

March 16, 2005

**Via E-Mail & Fax**

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers du Québec  
Nova Scotia Securities Commission  
New Brunswick Securities Commission  
Office of the Attorney General, Prince Edward Island  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Government of Yukon  
Registrar of Securities, Department of Justice,  
Government of the Northwest Territories  
Registrar of Securities, Legal Registries Division,  
Department of Justice, Government of Nunavut

c/o Blaine Young  
Senior Legal Counsel  
Alberta Securities Commission  
400, 300 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3C4

c/o Anne-Marie Beaudoin  
Directrice du secrétariat  
Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria, C.P. 246, 22e étage  
Montreal, Québec H4Z 1G3

Dear Members of the Canadian Securities Administrators,

**Re: Request for Comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (National Instrument or NI 45-106)**

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 proposed NI 45-106, the related proposed forms and Companion Policy 45-106 CP *Prospectus and Registration Exemptions* (the CP) published by the Canadian Securities Administrators (the CSA) on December 17, 2004.

We commend the CSA for consolidating the registration and prospectus exemptions currently found under various provincial statutes, regulations, rules, instruments and blanket orders into a single national instrument. This consolidation will benefit our issuers by improving the efficiency of the capital raising process, and by reducing the time and the costs currently incurred by issuers' professional advisers in reviewing various provincial exemption regimes.

Rik Parkhill  
President, TSX Markets  
130 King Street West  
3<sup>rd</sup> Floor The Exchange Tower  
Toronto, Canada M5X 1J2  
T (416) 947-4460  
F (416) 947-4537  
rik.parkhill@tsx.com

Linda Hohol  
President  
TSX Venture Exchange  
10<sup>th</sup> Floor, 300 Fifth Avenue S.W.  
Calgary, AB, Canada T2P 3C4  
T (403) 218-2828  
F (403) 234-435  
linda.hohol@tsxventure.com

However, despite the progress that has been made by proposed NI 45-106, fragmentation remains where certain jurisdictions have chosen either to modify or not adopt certain exemptions contained in the National Instrument. Although we recognize that fragmentation often stems from attempts to satisfy regional interests, when uniformity is compromised, the costs of compliance may be increased. While NI 45-106 represents a strong step in the direction of uniformity, we hope that efforts will be made to further harmonize NI 45-106 where possible, perhaps in the final version of NI 45-106 or in the future after it has been in effect and undergoes periodic reviews.

In the interim, we recommend that where a jurisdiction has modified or opted-out of a particular exemption into a local rule, that the National Instrument, to the extent possible without relying heavily on cross-referencing, make some reference as to what the local exemption is and/or where it can be located.

Our specific comments on the proposed National Instrument are in the attached Appendix 1.

Thank you for the opportunity to comment on the National Instrument. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Sincerely,

**TSX Inc.**

“Rik Parkhill”

**TSX VENTURE EXCHANGE INC.**

“Linda Hohol”

## **APPENDIX 1:** **Comments on NI 45-106**

### **PART 1: DEFINITIONS AND INTERPRETATION**

#### ***1.1 Definitions***

**AIF** - The definition of AIF should include information circulars that are prepared in the context of Reverse Takeovers (RTOs) and Changes of Business (COBs) undertaken by TSX Venture issuers (collectively, RTO Circulars). The disclosure included in RTO Circulars is based on prospectus level disclosure relating to the issuer, target company and the resulting issuer, and is substantially similar to the disclosure included in a circular prepared by a TSX Venture issuer undertaking a Qualifying Transaction (QT Circular), which is included in the definition of AIF in the National Instrument . QTs, RTOs and COBs are all transactions which give rise to new listings on TSX Venture, have similar listing and filing requirements, and undergo similar levels of review. In order to prevent a situation where one listing method is favoured over another, issuers completing these transactions should be placed on equal footing in respect to any advantages provided by having a current AIF.

### **PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS**

#### **Division 1: Capital Raising Exemptions**

#### ***2.9 Offering Memorandum***

The Exchanges support the inclusion of this exemption in the National Instrument. However, we are concerned that the proposed exemption is not uniform among the jurisdictions that have chosen to adopt it. Currently, two versions of this exemption are proposed in NI 45-106. We recommend that the CSA adopt only the version in section 2.9(1) of NI 45-106, which is proposed for use in only British Columbia, New Brunswick, Nova Scotia and Newfoundland.

The adoption of different versions of this exemption defeats the principles of uniformity and increases the costs of compliance to issuers. Further, Ontario has opted out of this exemption in NI 45-106 and has proposed to continue with its own version in a local rule. As such, we recommend that efforts be made to further harmonize the offering memorandum exemption, to the extent possible, in the final version of the National Instrument, and on a going forward basis.

#### ***2.10 Minimum Amount Exemption***

We support the inclusion and harmonization of the \$150,000 minimum amount exemption. It is important that the minimum amount be consistent among jurisdictions, and the resulting increase in the minimum amount for certain jurisdictions should not have a negative effect on the issuer's ability to raise capital in that jurisdiction.

#### **Division 2: Transaction Exemptions**

#### ***2.4 Securities for Debt***

We support the introduction of the securities for debt exemption and the corresponding guidance provided in the CP. The exemption provides these issuers with flexibility in managing their

resources and is often critical in facilitating reorganizations and reactivations of issuers that may otherwise not be possible if the issuer is unable to settle its debt.

## **Division 5: Miscellaneous Exemptions**

### ***2.30 Incorporation or Organization***

Since the National Instrument will include various exemptions that will help facilitate the organization of an issuer, such as the private issuer exemption; the family, friends and business associates exemption; the family, founder and control person exemption; and the employees exemption, there is no need for the incorporation or organization exemption, as contemplated by proposed section 2.30.

## **PART 5: OFFERINGS BY TSX VENTURE EXCHANGE SHORT FORM OFFERING DOCUMENT (SFOD)**

We support the introduction of this exemption into the National Instrument. However, we note that Ontario is not proposing to adopt this exemption. Our experience with this exemption in British Columbia, Alberta and Saskatchewan is that it has been widely used by issuers and has improved the capital raising efforts of TSX Venture issuers. We are concerned that if this new exemption is not available in Ontario, it will result in a significant subset of TSX Venture issuers being disadvantaged in their ability to raise funds in Ontario.

In addition, please see our comments relating to the definition of AIF for the arguments in support of allowing the RTO Circular to serve as an AIF. By including RTO Circulars in the definition of an AIF, TSX Venture Issuers who have completed an RTO Circular will be able to use the SFOD to raise funds.

## **Other Comments**

### ***Bonus and Finder's Fee Exemption***

We note that an exemption similar to British Columbia's bonus or finder's fee exemption currently found at sections 89(e) and 128(f) of the Securities Rules (BC) (the BC Exemption) is not proposed in NI 45-106. The BC Exemption allows TSX Venture issuers to issue securities as consideration to non-insiders for services performed in connection with arranging a loan, acquiring or disposing of an asset, or making various other distributions. This flexibility can be critical to an issuer with limited cash resources, where the services of an arm's length finder are necessary to facilitate the certain transactions. As a result, we believe this exemption should be included in the National Instrument, but should also exclude the residency restrictions contained in the current BC Exemption.