



Alberta Securities Commission

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DIRECT LINE: 403.297.4228  
DIRECT FAX: 403.297.6156  
E-MAIL: david.linder@seccom.ab.ca

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**By Courier**

TSX Venture Exchange  
10th Floor, 300 Fifth Avenue S.W.  
Calgary, AB T2P 3C4

**Attention: Linda Hohol  
President**

Dear Ms. Hohol:

**Re: 2005 TSX Venture Exchange Oversight Review**

The TSX Venture Exchange (“TSXV”) Oversight Review fulfills a part of the Alberta Securities Commission (“ASC”) oversight responsibilities as defined in the Memorandum of Understanding (“MOU”), as of September 3, 2002, among various Provincial Commissions.

The mandate for the oversight review is derived from the authority under s.62(2) of the Alberta Securities Act (the “Act”) to recognize an exchange. Section 63 of the Act requires the ASC to undertake oversight responsibilities for operational procedures delegated to the TSXV.

The TSXV operates under a fourth ASC Recognition Order, dated August 12, 2005.

As defined in Appendix A to the MOU the Lead Regulators for the TSXV are the ASC and the British Columbia Securities Commission (“BCSC”) acting jointly. Accordingly, the oversight review was structured by designating each Lead Regulator specific program review responsibilities.

The ASC Staff examined TSXV functions, including:

- Corporate Finance Policies relating to minimum listing or quoting requirements, continuing listing or quoting requirements or tier maintenance requirements, sponsorship, continuous disclosure, trading halts, suspensions and de-listing procedures
- Significant Waivers of CPC policy
- Documentation and Record Keeping
- Rule Making
- Corporate Governance
- Financial Viability and Fees

The BCSC examined Rule Enforcement, Interaction with Market Regulation Services, Clearing and Settlement Procedures, Trading Procedures and Systems Safeguards. The BCSC will be issuing a separate report on their findings and recommendations.

The ASC review covered the three years of TSXV operations, from January 1, 2002 to December 31, 2004.

Our work was greatly assisted by the professional and responsive support of the TSXV Staff and management. ASC Staff wishes to specifically thank Roy Homyshin for his assistance during our review.

Recommendations for improvement and compliance are presented at the end of each section of the findings. In the Corporate Finance Policy section ASC Staff have further classified the recommendations as Documentation, Training and Supervision, and Procedural Issues.

In summary, in the areas reviewed by the ASC Staff, the TSXV has in all material respects met the appropriate standards for market operation and regulation.

Yours truly,

David C. Linder  
Executive Director

HAK/RM/KL

**Findings and Recommendations**

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## **A. Corporate Finance Policies**

### **Information from the TSXV**

The TSXV Corporate Finance Department Staff conducts analysis and applies its knowledge and expertise in the evaluation of various Corporate Finance Policies and financial transaction submissions. TSXV staff is responsible for the management of the submission to ensure it is completed in accordance with the appropriate corporate finance policies. Review processes include reviewing the issuer's transaction applications, processing various filings requirements, and monitoring the conduct and activities of issuers for compliance as set out in the Recognition Order. The Executive Listings Committee ("ELC") approves all listing submissions. Amendments to the Corporate Finance Policies must be approved by the ASC and the BCSC.

Each transaction at the TSXV is a submission with an assigned number. This number is tracked using the WIP system, which is the electronic storage site for all Document Management Information System ("DMIS") documents associated with a submission. DMIS documents are the different source documents that are scanned into WIP. Source documents would generally be financial statements, legal letters or technical reports. Further division of the submissions is made into major and minor transactions. A major transaction is of a listing nature and a minor transaction is of a filing nature.

The Transaction types and requirements referred to in the report are as follows:

- LA -- Listing Application
- RTO -- Reverse Take Over
- TMR--Tier Maintenance Requirements
- MLR--Minimum Listing Requirements
- SSSPA -- Small Shareholders Selling and Purchase Agreement
- LB-- Loan/Bonus
- RO-- Rights Offering
- TIERMV-- Tier Movements
- INACTV-- Inactive Company
- NCIB-- Normal Course Issuer Bid
- SO-- Stock Option

ASC Staff received an Excel spreadsheet that include all of the submissions for all of the transaction types within the review period. This spreadsheet contained 28,502 submissions, of which 1,173 were classified as major. Submissions reviewed were representative of all TSXV offices.

Tests included multiple submissions for selected issuers.

All references to section numbers are from the TSXV Corporate Finance Manual.

## **ASC Staff Findings**

ASC Staff performed sample tests and significant deficiencies, from various requirements of the TSXV Corporate Finance Policies, are discussed below:

### ***Documentation Findings***

#### **Policy 2.3- Listing Procedures**

- Submission #77627 -- This LA submission was approved without the required public filing of the listing application on SEDAR.
- Submission #98379 -- This LA submission was approved without the required public filing of the listing applications. According to TSXV the listing application was filed on SEDAR upon listing in February 2005 but was marked “private” and therefore was not publicly accessible as required by section 1.4.
- Submission #74919 -- This LA submission was approved without the submission of a material contract, which is a requirement of section 1.2.

