OSC's Manager of Market Regulation approves such determination, TSX will deal with the matter in its usual course. When it has dealt with the matter, a brief written record of such determination with details of the analysis undertaken, and the manner in which the matter was disposed of, will be made by TSX and provided to the OSC's Manager of Market Regulation. If the OSC's Manager of Market Regulation does not approve the determination and provides notice of such non-approval to TSX, TSX will follow the procedures set out in section 3.8.2.

3.8.2. If the Conflicts Committee determines that a conflict of interest relating to the continued listing on TSX of TSX Group or the initial or continued listing of a Competitor on TSX does exist or is likely to arise or if TSX is provided non-approval notice from the OSC's Manager of Market Regulation under section 3.8.1, TSX shall: (i) formulate a written recommendation of how to deal with the matter; and (ii) provide its recommendation to the OSC's Manager of Market Regulation for his or her approval, together with a summary of the issues raised and details of any analysis undertaken. If the OSC's Manager of Market Regulation approves the recommendation, TSX will take steps to implement the terms of its recommendation.

3.9. Where the OSC's Manager of Market Regulation has considered the circumstances of an issue based on the information provided to him or her by the Conflicts Committee under section 3.8.2, and has determined that he or she does not agree with TSX's recommendation (i) and has requested that TSX reformulate its recommendation, TSX shall do so; or (ii) the OSC's Manager of Market Regulation may direct TSX to take such other action as he or she considers appropriate in the circumstances.

3.10. Where the OSC's Manager of Market Regulation or the Director is requested to review a matter pursuant to section 3.9 or 3.2, respectively, TSX shall provide to the OSC's Manager of Market Regulation or the Director any relevant information in its possession and, if requested by the OSC's Manager of Market Regulation or the Director, any other information in its possession, in order for the OSC's Manager of Market Regulation or the Director to review or, if appropriate, make a determination regarding the matter, including any notes, reports or information of TSX regarding the issue, any materials filed by the issuer or issuers involved, any precedent materials of TSX, and any internal guidelines of TSX. TSX shall provide its services to assist the matter, if so requested by the OSC's Manager of Market Regulation or by the Director.

3.11. TSX will provide to the OSC's Manager of Continuous Disclosure a copy of TSX Group's annual questionnaire and any other TSX Group disclosure documents that are filed with TSX but not with the OSC's Continuous Disclosure department. TSX will conduct its usual review process in connection with TSX Group's annual questionnaire and all prescribed periodic filings of TSX Group. Any deficiencies or irregularities in TSX Group's annual questionnaire or other TSX-issuer prescribed filings will be communicated to the OSC's Manager of Continuous Disclosure and brought to the attention of the Conflicts Committee which shall follow the procedures outlined in this section 3.

#### **4. TIMELY DISCLOSURE AND MONITORING OF TRADING**

4.1. TSX shall use its best efforts to ensure that RS at all times is provided with the current list of the TSX-listed issuers that are Competitors.

#### **5. MISCELLANEOUS**

5.1. Information provided by a Competitor in connection with an initial listing or continued listing matter to the Conflicts Committee will not be used by TSX for any purpose other than addressing Conflicts of Interest. TSX will not disclose any confidential information obtained under these Listing-Related Procedures to a third party other than the OSC unless:

- (a) prior written consent of the other parties is obtained;
- (b) it is required or authorized by law to disclose the information; or
- (c) the information has come into the public domain otherwise than as a result of its breach of this clause.

5.2. TSX will provide disclosure on its website and in the TSX Company Manual to the effect that an issuer can assert that it is a Competitor and will outline the procedures for making such an assertion, including appeal procedures.

**Schedule "B"**

**TSX Group Inc.**

**Board of Directors Independence Standards**

The Board of Directors has adopted these standards to determine whether individual members of the Board are independent from TSX Group Inc. These standards are derived from the rules of the Ontario Securities Commission and the Canadian Securities Administrators and the Recognition Order of TSX Group Inc. and TSX Inc. The Board will update these standards from time to time as required. These standards were reviewed and approved by the Board on ■, 2005.

**1. Composition**

At least fifty per cent (50%) of members of the Board shall be independent within the meaning of and as required by Multilateral Instrument 52-110—Audit Committees ("MI 52-110"). In addition, TSX Group will take steps to ensure that each member of the Board is a fit and proper person and the past conduct of the member affords reasonable grounds for belief that the member will perform his or her duties with integrity.

