

13.1.5 Memorandum of Understanding regarding oversight of RS Inc.

MEMORANDUM OF UNDERSTANDING REGARDING OVERSIGHT OF MARKET REGULATION SERVICES INC.¹

The parties agree as follows:

1. Underlying Principles

- 1.1 Market Regulation Services Inc. (“RS Inc.”) is recognized as a self-regulatory organization under applicable securities legislation and is a regulation services provider pursuant to National Instrument 23-101 Trading Rules.
- 1.2 RS Inc. will provide regulation services to marketplaces that retain RS Inc. as a regulation services provider.
- 1.3 As a means of performing oversight of these functions effectively, an oversight program (the “Oversight Program”) has been developed that will include reviewing and approving new and amended rules, policies and other similar instruments (“Rules”) of RS Inc., reviewing and approving material changes to RS Inc.’s operations and performing examinations of RS Inc.’s regulation services.
- 1.4 The purpose of the Oversight Program is to ensure that RS Inc. meets appropriate standards for regulation. These standards include:
 - 1.4.1 fair access to marketplaces;
 - 1.4.2 fair representation of marketplaces in corporate governance;
 - 1.4.3 systems and financial capacity to carry out prescribed regulatory functions;
 - 1.4.4 market integrity through the adoption of rules that prohibit unfair trading practices and monitoring and enforcing these rules; and
 - 1.4.5 compliance with the terms and conditions of the recognition of RS Inc. and related undertakings.
- 1.5 Each of the Commissions that have recognized RS Inc. as a self-regulatory organization under their legislation is a recognizing regulator (a “Recognizing Regulator”).
- 1.6 The parties agree that the OSC is the principal regulator (the “Principal Regulator”) responsible for coordinating the Oversight Program of RS Inc. which will include the matters described in Part 2.

2. Oversight Program

- 2.1 An Oversight Program will be established which will include, at a minimum, periodic examinations of regulation functions, review and approval of changes to RS Inc. Rules, and review of information filed by RS Inc.

2.2 Examinations of RS Inc.

- 2.2.1 The Principal Regulator is responsible for coordinating with the other Recognizing Regulators periodic examinations of the functions carried out by RS Inc.
- 2.2.2 The Principal Regulator will develop an examination program in consultation with staff of the other Recognizing Regulators. The Principal Regulator will be responsible for coordinating adequate staffing for an examination, drafting reports and reporting to the other Recognizing Regulators on the status and results of an examination. Depending on the functions carried out by RS Inc. in a particular office, staff of the other Recognizing Regulators may take an active role in carrying out the examination.
- 2.2.3 At the conclusion of an examination, staff of the Principal Regulator will coordinate the drafting of a report with staff of the other Recognizing Regulators who took an active role in carrying out the examination and send the draft report to all Recognizing Regulators for comment. Any Recognizing Regulator that has comments will send its comments to the Principal Regulator within 14 days of receipt of the draft report, with copies to the other Recognizing Regulators.
- 2.2.4 The Principal Regulator will forward a copy of the draft report to RS Inc. RS Inc. will review the draft report and, within 10 days of receipt, provide its comments to the Principal Regulator, with copies to the other Recognizing Regulators. The Principal Regulator and the Recognizing Regulators will consider the comments of RS Inc. and the Principal Regulator will revise the report as necessary.
- 2.2.5 The Principal Regulator will forward the final examination report to RS Inc. for a response within 21 days. A copy of the report will also be forwarded to the Canadian Securities Administrators (CSA) Chairs. The Principal Regulator will review the response of RS Inc. and coordinate a follow-up plan with the other Recognizing Regulators, if necessary. The Principal Regulator will continue to regularly update the other Recognizing Regulators on the implementation of any follow-up plan and any other action taken.

2.3 Rule Review

- 2.3.1 RS Inc. will be responsible for filing all Rules with each Recognizing Regulator on the same day.
- 2.3.2 In order to provide greater consistency and co-operation and to make the process more efficient, the Commissions have developed a joint rule protocol for coordinating the review and approval of Rules. The joint rule protocol is attached as Appendix A and may be amended from time to time.
- 2.3.3 The parties agree that the OSC will act as Principal Regulator for the purpose of approving Rules.

2.4 Information filed by RS Inc.

- 2.4.1 RS Inc. will be responsible for filing with each Recognizing Regulator the information set out in Appendix B, as amended from time to time.
- 2.4.2 Any comments of the Recognizing Regulators about the information filed by RS Inc. will be sent to the Principal Regulator.
- 2.4.3 The Principal Regulator will request that RS Inc.