#### **Policy 3.2- Filing Requirements and Continuous Disclosure**

- Submissions # 83882, # 83281, # 85223, # 86665 -- These LA submissions were approved by the TSXV without the required Personal Information Form (PIF) or a Declaration (Form 2C1). TSXV approval was granted because there had been recent background searches conducted by either the TSX or TSXV and the person was well known to the Exchange. In accordance with section 7.7 an issuer is required to file a Declaration in lieu of a PIF.

#### **Certificate of No Default:**

A Certificate of No Default is required from an Issuer in order to graduate from Tier 2 to Tier 1 or from NEX to Tier 2. These policies are included in the TSXV Corporate Finance Policy manual: s 1.4(1) of Policy 2.3, s 7.2(c) of Policy 2.5 and s 2.4(d) of Policy 2.6. The provisions of these three TSXV policies require that the Certificate of No Default be submitted to the TSXV prior to the approval of these transactions.

ASC Staff requires that this certificate be obtained in accordance with section 141 of the Act.

### ***Documentation Recommendation***

ASC Staff recommends that the TSXV consistently use checklists during submission analysis. This is especially relevant in cases where securities legislation requires specific document submissions or where public disclosure is necessary. These measures will assist in ensuring that all initial and final documentary requirements are satisfied before transaction approval is granted.

### *Training and Supervision Findings*

#### **Policy 4.5- Rights Offerings**

- Submission # 82149 -- In this RO submission the TSXV analyst did not understand the intention of Section 4.3 of this policy. In response to the issuer's question asking for interpretation of this section, the analyst responded in letter format to the issuer "It appears no one seems to understand the intention of this policy".

#### **Policy 5.1- Loans, Bonuses, Finder's Fee and Commissions**

- Submission # 77958 -- This LB submission was closed by the TSXV without the release of the final acceptance letter issued by the TSXV and the posting of the bulletin. The analyst responsible for the submission had left the TSXV and the submission was closed 3 years after it was opened after being discovered by another analyst as unfinished. There was a failure by the TSXV in managing the completion of the submission.

### *Training and Supervision Recommendation*

Managers should identify areas where employees require additional policy training and ensure that they receive the required instruction. ASC Staff believe that managing the transition process closely when analysts leave the TSXV will reduce the chance of a submission being left open for an extended period of time.

### *Procedural Findings*

#### **Policy 2.5- Tier Maintenance Requirements and Inter-Tier Movement**

- Submission # 94286 -- This TIERMV submission was approved by the TSXV to graduate an Issuer from Tier 3 to Tier 2. The submission documents indicated that the TSXV had obtained the TMR comfort for this particular Issuer based on a Reinstatement Review filed under another submission (# 90679). ASC Staff conducted a review of submission # 90679 and found no documents relating to the TMR review. The Reinstatement Review did not include the required TMR compliance review.

#### **Policy 5.6- Normal Course Issuer Bid (NCIB)**

- Section 8.1 details the requirements for Issuers to provide NCIB Transaction Reports to the TSXV within 10 days after the end of each month. TSXV have not implemented any procedure for monitoring such NCIB monthly reporting requirement. TSXV has no specific form for uniform reporting of information (i.e., number of securities purchased, dates of the purchases, the average price paid, statement whether the securities have been cancelled, reserved for issuance, etc).
- Section 5.1 details the requirements for TMR review. ASC Staff examined 10 NCIB submissions, which showed no TMR review. Instead TSXV relies on the Form 5G filed

by the Issuer, which states, “The undersigned (Issuer) hereby certifies that this Normal Course Issuer Bid is in Compliance with Policy 5.6”.

**Policy 5.7- Small Shareholders Selling and Purchase Agreement (SSSPA)**

- Submission # 88882 -- In this SSSPA submission the Issuer failed to complete a condition of the RTO. The condition was the completion of the SSSPA. The Issuer initially agreed to this condition. The Issuer later withdrew the SSSPA because a transfer agent and an exchange member brokerage firm were required and the cost was prohibitive. The TSXV did not ensure fulfillment of the Issuer’s commitment to complete the SSSPA prior to receipt for the approval of the RTO.

***Procedural Recommendation***

ASC Staff recommends that TSXV management review all transactions to ensure that the Corporate Finance Policies are being followed throughout the approval process. Modification of policies by TSXV analysts, the exclusion of documentation requirements, or the use of incorrect policy during analysis all jeopardize the effectiveness of the submission review system. It is important that the TSXV create formal procedures to manage Issuer compliance when conditions are granted to Issuers.

**B. Significant Waiver Reporting**

***Information from the TSXV***

The TSXV will advise, as required by section 15 of the Recognition Order, the ASC in writing on a semi-annual basis starting in 2003, and quarterly for 2002, of all significant waivers of corporate finance policies and provide information on the issuers involved, the nature of the waiver or exemption, and the reasons for granting the waivers or exemptions.