**2. Determination by Board**

A director is considered independent only where the Board affirmatively determines that the director has no material relationship with TSX Group.<sup>1</sup> A "material relationship" is a relationship which could, in the view of the Board, reasonably interfere with the exercise of a director's independent judgement.<sup>2</sup> The Board shall make a determination concerning the independence of a director each year at the time the Board approves director nominees for inclusion in TSX Group's information circular. Where a director joins the Board mid-year, the Board will make a determination at that time.

**3. General Independence Standards**

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Group and are therefore considered NOT to be independent:

- (a) an individual who is, or has been within the last three years, an employee or executive officer<sup>3</sup> of TSX Group or any of its affiliates;
- (b) an individual whose immediate family member<sup>4</sup> is, or has been within the last three years, an executive officer of TSX Group or any of its affiliates (past or present employment of the individual or immediate family member, on a part-time basis, as the chair or vice-chair of the board or any board committee does not disqualify the individual from being independent);
- (c) an individual who:
  - (i) is a partner of a firm that is the internal or external auditor of TSX Group or any of its affiliates,
  - (ii) is an employee of that firm, or
  - (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Group or any of its affiliates within that time;
- (d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:
  - (i) is a partner of a firm that is the internal or external auditor of TSX Group or any of its affiliates,

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<sup>1</sup> MI 52-110, section 1.4(1).

<sup>2</sup> MI 52-110, section 1.4(2).

<sup>3</sup> "Executive officer" means a chair, vice-chair, president, any vice-president in charge of a principal business unit, division or function (including sales, finance or production), any officer of the company or its subsidiaries who performs a policy-making function, or any other individual who performs a policy-making function.

<sup>4</sup> "Immediate family member" means an individual's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of the individual or the individual's immediate family member) who shares the individual's home.



- (ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or
  - (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Group or any of its affiliates within that time;
- (e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the current executive officers of TSX Group or its affiliates serves or served at that same time on the entity's compensation committee; and
- (f) an individual who received, or whose immediate family member who is employed as an executive officer of TSX Group or any of its affiliates received, more than \$75,000 in direct compensation from TSX Group or any of its affiliates during any 12 month period within the last three years (other than director or board committee fees and retirement plan payments or other deferred compensation for prior service, provided the compensation is not contingent in any way on continued service).

#### **4. Additional TSX Group Independence Standards**

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Group and are therefore considered NOT to be independent:

- (a) an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of an entity that is a Participating Organization<sup>5</sup>; and
- (b) an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of an entity that has a Participating Organization as a significant affiliate<sup>6</sup>, who is responsible for or is actively or significantly engaged in the day-to-day operations or activities of the Participating Organization.

#### **5. Determination by the Board and Review by the Ontario Securities Commission**

- (a) The Board may determine that an individual who is considered to have a material relationship under Section 4 is nonetheless independent, if the Board is satisfied that the material relationship under Section 4 will not, in the view of the Board, reasonably interfere with the exercise of the individual's independent judgment.
- (b) If the Board makes the determination referred to in clause 5(a), TSX Group must disclose in a written statement in its management information circular delivered to shareholders in connection with its annual meeting of shareholders:
  - (i) the nature of the relationship of the individual with TSX Group; and
  - (ii) the explanation of the Board's determination as to why the individual should be considered independent.
- (c) TSX Group will notify the Manager of Market Regulation for the Ontario Securities Commission in writing of the Board's intention to make the determination referred to in clause 5(a) as soon as practicable, and in any event no less than 15 business days before the written statement in clause 5(b) is made.

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<sup>5</sup> A "Participating Organization" is an entity desiring access to the trading facilities of Toronto Stock Exchange whose application is accepted by Toronto Stock Exchange.

<sup>6</sup> A Participating Organization is a "significant affiliate" of another entity if the Participating Organization is an affiliate of that entity (as defined in the *Business Corporations Act* (Ontario)) and if the annual revenues of the Participating Organization for its most recently completed fiscal year represent more than 10% of the consolidated revenues of its group parent.

**Schedule "C"**

**TSX Inc.**

**Board of Directors Independence Standards**

The Board of Directors has adopted these standards to determine whether individual members of the Board are independent from TSX Inc. These standards are derived from the rules of the Ontario Securities Commission and the Canadian Securities Administrators and the Recognition Order of TSX Group Inc. and TSX Inc. The Board will update these standards from time to time as required. These standards were reviewed and approved by the Board on ■, 2005.

