

## Chapter 13

# SRO Notices and Disciplinary Proceedings

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### 13.1.1 RS Amendment to the Universal Market Integrity Rules Policy 10.8, Section 9.7 Public Access to Hearings

#### MARKET REGULATION SERVICES INC.

#### AMENDMENT TO THE UNIVERSAL MARKET INTEGRITY RULES

#### POLICY 10.8, SECTION 9.7 PUBLIC ACCESS TO HEARINGS

##### 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 approved an amendment to the Policies under the Universal Market Integrity Rules ("UMIR") to provide for public access to hearings subject to certain limitations.

##### Background to the Amendment

While public access to hearings was implied in Policy 10.8, it was desirable that a specific provision be added to require public access to the various forms of hearings except in certain circumstances. The amendment essentially incorporates the standard established for public access to hearings under the *Statutory Powers Procedure Act* (Ontario) ("SPPA"). That statute applied to hearings conducted by the Toronto Stock Exchange ("TSX") under the rules and by-laws of the TSX as the TSX was created by statute in the Province of Ontario. As Market Regulation Services Inc. ("RS") is a recognized self-regulatory organization incorporated under the *Canada Business Corporations Act*, RS does not exercise a statutory power of decision and is therefore not subject to the SPPA nor comparable legislation in any of the other jurisdictions in which RS is recognized as a self-regulatory organization.

##### Changes from the Original Proposal

While section 1.2 of Policy 10.8 presently provides that a Hearing Panel shall change any practice or procedure set out in Policy 10.8 to comply with applicable statutory requirements, the original proposal set out in Market Integrity Notice 2002-017 dated September 30, 2002 has been modified by the addition of a subsection that specifically provides that in respect of a hearing in Quebec the hearing shall be public provided the Hearing Panel, on its own initiative or at the request of a party, may order the hearing be held in camera or ban the publication or release of any information or documents it indicates in the interest of morality or public order. The addition of this subsection specifically recognizes the requirements imposed on disciplinary hearings by recognized self-regulatory organizations under section 182.1 of the *Securities Act* (Quebec).

##### Impact of the Amendment

The amendment provides "public access" to a hearing conducted by RS. In the case of an oral hearing, the hearing would be open to the public. The public would be given reasonable access to documents submitted for a written hearing at the office of RS during ordinary business hours. In the case of an electronic hearing, the public shall have reasonable access to the proceedings.

Public access to a hearing may be denied if:

- a specific Rule or Policy provides that a hearing be conducted in the absence of the public;
- the Hearing Panel determines that the exclusion of the public from an oral or electronic hearing is necessary for the maintenance of order at the hearing; or
- the Hearing Panel determines that intimate financial or personal matters may be disclosed at the hearing and that the desirability of avoiding disclosure of such personal matters outweighs the desirability of public access to the hearing.

For a hearing in Quebec, the Hearing Panel, on its own initiative or at the request of a party, may order the hearing be held in camera or ban the publication or release of any information or documents it indicates in the interest of morality or public order.

Under the amendment, unless otherwise provided by the Hearing Panel or the terms of a specific Rule or Policy, the public will have access to a hearing to consider:

- approval or rejection of a Settlement Agreement entered into between RS and any person with respect to a violation of UMIR;
- a disciplinary matter undertaken pursuant to a Notice of Hearing issued by RS as against any person alleged not to have complied with a requirement of UMIR; and
- a hearing to consider any procedural applications or motions in relation to a disciplinary proceeding.

**Text of the Amendment**

The text of the amendment to the Policies under UMIR to provide for public access to hearings is set out in Appendix "A". Appendix "B" is a marked version of the amendment that highlights the changes from the original proposal as set out in Market Integrity Notice 2002-017 dated September 30, 2002.

**Responses to the Request for Comments**

In response to the Request for Comments on the proposed amendments set out in Market Integrity Notice 2002-017, RS received one comment letter. The comment letter and the response of RS have been summarized in Appendix "C".

**Questions**

Questions concerning this notice may be directed to:

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**Appendix "A"**

***Universal Market Integrity Rules***

**TEXT OF AMENDMENT RELATED TO PUBLIC ACCESS TO HEARINGS**

The Policies to the Universal Market Integrity Rules are amended by adding the following as section 9.7 of Policy 10.8:

**9.7 Public Access to Hearing**

- (1) Subject to subsection (2), each hearing shall be conducted in a manner:
  - (a) in the case of an oral hearing, to be open to the public;
  - (b) in the case of a written hearing, to provide the public with reasonable access to the documents submitted at the office of the Market Regulator during ordinary business hours; and
  - (c) in the case of an electronic hearing, to provide the public with reasonable access to the proceedings.
- (2) A hearing shall be conducted in the absence of the public in the case of an oral or electronic hearing or without access to the documents submitted in the case of a written hearing if:
  - (a) a specific Rule or Policy provides that a hearing be conducted in the absence of the public or without access to the documents submitted;
  - (b) in the opinion of the Hearing Panel, the absence of the public from an oral or electronic hearing is necessary for the maintenance of order at the hearing; and
  - (c) in the opinion of the Hearing Panel, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
- (3) Despite subsection (2), a hearing by a Hearing Panel in Quebec shall be public provided the Hearing Panel, on its own initiative or at the request of a party, may order the hearing be held in camera or ban the publication or release of any information or documents it indicates in the interest of morality or public order.

Appendix "B"

*Universal Market Integrity Rules*

**TEXT OF THE AMENDMENT MARKED TO THE PROPOSAL SET OUT IN MARKET INTEGRITY NOTICE 2002-017  
DATED SEPTEMBER 30, 2002**

The Policies to the Universal Market Integrity Rules are amended by adding the following as section 9.7 of Policy 10.8:

**9.7 Public Access to Hearing**

- (1) Subject to subsections (2) and (3), each hearing shall be conducted in a manner:
  - (a) in the case of an oral hearing, to be open to the public;
  - (b) in the case of a written hearing, to provide the public with reasonable access to the documents submitted at the office of the Market Regulator during ordinary business hours; and
  - (c) in the case of an electronic hearing, to provide the public with reasonable access to the proceedings.
- (2) A hearing shall be conducted in the absence of the public in the case of an oral or electronic hearing or without access to the documents submitted in the case of a written hearing if:
  - (a) a specific Rule or Policy provides that a hearing be conducted in the absence of the public or without access to the documents submitted;
  - (b) in the opinion of the Hearing Panel, the absence of the public from an oral or electronic hearing is necessary for the maintenance of order at the hearing; and
  - (c) in the opinion of the Hearing Panel, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
- (3) Despite subsection (2), a hearing by a Hearing Panel in Quebec shall be public provided the Hearing Panel, on its own initiative or at the request of a party, may order the hearing be held in camera or ban the publication or release of any information or documents it indicates in the interest of morality or public order.

**Appendix "C"**

***Universal Market Integrity Rules***

**COMMENTS IN RESPONSE TO PROPOSED AMENDMENTS REGARDING PUBLIC ACCESS TO HEARINGS**

| Commentator  | Specific Comments   | Response to Comment   |
|--------------|---|---|
| Simon Romano | The commenter suggested that the public be provided with the ability wherever possible to review the documents submitted via the Internet. The commentator suggested that in the alternative the public should be able to request copies of the documents be mailed to them without charge. | As a matter of course, and in accordance with Policy 10.8, notices of hearing, statements of allegations and orders and decisions (both in summary and full text) are provided on the RS website. RS does not provide on the website background documents or documents relied upon by parties at hearings as such material is often not readily available in electronic form or would be too cumbersome to maintain on the website. |