

October 31, 2003

No. 2003-024

Suggested Routing: Trading, Legal & Compliance

NOTICE OF AMENDMENT APPROVAL

ACCOMMODATION OF ANONYMOUS ORDERS

Summary

Effective October 31, 2003, the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and the Commission des valeurs mobilières du Québec approved amendments to the Universal Market Integrity Rules ("UMIR") to accommodate the introduction of "anonymous orders" by the Toronto Stock Exchange ("TSX"). The amendments provide exemptions to Participants from the requirements under UMIR related to client priority and client-principal trading in circumstances where an anonymous order has been entered directly by a client and the Participant is unaware, prior to the execution of the order, that the order has been entered by a client.

Background to the Amendments

National Instrument 21-101 and UMIR permit a marketplace to determine whether the identifier of the Participant entering an order is included in the information provided in a consolidated market display of orders entered on a marketplace. Effective March 22, 2002, the TSX introduced "attribution choices" which allowed orders to be entered into the trading system of the TSX "anonymously". The Ontario Securities Commission granted approval to Market Regulation Services Inc. ("RS") to temporarily exempt Participating Organizations of the TSX from the application of Rules 5.3 and 8.1 in circumstances where the client has directly entered an order on a marketplace that does not require the disclosure of the identifier of the dealer and the director, officer, partner, employee or agent of the Participant that enters a principal order or a non-client order does not have knowledge that the client order is from a client of the Participant until the execution of the client order. These exemptions have expired on the approval of the amendments to Rule 5.3 and 8.1.

Notwithstanding that the identifier of the Participant attached to an "anonymous order" is not disclosed in the public consolidated market display, the identifier of the Participant is visible to RS for the purposes of performing market surveillance.

Impact of the Amendments

Rule 8.1 of UMIR requires a Participant to provide a “better price” to a client if a client order for 50 standard trading units or less trades with a principal order or non-client order. Subject to certain exceptions, Rule 5.3 requires a Participant to give priority to a client order over a principal order or non-client order for the same security at the same price on the same side of the market. Both of these requirements become problematic when a client directly enters an anonymous order on a marketplace (in the case of the TSX by a client with access pursuant to Policy 2-501) without the knowledge of the Participant.

The amendment to UMIR applies to orders entered directly by a client on any marketplace that does not require the inclusion of Participant identifiers in the consolidated market display of orders for that marketplace. If a Participant enters an order on behalf of a client on a marketplace that does not require disclosure in the consolidated display of the identifier of the Participant entering the order, the Participant will be expected to comply with the requirements of Rule 5.3 dealing with client priority and 8.1 dealing with client-principal trading as the Participant is aware that the order being entered “anonymously” is in fact an order of a client of the Participant.

Text of the Amendments

The text of the amendments to UMIR to facilitate the introduction of anonymous trading is set out in Appendix “A”.

Responses to the Request for Comments

In response to the Request for Comments on the proposed amendments set out in Market Integrity Notice 2002-015, RS received one comment letter. The comment letter and the response of RS have been summarized in Appendix “B”.

Questions

Questions concerning this notice may be directed to:

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Appendix “A”
Universal Market Integrity Rules

AMENDMENTS TO ACCOMMODATE ANONYMOUS ORDERS

The Universal Market Integrity Rules are amended as follows:

1. Rule 5.3 is amended by adding the following as subsection (8):
 - (8) Subsections (1) and (2) shall not apply to a client order that has been entered directly by the client of the Participant on a marketplace that does not require the disclosure of the identifier of the Participant in a consolidated market display and the director, officer, partner, employee or agent of the Participant who enters a principal order or a non-client order does not have knowledge that the client order is from a client of the Participant until the execution of the client order.
2. Rule 8.1 is amended by adding the following as subsection (3):
 - (3) Subsection (1) does not apply if the client order has been entered directly by the client of the Participant on a marketplace that does not require the disclosure of the identifier of the Participant in a consolidated market display and the director, officer, partner, employee or agent of the Participant who enters a principal order or a non-client order does not have knowledge that the client order is from a client of the Participant until the execution of the client order.

Appendix “B”

Universal Market Integrity Rules

COMMENTS IN RESPONSE TO PROPOSED AMENDMENTS TO ACCOMMODATE “ANONYMOUS ORDERS”

Commentator	Specific Comments	Response to Comment
Simon Romano	<p>The commentator was concerned that anonymous orders would hamper the ability of issuers to monitor compliance with certain provisions of securities legislation related to take-over bid (namely pre-bid integration requirements and post-bid restrictions). In this regard, the commentator suggested that targets of take-over bids and/or shareholders of the target be given the ability to obtain confidential access to trading records for the purposes of monitoring compliance with the take-over bid provisions.</p>	<p>RS would note that, on the approval of UMIR, the securities commissions requested that subsection (5) of Rule 6.2 provide that each marketplace be given the ability to determine if the identifier of the Participant or the marketplace would be displayed in a consolidated market display. Even if the identifier information is not included in a consolidated market display, the identification of the Participant entering the order is available to Market Regulators and securities regulatory authorities for compliance purposes. RS would undertake an analysis of trading in securities of an issuer that was the target of a take-over bid if that issuer or any other person notified RS that they thought that there had not been compliance with applicable securities legislation regarding pre-bid integration, limits on purchases during the bid or post-bid restrictions. If RS determines that there has been improper or illegal conduct, the matter would become the subject of a disciplinary process by RS (for which there is public disclosure) or, in an appropriate circumstance, RS would refer the matter to the applicable securities regulatory authority.</p>