**1. Composition**

At least fifty per cent (50%) of members of the Board shall be independent within the meaning of and as required by Multilateral Instrument 52-110—Audit Committees ("MI 52-110"). In addition, TSX Inc. will take steps to ensure that each member of the Board is a fit and proper person and the past conduct of the member affords reasonable grounds for belief that the member will perform his or her duties with integrity.

**2. Determination by Board**

A director is considered independent only where the Board affirmatively determines that the director has no material relationship with TSX Inc.<sup>1</sup> A "material relationship" is a relationship which could, in the view of the Board, reasonably interfere with the exercise of a director's independent judgement.<sup>2</sup> The Board shall make a determination concerning the independence of a director each year at the time the Board approves director nominees for inclusion in TSX Group's information circular. Where a director joins the Board mid-year, the Board will make a determination at that time.

**3. General Independence Standards**

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Inc. and are therefore considered NOT to be independent:

- (a) an individual who is, or has been within the last three years, an employee or executive officer<sup>3</sup> of TSX Inc. or any of its affiliates;
- (b) an individual whose immediate family member<sup>4</sup> is, or has been within the last three years, an executive officer of TSX Inc. or any of its affiliates (past or present employment of the individual or immediate family member, on a part-time basis, as the chair or vice-chair of the board or any board committee does not disqualify the individual from being independent);
- (c) an individual who:
  - (i) is a partner of a firm that is the internal or external auditor of TSX Inc. or any of its affiliates,
  - (ii) is an employee of that firm, or
  - (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Inc. or any of its affiliates within that time;
- (d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:
  - (i) is a partner of a firm that is the internal or external auditor of TSX Inc. or any of its affiliates,

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<sup>1</sup> MI 52-110, section 1.4(1).

<sup>2</sup> MI 52-110, section 1.4(2).

<sup>3</sup> "Executive officer" means a chair, vice-chair, president, any vice-president in charge of a principal business unit, division or function (including sales, finance or production), any officer of the company or its subsidiaries who performs a policy-making function, or any other individual who performs a policy-making function.

<sup>4</sup> "Immediate family member" means an individual's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of the individual or the individual's immediate family member) who shares the individual's home.

- (ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or
- (iii) was within the last three years a partner or employee of that firm and personally worked on the audit of TSX Inc. or any of its affiliates within that time;
- (e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the current executive officers of TSX Inc. or its affiliates serves or served at that same time on the entity's compensation committee; and
- (f) an individual who received, or whose immediate family member who is employed as an executive officer of TSX Inc. or any of its affiliates received, more than \$75,000 in direct compensation from TSX Inc. or any of its affiliates during any 12 month period within the last three years (other than director or board committee fees and retirement plan payments or other deferred compensation for prior service, provided the compensation is not contingent in any way on continued service).

#### **4. Additional TSX Inc. Independence Standards**

In determining whether a director is independent, the following individuals are considered to have a material relationship with TSX Inc. and are therefore considered NOT to be independent:

- (c) an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of an entity that is a Participating Organization<sup>5</sup>; and
- (d) an individual who is an employee, associate (within the meaning of the *Securities Act* (Ontario)), or executive officer of an entity that has a Participating Organization as a significant affiliate<sup>6</sup>, who is responsible for or is actively or significantly engaged in the day-to-day operations or activities of the Participating Organization.

#### **5. Determination by the Board and Review by the Ontario Securities Commission**

- (a) The Board may determine that an individual who is considered to have a material relationship under Section 4 is nonetheless independent, if the Board is satisfied that the material relationship under Section 4 will not, in the view of the Board, reasonably interfere with the exercise of the individual's independent judgment.
- (b) If the Board makes the determination referred to in clause 5(a), TSX Group must disclose in a written statement in its management information circular delivered to shareholders in connection with its annual meeting of shareholders:
  - (i) the nature of the relationship of the individual with TSX Inc.; and
  - (ii) the explanation of the Board's determination as to why the individual should be considered independent.
- (c) TSX Inc. will notify the Manager of Market Regulation for the Ontario Securities Commission in writing of the Board's intention to make the determination referred to in clause 5(a) as soon as practicable, and in any event no less than 15 business days before the written statement in clause 5(b) is made.

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<sup>5</sup> A "Participating Organization" is an entity desiring access to the trading facilities of Toronto Stock Exchange whose application is accepted by Toronto Stock Exchange.

<sup>6</sup> A Participating Organization is a "significant affiliate" of another entity if the Participating Organization is an affiliate of that entity (as defined in the *Business Corporations Act* (Ontario)) and if the annual revenues of the Participating Organization for its most recently completed fiscal year represent more than 10% of the consolidated revenues of its group parent.