

January 30, 2004

No. 2004-005

*Suggested Routing: Trading, Legal & Compliance*

## **NOTICE OF AMENDMENT APPROVAL**

### **ADMINISTRATIVE AND EDITORIAL AMENDMENTS**

#### **Summary**

Effective January 30, 2004, the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and the Commission des valeurs mobilières du Québec (the “Recognizing Regulators”) approved amendments to the Universal Market Integrity Rules (“UMIR”) of a generally editorial or administrative nature. The amendments correct a number of drafting errors and provide clarification to the interpretation of several sections.

#### **Background to the Proposed Amendments**

The structure and contents of UMIR represented a significant departure from the previous rules and policies of both the Toronto Stock Exchange and the TSX Venture Exchange. UMIR was the result of efforts to “harmonize” the rules of the two exchanges with the requirements of the Canadian Securities Administrators (“CSA”) as set out in the draft and final versions of both National Instrument 21-101 and National Instrument 23-101. Since UMIR was approved by the Recognizing Regulators in February of 2002 as part of the recognition of RS as a self-regulatory organization, it has become apparent that there is a need for a number of minor drafting and editorial changes.

Most of the “administrative” amendments are merely clarifications in the language used in the provisions and the insertion of terminology that would otherwise be reasonably implied. The most substantive amendment extends responsibility for conduct of a Participant to the officer or employee of a Participant or Access Person that engages in conduct that results in the contravention of a requirement under UMIR is liable for the conduct. While this provision was intended to be included in UMIR, in fact this provision was omitted from the version of UMIR submitted for approval by the CSA.

#### **Impact of the Amendments**

The effect of each of the amendments is described in more detail as follows:

- *Rule 7.4 – Contract Record and Official Transaction Record*

Rule 7.4 previously provided that the electronic record of a “trade” as provided by a marketplace to an information processor or information vendor was the official record for determining “best ask price”, “best bid price” and “last sale price”. The amendment corrects

a drafting error as the “best bid” and “best ask” prices referenced in the Rule are based on “orders” entered on marketplaces and not “trade” prices.

- *Rule 10.3 – Extension of Responsibility*

UMIR was drafted such that various restrictions and prohibitions apply to Participants and Access Persons. Rule 10.3 of UMIR was designed to extend the responsibility for the conduct to various parties. For example, under subsection (1) a Participant or Access Person is made responsible for the conduct of any director, officer, partner, employee of individual holding a similar position. Under subsection (2) a partner or director is made responsible for the conduct of the Participant or Access Person and under subsection (3) a supervisor is made responsible for the conduct of any supervised employee. It had been intended that the structure of Rule 10.3 would provide that an officer or employee of a Participant or Access Person that engages in conduct that results in the contravention of a Requirement is liable for the conduct. The amendment corrects this oversight and ensures that the employees or officers who actually engage in offending conduct are held liable for that conduct and not just the Participant or Access Person.

- *Rule 10.7 – Assessment of Expenses*

The purpose of the amendment to Rule 10.7 is to clarify that the power of the Market Regulator to assess expenses in the event of a “frivolous” complaint by a Regulated Person is subject to the requirement of the Market Regulator to “act reasonably” in making such determination. As a self-regulatory organization, a Market Regulator is under an obligation to “act reasonably” in fulfilling all of its responsibilities. However, the amendment is administrative in nature as it simply incorporates the existing standard of conduct into the text of the Rule.

## **Text of the Amendments**

The text of the amendments to UMIR to facilitate the administrative and editorial amendments described above is set out in Appendix “A.”

## **Changes From the Original Proposal**

In the Request for Comments issued by RS on September 30, 2002 as Market Integrity Notice 2002-014, RS proposed an amendment to Rule 11.11 on the Status of Rules and Policies. The proposed amendment sought to clarify the inter-play between the provisions of UMIR and the terms of any regulation services agreement entered into between a Market Regulator and a marketplace by stipulating that the obligations of a marketplace related to investigations by a Market Regulator under Rule 10.2 and indemnifications by a marketplace of a Market Regulator under Rule 10.11 would be subject to the terms of the regulation services agreement. This proposed amendment to Rule 11.11 has not been pursued and is not part of the Administrative and Editorial Amendments approved by the Recognizing Regulators.

Market Integrity Notice 2002-014 also proposed several amendments to Policy 10.8 dealing with Practice and Procedure to correct several minor drafting problems and to clarify the interpretation of certain provisions. In particular, the amendments to Policy 10.8 sought to:

- (a) clarify that a Notice of Hearing does not need to contain a statement that a party may object to the form of the hearing if the hearing will be an oral hearing;
- (b) provide that a Hearing Panel shall be selected upon acceptance of an Offer of Settlement (since under Part 3 of Policy 10.8 a Hearing Panel must convene to either approve or reject any Settlement Agreement that has been entered into by a Market Regulator.);
- (c) delete the term “defendant” from a heading as this term is not used in UMIR; and
- (d) correct cross references to the Rules.

The impact of these changes to Policy 10.8 are still being reviewed by the Recognizing Regulators and are not part of the Administrative and Editorial Amendment approved by the Recognizing Regulators that are effective as of January 30, 2004.

### **Responses to the Request for Comments**

No comments were received by Market Regulation Services Inc. in response to the Request for Comments on the proposed amendments set out in Market Integrity Notice 2002-014.

### **Questions**

Questions concerning this notice may be directed to:

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## **Schedule “A”**

### ***Universal Market Integrity Rules***

#### **Administrative and Editorial Amendments**

The Universal Market Integrity Rules are amended as follows:

1. Subsection (1) of Rule 7.4 is amended by inserting the words “an order or” immediately preceding the words “a trade”.
2. Rule 10.3 is amended by:
  - (a) renumbering subsection (4) as subsection (5); and
  - (b) inserting the following as subsection (4):

Any officer or employee of a Participant or Access Person or any individual holding a similar position with a Participant or Access Person who engages in conduct that results in the Participant or Access Person contravening a Requirement may be found liable by the Market Regulator for the conduct and be subject to any penalty or remedy as if such person was the Participant or Access Person.
3. Subsection (2) of Rule 10.7 is amended by adding the phrase “, acting reasonably,” before the word “determines”.