

December 17, 2004

DELIVERED & VIA E-MAIL

Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
18th Floor, Box 55
Toronto, ON M5H 3S8

Cheryl Graden
Legal Counsel, Energy Markets
TSX Group Inc.
c/o Natural Gas Exchange Inc.
Suite 2330
140 4th Avenue S.W.
Calgary, Canada
T2P 3N3
T (403) 974-1730
F (403) 234-4313
cheryl.graden@tsx.com

Dear Mr. Stevenson:

Re: Request for Comment on Proposed OSC Rule 14-502 Designation of Additional Commodities (Proposal)

TSX Group Inc. (TSX Group) welcomes the opportunity to comment on the Proposal published by the Ontario Securities Commission (Commission) on September 17, 2004. TSX Group operates Toronto Stock Exchange and TSX Venture Exchange as well as NGX, a leading North American exchange for the trading and clearing of natural gas and electricity contracts.

TSX Group agrees with the Commission's goal to have contracts traded on commodity futures exchanges regulated in a consistent manner. We also appreciate the Commission's commitment to engage in an approach to the definition of commodities that is consistent with other jurisdictions. Regarding the definition of commodity, TSX Group specifically agrees that electricity should be designated as a commodity.

We understand that section 2 of the Regulation to the *Commodity Futures Act* (Ontario) (CFA) is to be revoked and replaced with proposed rule. Given this revocation, will a corresponding change be made to section 1 of the CFA? Specifically, will the reference to "and any goods, article, service, right or interest, or class thereof, designated as a commodity *under the regulations*" contained in the definition of "commodity" in section 1 of the CFA be removed, or will the words "under the regulations *or the rules*" be added?

We submit that the inconsistent use of "fuel" vs. "hydrocarbon fuel" may be confusing. Section 1.1(a) of the proposed rule refers to "fuel", whereas the definition of commodity in section 1 of the CFA already uses the term "hydrocarbon fuel" (commonly known to include oil and natural gas). This is very confusing in particular because the proposed rule states that the listed commodities (which includes "fuel") are *in addition* to those listed in section 1 of the CFA (which includes "hydrocarbon fuel"). We suggest that section 1.1(a) of the proposed rule be revised to cure these conflicting statements.

With respect to the designation of additional commodities set out in section 1.1 of the proposed rule, it is TSX Group's view that it would be more efficient and effective to take an approach similar to that of the *U.S. Commodity Exchange Act*. We believe that adding a catch-all phrase in the designation section is more useful than attempting to describe and list all things that may be considered to be commodities. A catch-all phrase such as: "all similar types of goods, articles, services, rights and interests in which contracts for future delivery are presently or in the future dealt with" can be very useful. The catch-all drafting has the added benefit of flexibility, as it immediately captures new products as they arise, without an amendment to the rule being required. As well, this approach limits the need to be overly inclusive in an attempt to identify every potential commodity that could be exchange-traded on a futures basis.

We question whether an all-inclusive category for "securities" in section 1.1(g) of the proposed rule is necessary or appropriate, given the natural distinctions between securities and commodities, and the historical appreciation at the time that the CFA was implemented of: (i) the need for two distinct forms of regulation for securities and commodities; and (ii) the need to clearly carve out those limited security instruments that are futures traded and therefore more appropriately regulated under the commodities regime. In an attempt to avoid duplicate regulation and oversight where an instrument is at risk of being doubly regulated both as a security and commodity, the Government and the Courts in the United States, driven in part by the jurisdictional conflict between the Securities Exchange Commission and the Commodities Futures Trading Commission, have tended to specify only those securities that are more appropriately governed under futures regulation because of their commodity-like characteristics. As well, it appears that, with respect to the definition of "security" under section 1 of the *Securities Act (Ontario) (OSA)* which provides that a security is equated with non-exchange traded or approved "commodity futures *contracts*", legislators were careful to avoid unnecessary complications by confirming that only those commodities in their instrument form, that are not regulated under the CFA, are subject to residual regulation under the OSA as securities. The reverse should also be true. That is, without redefining securities themselves as commodities, it should be only those securities that are clearly identified as constituting "commodity futures contracts" that are captured by the CFA.

Thank you for providing us with the opportunity to comment on the Proposal. Should you wish to discuss our comments in more detail, I would be pleased to respond.

Please call me with any questions.

Yours truly,

Cheryl Graden