¹ The memorandum of understanding will generally take the form set out below.

respond to comments raised by the Recognizing Regulators, if necessary, and forward any response from RS Inc. to the Recognizing Regulators.

APPENDIX A JOINT RULE PROTOCOL

3. Reporting Obligations

- 3.1 Set out in Appendix C, as amended from time to time, are the reporting requirements applicable to RS Inc. RS Inc. will be responsible for reporting to each Recognizing Regulator.
- 3.2 Any comments of the Recognizing Regulators on the reports described in this section will be sent to the Principal Regulator.
- 3.3 The Principal Regulator will request that RS Inc. respond to comments raised by the Recognizing Regulators, if necessary, and forward any response from RS Inc. to the Recognizing Regulators.

4. Status Meetings

- 4.1 In order to coordinate the Oversight Program, the Principal Regulator will organize quarterly conference calls with the other Recognizing Regulators and with RS Inc. staff to discuss upcoming policy, rule or operational changes at RS Inc. and the status of approval of changes by the Recognizing Regulators.

5. Oversight Committee

- 5.1 An oversight committee will be established (the "Oversight Committee") which will act as a forum and venue for the discussion of issues, concerns and proposals related to the oversight of RS Inc.
- 5.2 The Oversight Committee will include staff representatives from each of the Recognizing Regulators. The Oversight Committee will meet at least once annually and will conduct conference calls at least quarterly.
- 5.3 The Oversight Committee will provide to the CSA Chairs an annual written report that will include a summary of all oversight activities during the previous period.

6. Effective Date

This MOU comes into effect as of * .

The parties agree as follows:

1. Underlying Principles

- 1.1 The Commissions agree to adopt uniform procedures to coordinate the review and approval of each new or amended rule, policy and other similar instrument (a "Rule") proposed by Market Regulation Services Inc. ("RS Inc.") in order to streamline the review and approval process.
- 1.2 The Commissions agree that the OSC is the principal regulator (the "Principal Regulator") responsible for coordinating the rule review and approval process.

2. Materials to be Filed

- 2.1 RS Inc. shall file with each Commission on the same day the following information:
 - 2.1.1 the proposed Rule;
 - 2.1.2 a notice of publication including:
 - 2.1.2.1 a description of the proposed Rule and its impact;
 - 2.1.2.2 a concise statement, together with supporting analysis, of the nature, purpose and effect of the Rule;
 - 2.1.2.3 the possible effects of the Rule on marketplaces, marketplace participants, competition and the costs of compliance;
 - 2.1.2.4 a description of the rule-making process, including a description of the context in which the proposed Rule was developed, the process followed, the issues considered, the consultation process undertaken, the alternative approaches considered and the reasons for rejecting the alternatives;
 - 2.1.2.5 where the proposed Rule requires technological systems changes to be made by RS Inc., marketplaces or marketplace participants, RS Inc. shall provide a description of the implications of the Rule and, where possible, an implementation plan, including a description of how the Rule will be implemented and the timing of the implementation; and
 - 2.1.2.6 a reference to other jurisdictions including an indication as to whether another regulator in Canada, the United States or another jurisdiction has a comparable rule or has made or is contemplating making a comparable rule and, if applicable, a comparison of the proposed Rule to the rule of the other jurisdiction.
- 2.2 RS Inc. may file a Rule for approval on its own behalf and on behalf of any exchange and quotation and trade reporting system that has contracted with it for regulation services. In submitting a Rule to each Commission, RS Inc. shall clearly state on whose behalf it is submitting the Rule for review and approval. Any approval by the Commissions of a Rule submitted by RS Inc. shall be given to RS Inc. and the exchanges and quotation and trade reporting systems on whose behalf RS Inc. filed the Rule.