Significant Waivers are defined in Appendix B of the CPC Operating Agreement. The CPC Operating Agreement came into effect on March 24, 2005 and amends and restates an earlier agreement dated June 15, 2002.

***ASC Staff Findings***

ASC Staff performed sample tests on the TSXV waiver reports. The following submissions included significant waivers that were not reported. In addition no unreported waivers were found in the random sample tests made on the database of submissions.

- Submission # 69288 -- The transaction should have reported a waiver that concerned MLR with regard to earnings and revenue criteria that were not met.
- Submissions # 86967, # 83007, and # 94353 -- These transactions should have reported a waiver of public distribution. The issuer did not have the minimum market value for the public float to qualify for the Tier 1 status.

- Submission # 84571 -- The transaction should have reported a waiver of seed capital as the company had seed capital greater than the maximum allowed.

### ***ASC Staff Recommendation***

The TSXV should document the reasons for the implementation of any provisions of Appendix B of the CPC Operating Agreement.

## **C. Documentation and Record Keeping**

### ***Information from the TSXV***

TSXV currently scans all submission documents into a database called WIP.

Authorized personnel can access documents from WIP only. An operational policy for the documentation system is in place with detailed procedures and methods of handling the documents. Documents are scanned into the system at the completion of a submission. Documents are sorted by Type, Date, and the Title of the scanned document.

TSXV has a comprehensive record keeping policy that is detailed by division, department and record type. Various codes are used to classify the document retention schedule including Active, Semi-Active, Archive and Destroy.

Documents remain active for a specified period of time, move to semi-active (off site storage) and then are either archived off site or destroyed. The type of document or series of documents determines how long it remains in each of the above stages.

### ***ASC Staff Findings***

ASC Staff noted that the WIP system is a useful document management system and provides users with electronic access to all source documents that are part of a submission.

The record management classification system appears to be thorough. ASC Staff noted that many documents were destroyed prior to the five-year retention limit, which is the informal working record retention limit. ASC Staff reviewed 70 retention and disposal schedules and found that 20 had disposal periods of less than five years. The record retention period should be seven years in accordance with NI 21-101.

### ***ASC Staff Recommendations***

ASC Staff recommends that all checklists that have been utilized in the hard copy filings be scanned into the system for tracking purpose.

TSXV should follow the terms of NI 21-101 and retain documents for seven years.

## **D. Corporate Governance**

### ***Information from the TSXV***

The TSXV board is comprised of individuals that provide a proper balance between the interests of the different entities using its services and facilities.



The TSXV will not, without prior Commission approval, implement any significant changes to the governance structure and practices of its board, including significant changes to the composition and terms of reference of its board committees and advisory committees.

### ***ASC Staff Findings***

ASC Staff finds that all changes to the governance structure, practices and composition of its board, the terms of reference of its board committees and advisory committees were approved by the Commission prior to their implementation.

ASC Staff reviewed the TSXV's organizational chart and information relating to the following:

- TSXV's management, including a review of the background of the senior management, their roles and the reporting structure of the Exchange
- Composition of its Board, including its commitment in the Recognition Order that at least 25% of the directors be persons that have expertise in or are associated with the Canadian public venture capital market; and, at least 50% are independent directors
- TSXV's corporate and organizational policies and procedures including whether it has adequate resources and capacity to perform its functions and whether there are appropriate rules in place that are designed to ensure that the Exchange's business is conducted in a manner that affords protection to investors

The review indicates that senior management, the Board and its committees were able to identify issues relating to a conflict of interest or limitation of liabilities.

### ***ASC Staff Recommendations***

None

## **E. Financial Viability and Fees**

### ***Information from the TSXV***

The TSXV filed with the ASC the annual audited financials statements for the year ended December 31, 2004 with comparative figures for 2003. Attached to the financials was the unqualified auditor's report by KPMG.

The TSXV provided the Exchange Listings Strategy to ASC Staff, which contains the different steps, plans and strategies that it is planning to accomplish in the years 2005 to 2009. Senior management of the TSXV reviewed the detailed operating budgets received from the Corporate Finance, Compliance Services, and Business Development departments.

***ASC Staff Findings***

The annual audited financials were filed by the TSXV with the ASC, Corporate Finance Department, on time within 90 days of their financial year-end. All quarterly reports were also filed within 60 days from the end of the financial quarter. The TSXV has sufficient financial resources to carry on its operations.

The Exchange Listings Strategy was adequate and relied on inputs and information from various departments. The TSXV demonstrated the understanding of the needs of small and large shareholders by reviewing the Issuers' financial requirements, personal information evaluation and utilization of professional advice.

The TSXV fee schedule was approved by the ASC on a yearly basis throughout the examination period. The fee schedule was implemented in accordance with approved policy.

***ASC Staff Recommendations***

None