

## **Schedule C — Memorandum of Understanding Regarding the Oversight of the Canadian Venture Exchange Inc. by the Alberta Securities Commission and British Columbia Securities Commission Between: Alberta Securities Commission (the “ASC”) and British Columbia Securities Commission (the “BCSC”) and Ontario Securities Commission (the “OSC”)**

The parties agree as follows:

### **1. — Underlying Principles**

1.1 The ASC and BCSC are the lead regulators (the “Lead Regulators”) in connection with the oversight of the Canadian Venture Exchange Inc. (“CDNX”) in accordance with the division of duties outlined in Appendix “A”.

1.2 The OSC has exempted or will exempt CDNX from recognition as a stock exchange in Ontario on the basis that:

1.2.1 CDNX is and will continue to be recognized as an exchange by the Lead Regulators;

1.2.2 the Lead Regulators are responsible for conducting the regulatory oversight of CDNX; and

1.2.3 the OSC will be informed of the oversight activities of the Lead Regulators and will be provided with opportunities to raise issues concerning the oversight of CDNX with the Lead Regulators in accordance with this Memorandum of Understanding (the “MOU”).

1.3 The parties will act in good faith in the resolution of issues raised by any of the parties in connection with the oversight of CDNX by the Lead Regulators.

1.4 The Lead Regulators are responsible for conducting an oversight program of CDNX which will include the matters described in Part 2 (the “Oversight Program”).\*(1)

1.5 The purpose of the Oversight Program is to ensure that CDNX meets appropriate standards for market operation and regulation. Those standards include:

1.5.1 fair access to issuers and market participants;

1.5.2 fair representation in corporate governance and rule making;

1.5.3 systems and financial capacity to carry out its regulatory functions;

1.5.4 orderly markets through appropriate review of products to be traded and trading rules;

1.5.5 appropriate listed company regulation;

1.5.6 transparency through timely access to relevant information on traded products and market prices;

1.5.7 market integrity through prohibition of unfair trading practices;

1.5.8 proper identification and management of risks, including financial condition of operation and standards for market participants; and

1.5.9 integration with effective clearing and settlement systems.

1.6 The OSC acknowledges that the Lead Regulators may enter into a Memorandum of Understanding substantially similar to this MOU with the securities commission of any other jurisdiction where CDNX opens an office.

1.7 The Lead Regulators intend to enter into a Memorandum of Understanding with the Manitoba Securities Commission (“MSC”) regarding the oversight of CDNX by the Lead Regulators (the “MSC MOU”) in substantially the same form as this MOU.

## **2. — Oversight Program**

2.1 The Lead Regulators will establish and conduct the Oversight Program, which will include, at a minimum, the following:

2.1.1 review of information filed by CDNX on critical financial and operational matters and significant changes to operations, including information related to:

- a) affiliated entities;
- b) operation of CDNX systems/technological capacity;
- c) financial statements;
- d) membership and access requirements and forms;
- e) corporate finance policies, including listing and filing requirements; and
- f) corporate governance, including board and committee composition, structure, mandate and function;

2.1.2 review and approval of changes to CDNX by-laws, rules, policies and other regulatory instruments in accordance with the procedures established by the Lead Regulators for the review of such instruments in effect from time to time. The current procedures are set out in letters dated November 26, 1999 and February 24, 2000; and

2.1.3 periodic examination of CDNX functions, including:

- a) corporate finance policies: policies relating to minimum listing requirements, listing or tier maintenance requirements, sponsorship and continuous disclosure;
- b) trading halts, suspensions and delisting procedures;
- c) surveillance and enforcement: procedures for detection of non-compliance and resolution of outstanding issues;
- d) access: requirements for access to trade through the facilities of CDNX;
- e) information transparency: procedures for the dissemination of market information;
- f) corporate governance: corporate governance procedures, including policy and rule

making process; and

g) risk management and computer systems.

2.2 The Lead Regulators will retain sole discretion regarding the manner in which the Oversight Program is carried out, including, but not limited to, determining the order and timing of their examinations of CDN X functions under section 2.1. However, the Lead Regulators will perform the examinations of CDN X functions under section 2.1.3 at least once every three years. The Lead Regulators will provide to the OSC a copy of the report of the examination performed in accordance with section 2.1.3 and any responses of CDN X to the report.