3. Review Process

- 3.1 The Principal Regulator shall immediately send confirmation of receipt of the Rule to RS Inc., with copies to the other Commissions.
- 3.2 The Principal Regulator shall, and the other Commissions may, publish for a 30 day comment period in its bulletin or on its website the notice filed by RS Inc., and the proposed Rule. The 30 day period shall commence on the date the proposed Rule appears in the bulletin or on the website of the Principal Regulator.
- 3.3 During the 30 day comment period, each of the Commissions shall provide material comments to the Principal Regulator in writing, with copies to the other Commissions. If no comments are received within the 30 day period, the Principal Regulator shall assume that the other Commissions do not have any comments.
- 3.4 If the Principal Regulator and the other Commissions do not have any comments and the Principal Regulator has verified that no public comments were received, the Principal Regulator shall advise RS Inc. and proceed to have the proposed Rule approved in accordance with section 4.
- 3.5 The Principal Regulator shall prepare and deliver to the other Commissions, within seven days of the end of the comment period, a draft comment letter to RS Inc. that incorporates the comments raised by the Commissions. If the Principal Regulator and the other Commissions do not have any comments, the Principal Regulator shall send a confirmation of that fact to the other Commissions.
- 3.6 Within seven days of receipt, each of the Commissions shall provide comments on the draft comment letter prepared by the Principal Regulator. If the Principal Regulator does not receive any comments during that period, the other Commissions will be deemed not to have any comments.
- 3.7 The Principal Regulator shall forward the comment letter to RS Inc. within three days of the other Commissions' response period under section 3.5, with a copy to each of the other Commissions.
- 3.8 Within 14 days of receipt, RS Inc. shall respond in writing to the comment letter sent by the Principal Regulator and include in its response a summary of public comments received. RS Inc. shall send a copy of its response to the Principal Regulator and the other Commissions.
- 3.9 Each of the other Commissions shall provide material comments to the Principal Regulator in writing within seven days of RS Inc.'s response with copies to the other Commissions. The Principal Regulator shall provide its comments to the other Commissions within the same period. If no comments are received within the seven day period by the Principal Regulator, the other Commissions are deemed to have no comments.
- 3.10 The Principal Regulator shall use its best efforts to resolve any issues that are significant on a timely basis in consultation with the other Commissions as needed. The Principal Regulator will notify the other Commissions of the resolution of outstanding issues.
- 3.11 If amendments to the Rule are necessary as a result of comments received, the Principal Regulator shall have discretion to determine whether the Rule should be re-published for comment.

4. Approval Process

- 4.1 Staff of the Principal Regulator shall present documentation for

approval of the Rule by the Principal Regulator within 10 days of the later of: receiving confirmation from RS Inc. of no public comments or resolving comments raised under section 3.10.

- 4.2 Staff of the Principal Regulator shall circulate to the other Commissions the documentation approved by the Principal Regulator.
- 4.3 Staff of the other Commissions shall obtain the necessary approval within 10 days of receipt of the documentation from the Principal Regulator. In the event that approval cannot be obtained by a particular Commission within 10 days, that Commission will inform the Principal Regulator and the other Commissions. The Principal Regulator will notify RS Inc.
- 4.4 Each Commission shall inform the Principal Regulator in writing of the decision concerning the proposed Rule immediately following the decision.
- 4.5 The Principal Regulator shall communicate in writing the approval of the proposed Rule to RS Inc. within three days of receipt of notification from all of the other Commissions of their decision.
- 4.6 In the event that there is disagreement between Commissions concerning the approval of a Rule, the Principal Regulator shall arrange, within 14 days of becoming aware of the disagreement, for the Chair of each of the Commissions to discuss the issues and attempt to establish a consensus between the Commissions. If, after the consultations, the Chairs of each of the Commissions are unable to agree on the appropriate outcome for the proposed Rule, RS Inc. will not be able to adopt the Rule.
- 4.7 The Principal Regulator shall prepare and publish in its bulletin or website a notice of approval of a Rule within seven days of delivery of the notification to RS Inc. of the approval. The notice shall be forwarded to the other Commissions and shall contain a short summary of the Rule, RS Inc.'s summary of public comments received and responses, if applicable, and a copy of a revised Rule if changes were made to the version published for public comment. The other Commissions may publish the notice in their bulletin or on their website.
- 4.8 A Rule shall be effective as of the date of the notification of approval by the Principal Regulator to RS Inc. or on a date determined by RS Inc., whichever is later.

5. Immediate Implementation of Rules

- 5.1 If RS Inc. reasonably believes that there is an urgent need to implement a Rule because of a substantial risk of material harm to marketplaces or marketplace participants, RS Inc. may make a Rule effective immediately upon approval by RS Inc.'s board of directors provided that RS Inc.:
- 5.1.1 provides each Commission with written notice of the urgent need to implement the Rule at least seven business days before the Rule is approved by RS Inc.'s board of directors; and
 - 5.1.2 includes in the notice referenced in subsection 5.1.1 an analysis in support of the need for immediate implementation of the Rule.
- 5.2 If a Commission does not agree that immediate implementation is necessary, that Commission shall, within two business days after receiving RS Inc.'s notification, advise the Principal Regulator in writing that it disagrees and provides the reasons for its disagreement, with copies to the other Commissions. The Principal Regulator shall advise the other Commissions in writing if it disagrees within the same period. If no notice is received by RS Inc. within five business days of the Commissions receiving RS Inc.'s notification, RS Inc. shall assume that the Commissions agree with its assessment.
- 5.3 A Rule that is implemented immediately shall be published, reviewed, and approved in accordance with the review and approval procedures set out in sections 3 and 4. Where the Commissions subsequently disapprove a Rule that was implemented immediately, RS Inc. shall repeal the Rule and inform the marketplaces that it regulates.

6. Waiver

- 6.1 The Commissions, through the Principal Regulator, may waive any part of this agreement upon RS Inc. filing a written request with each Commission. The Principal Regulator shall consult with the other Commissions and each Commission will advise the Principal Regulator within seven days if it agrees to grant the waiver. The waiver must be granted in writing by the Principal Regulator, with copies to the other Commissions.
- 6.2 The terms, conditions and procedures of this rule protocol may be varied or waived by mutual agreement of the parties. A waiver or variation may be specific or general and may be made for a time or for all time as mutually agreed by the parties.

7. Effective Date

- 7.1 This agreement comes into effect as of * .

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the date on which the Exhibit is filed and the date as of which the information is accurate if that date is different from the date of filing. If any Exhibit is inapplicable, make a statement to that effect. When filing an amendment, provide a description of the changes and file a complete and updated Exhibit.

1. CORPORATE GOVERNANCE

- Exhibit A** A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.
- Exhibit B** For each affiliated entity of RS Inc., has a contractual or other agreement relating to the operation of the system to be used by RS Inc. to carry out its regulation functions (the "System"), provide the following information:
1. Name and address of person or company.
 2. Form of organization (e.g., association, corporation, partnership, etc.).
 3. Location and statute citation under which organized. Date of incorporation in present form.
 4. Brief description of nature and extent of affiliation or contractual or other agreement with RS Inc.
 5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System.
 6. If a person or company has ceased to be an affiliated entity of RS Inc. during the previous year or ceased to have a contractual or other agreement relating to the operation of a System during the previous year, provide a brief statement of the reasons for termination of the relationship.
- Exhibit C** Provide a list of partners, directors, officers, governors, members of all board and standing committees, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:
1. Name.
 2. Title.
 3. Dates of commencement and expiry of present term of office or position and length of time position held.
 4. Type of business in which each is primarily engaged and current employer.
 5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
 6. Whether the person is considered to be an independent director.
- Exhibit D** Provide a list of each shareholder that directly owns five percent or more of a class of a voting security of RS Inc. For each of the persons listed in this Exhibit, please provide the following:
1. Full legal name.
 2. Title or status.
 3. Date title or status was acquired.
 4. Approximate ownership interest.
 5. Whether the person has control of RS Inc. (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation).

2. RULES

- Exhibit E** With the initial filing, provide a copy of all by-laws, rules, policies and other similar instruments of RS Inc. that are not included in Exhibit A.

3. SYSTEMS AND OPERATIONS

- Exhibit F** Describe the manner of operation of the System. This description should include the following:
1. A detailed description of the surveillance tools that comprise the System.
 2. The means of access to the System.
 3. The hours of operation of the System, and the date on which RS Inc. intends to commence operation of the System.

4. Description of current and future capacity estimates, contingency and business continuity plans and the procedures to review and test methodology of the System and to perform stress testing.

Exhibit G Provide a list of all securities for which RS Inc. performs regulation functions.

4. ACCESS

Exhibit H Provide a list of marketplaces for which RS Inc. provides regulation services, and for each marketplace provide the following information:

1. Name.
2. Date of the agreement between the marketplace and RS Inc.
3. Principal business address and telephone number.

5. FEES

Exhibit I Provide a description of all fees to be paid by marketplaces or marketplace participants and how such fees are set.

6. FINANCIAL VIABILITY

Exhibit J¹¹ Provide audited financial statements of RS Inc. and a report prepared by an independent auditor.

7. REGULATION

Exhibit K Provide a description of the regulation services performed by RS Inc., including the structure of RS Inc., policies and procedures in place to ensure confidentiality, policies and procedures relating to conducting an investigation and its disciplinary process.

Exhibit L Provide the contracts between RS Inc. and each marketplace for which RS Inc. is performing regulation services.

Exhibit M If more than one entity is performing regulation services for a type of security, provide the written agreement between RS Inc. and any other regulation services provider under section 7.5 of National Instrument 23-101.

CERTIFICATE OF MARKET REGULATION SERVICES INC.

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this ____ day of _____ 20__

(Name of exchange or quotation and trade reporting system)

(Name of director, officer or partner - please type or print)

(Signature of director, officer or partner)

(Official capacity - please type or print)

APPENDIX C

REPORTING OBLIGATIONS

[This appendix will contain reporting obligations]