### **3. — Involvement of the OSC**

3.1 The Lead Regulators acknowledge that the OSC will require that CDN X provide to the OSC:

3.1.1 copies of all by-laws, rules, policies and other regulatory instruments that CDN X files for review and approval with the Lead Regulators, under the Lead Regulators' procedures referred to in section 2.1.2, at the same time that CDN X files those documents with the Lead Regulators;

3.1.2 copies of all final by-laws, rules, policies and other regulatory instruments once approved by the Lead Regulators in accordance with the procedures outlined in section 2.1.2; and

3.1.3 if requested by the OSC, copies of information filed by CDN X pursuant to section 2.1.1 as identified in the request.

3.2 Where the OSC advises the Lead Regulators that it has specific concerns regarding the operations of CDN X in Ontario and requests that the Lead Regulators perform an examination of CDN X in Ontario, the Lead Regulators may determine to conduct an examination of an office or offices of CDN X in Ontario or a function performed by a CDN X office located in Ontario. The OSC may, as part of its request, ask that the Lead Regulators include staff of the OSC in the Lead Regulators' examination.

3.3 If the Lead Regulators advise the OSC that they cannot or will not conduct the examination as referenced in section 3.2, the OSC may conduct such examination on behalf of the Lead Regulators without the participation of the Lead Regulators. In such cases, the OSC will provide copies of the results of the examination to the Lead Regulators.

3.4 The Lead Regulators will inform the OSC in writing of any material changes in how they perform their obligations under this MOU.

### **4. — Information Sharing**

4.1 The Lead Regulators will, upon written request from the OSC, provide or request CDN X to provide to the OSC any information in the possession of CDN X relating to members, shareholders and the market operations of CDN X, including, but not limited to, shareholder and participating organization lists, products, trading information and disciplinary decisions.

## **5. — Oversight Committee**

5.1 A committee will be established (the “Oversight Committee”) which will act as a forum and venue for the discussion of issues, concerns and proposals related to the oversight of marketplaces by the parties.

5.2 The Oversight Committee will include staff representatives from each of the Lead Regulators and the OSC who have responsibility and/or expertise in the areas of exchange oversight and market regulation.

5.3 The Oversight Committee will meet at least once annually in person and will conduct conference calls at least quarterly.

5.4 At least quarterly the parties will provide to the Oversight Committee a summary report on their oversight of marketplaces regulated by them that will include a summary description of any material changes to their oversight program implemented during the period.

5.5 At least once annually the Oversight Committee will provide to the Canadian Securities Administrators (the “CSA”) a written report of the oversight activities of the committee members during the previous period.

5.6 The OSC acknowledges that, since the Lead Regulators intend to enter into the MSC MOU and may enter into another Memorandum of Understanding substantially similar to this MOU with the securities commissions of any other jurisdiction where CDNX opens an office under section 1.6, the Oversight Committee will include staff representatives from the MSC and the relevant securities commission and those representatives will participate in the work of the Oversight Committee on the same basis as the staff representatives from the OSC.

## **Waiver and Non-Performance**

6.1 The terms, conditions and procedures of this MOU may be varied or waived by mutual agreement of the staff of the parties. A waiver or variation may be specific or general and may be for a time or for all times as mutually agreed by staff of the parties.

6.2 If a party believes that another party is not performing satisfactorily its obligations under this MOU, it may give written notice to the other party stating that belief and accompanied by particulars in reasonable detail of the alleged failure to perform. If the party receiving the notice has not satisfied the notifying party within two months of the delivery of the notice either that its performance is satisfactory or that it has taken or will take acceptable steps to rectify its performance, the notifying party may by written notice to the other parties terminate this MOU on a date not less than six months following delivery of such notice. In that case the notifying party will send to CDNX a copy of its notice of termination at the same time that it sends such notice to the other party.

6.3 For the purposes of this Part, the Lead Regulators will be considered to be one party.

**Effective Date**

7.1 This MOU comes into effect on the date it is approved by the Minister of Finance in Ontario pursuant to section 143.10 of the Ontario Securities Act.

ALBERTA SECURITIES COMMISSION

“Stephen Sibbold”

Chair

September 18, 2000

ONTARIO SECURITIES COMMISSION

“David A. Brown”

Chair

September 18, 2000

BRITISH COLUMBIA SECURITIES COMMISSION

“Douglas M. Hyndman”

Chair

September 18, 2000

## **Endnotes**

**1**

The matters outlined in the Oversight Program are intended to prescribe a minimum level of oversight. The Lead Regulator may conduct additional review procedures. The purpose of specifying the Oversight Program is to ensure that each participant in the CDNX Oversight Protocol is comfortable that there is acceptable oversight of CDNX, which in turn justifies reliance on the Lead Regulator.